



# Banking (Special Provisions) Act 2008

## 2008 CHAPTER 2

### *General*

#### **12 Consequential and supplementary provision**

- (1) The Treasury may by order make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
- as they consider appropriate for the general purposes, or any particular purposes, of this Act or in consequence of any provision made by or under this Act, or for giving full effect to this Act or any such provision.
- (2) An order under this section may in particular—
- (a) disapply (to such extent as is specified) any specified statutory provision or rule of law;
  - (b) provide for any specified statutory provision to apply (whether or not it would otherwise apply) with specified modifications;
  - (c) make provision for or in connection with any of the matters mentioned in subsection (3).
- (3) Those matters are—
- (a) imposing a moratorium on the commencement or continuation of proceedings or other legal processes of any specified description in relation to any body or property of any such description;
  - (b) providing exceptions from any provision made in pursuance of paragraph (a), whether framed by reference to—
    - (i) the leave of the court or the consent of the Treasury or the Bank of England, or
    - (ii) instruments or transactions of specified descriptions, or otherwise;
  - (c) the dissolution of any relevant deposit-taker or of any UK undertaking which is a subsidiary undertaking of any relevant deposit-taker;

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- (d) exempting directors of any relevant deposit-taker, or of any group undertaking of any relevant deposit-taker, from liability in connection with acts or omissions in relation to the deposit-taker or undertaking;
  - (e) the payment of any compensation by the Treasury to persons affected by an order under this section.
- (4) An order under this section may, in connection with the payment of any such compensation, make provision for any matter for which provision is or may be made by or under section 5, 7 or 9.
- (5) In this section “relevant deposit-taker” means any authorised UK deposit-taker in relation to which an order is being, or has been, made under section 3 or 6.

### **13 Orders and regulations: general**

- (1) Orders and regulations under this Act are to be made by statutory instrument.
- (2) Such orders and regulations—
- (a) may make different provision for different cases or circumstances;
  - (b) may make such supplementary, incidental, consequential, transitory, transitional or saving provision as the Treasury consider appropriate.
- (3) A statutory instrument which contains an order under section 5, 7, 8(6) or 11 (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) If a statutory instrument to which subsection (3) applies would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not such an instrument.
- (5) A statutory instrument containing an order under this Act to which subsection (3) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing regulations under section 10 is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) Nothing in any provision of this Act that authorises the making of any order or regulations, or the making of any particular kind of provision by any order or regulations, affects the generality of any other such provision of this Act.

### **14 Orders and regulations: retrospective provisions**

- (1) Subsections (2) and (3) apply to any order made under section 3, 4, 6 or 12 (a “relevant order”).
- (2) A relevant order may—
- (a) provide for any provision made by the order to have retrospective effect as from any appropriate time or any specified later time;
  - (b) make provision for or in connection with, or in consequence of, nullifying the effect of transactions or events taking place after the time in question.
- (3) “Appropriate time”, in relation to a relevant order, means —

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- (a) the specified time on the date of a statement published by the Treasury of their intention to make an order that would have the same general effect as the relevant order;
  - (b) the specified time on the date on which any transfer was effected by or under a previous relevant order.
- (4) It is immaterial whether the statement mentioned in subsection (3)(a) is published before or after the passing of this Act.
- (5) Regulations under section 10 may provide for any of their provisions to have retrospective effect as from any time which is not earlier than 3 months before the day on which this Act is passed.

## 15 Interpretation

(1) In this Act—

“authorised UK deposit-taker” has the meaning given by section 1;

“body corporate” includes a body incorporated outside the United Kingdom, but does not include the Bank of England;

“company” means a company within the meaning of section 1 of the Companies Act 2006 (c. 46);

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“enactment” includes—

- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978;

“financial assistance”, in relation to any person, includes—

- (a) assistance provided by way of loan, guarantee or indemnity,
- (b) assistance provided by way of any transaction which equates, in substance, to a transaction for lending money at interest (such as a transaction involving the sale and repurchase of securities or other assets), and
- (c) assistance falling within paragraph (a) or (b) provided indirectly to or otherwise for the benefit of the person (including the provision of assistance within paragraph (a) or (b) to any group undertaking of that person),

whether provided in pursuance of an agreement or otherwise and whether provided before or after the passing of this Act;

“FSMA 2000” means the Financial Services and Markets Act 2000 (c. 8);

“group undertaking” has the meaning given by section 1161 of the Companies Act 2006;

“indemnity” includes any undertaking or other arrangement entered into for the purpose of indemnifying any person or for any similar purpose;

“liabilities” includes obligations;

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“modifications” includes omissions, additions and alterations, and “modify” has a corresponding meaning;

“pension scheme” means a scheme or other arrangements for the provision of benefits to or in respect of people—

- (a) on retirement,
- (b) on death,
- (c) on having reached a particular age,
- (d) on the onset of any serious ill-health or incapacity, or
- (e) in similar circumstances;

“relevant guarantee arrangements”, in relation to any authorised UK deposit-taker, has the meaning given by section 2(6);

“securities” includes—

- (a) shares and stock,
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, and
- (c) warrants or other instruments entitling the holder to subscribe for, or otherwise acquire, securities falling within paragraph (a) or (b),

and see also subsection (2);

“specified”, in relation to any order or regulations under this Act, means specified in the order or regulations;

“statutory provision” means any provision made by or under an enactment (whenever passed or made);

“subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006 (c. 46);

“UK undertaking” means an undertaking which is incorporated in, or formed under the law of any part of, the United Kingdom;

“undertaking” has the meaning given by section 1161 of the Companies Act 2006 (except in the definition of “indemnity”);

“wholly owned”, in relation to the Bank of England or the Treasury, is to be construed in accordance with subsection (6);

“wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

- (2) In this Act any reference (however expressed) to securities issued by any authorised UK deposit-taker includes a reference to rights granted by the deposit-taker which form part of its own funds for the purposes of Section 1 of Chapter 2 of Title V of the Banking Consolidation Directive (and which would not otherwise be securities by virtue of subsection (1)).
- (3) In subsection (2) “the Banking Consolidation Directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).
- (4) For the purposes of this Act any undertaking that was an authorised UK deposit-taker immediately before the making of the first order under section 3 or 6 in relation to the undertaking is to be regarded as continuing to be an authorised UK deposit-taker, whether or not it would be one apart from this subsection.

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- (5) For the purposes of this Act any reference (however expressed) to an undertaking which is—
- (a) a group undertaking of an authorised UK deposit-taker, or
  - (b) a subsidiary undertaking of an authorised UK deposit-taker,
- includes, in relation to any time after the making of the first order under section 3 or 6 in relation to the deposit-taker (“the relevant time”), a reference to an undertaking which was a group or subsidiary undertaking of the deposit-taker immediately before the making of that order but is not one at the relevant time.
- (6) For the purposes of this Act—
- (a) a company is to be regarded as wholly owned by the Bank of England at any time if at that time—
    - (i) it is a company of which no person other than the Bank or a nominee of the Bank is a member, or
    - (ii) it is a wholly-owned subsidiary of a company within subparagraph (i); and
  - (b) a company is to be regarded as wholly owned by the Treasury at any time if at that time—
    - (i) it is a company of which no person other than a nominee of the Treasury is a member, or
    - (ii) it is a wholly-owned subsidiary of a company within subparagraph (i).
- (7) This subsection makes transitional provision for the purposes of this Act in relation to expressions defined by subsection (1) by reference to provisions of the Companies Act 2006 (c. 46) (“the 2006 Act”)—
- (a) in relation to any time before the commencement of section 1 of the 2006 Act, “company” means a company within the meaning of the Companies Act 1985 (c. 6) (“the 1985 Act”) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (“the 1986 Order”);
  - (b) in relation to any time before the commencement of section 1159 of the 2006 Act, “wholly-owned subsidiary” has the meaning given by section 736 of the 1985 Act or Article 4 of the 1986 Order;
  - (c) in relation to any time before the commencement of sections 1161 and 1162 of the 2006 Act, “group undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given by sections 258 and 259 of the 1985 Act or Articles 266 and 267 of the 1986 Order.

## 16 Financial provision

- (1) There is to be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Treasury in connection with the provision of financial assistance to any authorised UK deposit-taker in relation to which an order is made under section 3 or 6;
  - (b) any expenditure incurred by the Treasury in connection with the provision of financial assistance to any person to whom any transfer is made under this Act;
  - (c) any expenditure incurred by the Treasury in connection with the giving of any relevant indemnity or the putting in place of relevant guarantee arrangements in relation to any particular authorised UK deposit-taker; and
  - (d) any other expenditure incurred by the Treasury by virtue of this Act.

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- (2) In subsection (1)(c) “relevant indemnity” means any indemnity given to—
- (a) directors of any authorised UK deposit-taker in relation to which an order is made under section 3 or 6,
  - (b) directors of any body to which any transfer is made under this Act,
  - (c) directors of any body which is a group undertaking of any body to which any transfer is made under this Act,
  - (d) the Bank of England in respect of, or in connection with, any financial assistance provided by it to any body within any of paragraphs (a) to (c), or
  - (e) any person appointed by the Treasury as an independent valuer for the purposes of any order made under this Act.
- (3) It is immaterial whether the indemnity or arrangements mentioned in subsection (1) are given or put in place before or after the passing of this Act.

## **17 Short title, commencement and extent**

- (1) This Act may be cited as the Banking (Special Provisions) Act 2008.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

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**Changes to legislation:**

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