



# Banking Act 2009

## CHAPTER 1

---

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

---



# Banking Act 2009

## CHAPTER 1

## CONTENTS

### PART 1

#### SPECIAL RESOLUTION REGIME

##### *Introduction*

- 1 Overview
- 2 Interpretation: “bank”
- 3 Interpretation: other expressions

##### *Objectives and code*

- 4 Special resolution objectives
- 5 Code of practice
- 6 Code of practice: procedure

##### *Exercise of powers: general*

- 7 General conditions
- 8 Specific conditions: private sector purchaser and bridge bank
- 9 Specific conditions: temporary public ownership
- 10 Banking Liaison Panel

##### *The stabilisation options*

- 11 Private sector purchaser
- 12 Bridge bank
- 13 Temporary public ownership

##### *Transfer of securities*

- 14 Interpretation: “securities”
- 15 Share transfer instrument

- 16 Share transfer order
- 17 Effect
- 18 Continuity
- 19 Conversion and delisting
- 20 Directors
- 21 Ancillary instruments: production, registration, &c.
- 22 Termination rights, &c.
- 23 Incidental provision
- 24 Procedure: instruments
- 25 Procedure: orders
- 26 Supplemental instruments
- 27 Supplemental orders
- 28 Onward transfer
- 29 Reverse share transfer
- 30 Bridge bank: share transfers
- 31 Bridge bank: reverse share transfer
- 32 Interpretation: general

*Transfer of property*

- 33 Property transfer instrument
- 34 Effect
- 35 Transferable property
- 36 Continuity
- 37 Licences
- 38 Termination rights, &c.
- 39 Foreign property
- 40 Incidental provision
- 41 Procedure
- 42 Supplemental instruments
- 43 Onward transfer
- 44 Reverse property transfer
- 45 Temporary public ownership: property transfer
- 46 Temporary public ownership: reverse property transfer
- 47 Restriction of partial transfers
- 48 Power to protect certain interests

*Compensation*

- 49 Orders
- 50 Sale to private sector purchaser
- 51 Transfer to temporary public ownership
- 52 Transfer to bridge bank
- 53 Onward and reverse transfers
- 54 Independent valuer
- 55 Independent valuer: supplemental
- 56 Independent valuer: money
- 57 Valuation principles
- 58 Resolution fund
- 59 Third party compensation: discretionary provision
- 60 Third party compensation: mandatory provision
- 61 Sources of compensation
- 62 Procedure

*Incidental functions*

- 63 General continuity obligation: property transfers
- 64 Special continuity obligations: property transfers
- 65 Continuity obligations: onward property transfers
- 66 General continuity obligation: share transfers
- 67 Special continuity obligations: share transfers
- 68 Continuity obligations: onward share transfers
- 69 Continuity obligations: consideration and terms
- 70 Continuity obligations: termination
- 71 Pensions
- 72 Enforcement
- 73 Disputes
- 74 Tax
- 75 Power to change law

*Treasury*

- 76 International obligation notice: general
- 77 International obligation notice: bridge bank
- 78 Public funds: general
- 79 Public funds: bridge bank
- 80 Bridge bank: report
- 81 Temporary public ownership: report

*Holding companies*

- 82 Temporary public ownership
- 83 Supplemental

*Building societies, &c.*

- 84 Application of Part 1: general
- 85 Temporary public ownership
- 86 Distribution of assets on dissolution or winding up
- 87 Interpretation
- 88 Consequential provision
- 89 Credit unions

**PART 2**

## BANK INSOLVENCY

*Introduction*

- 90 Overview
- 91 Interpretation: “bank”
- 92 Interpretation: “the court”
- 93 Interpretation: other expressions

*Bank insolvency order*

- 94 The order
- 95 Application
- 96 Grounds for applying

- 97 Grounds for making
- 98 Commencement

*Process of bank liquidation*

- 99 Objectives
- 100 Liquidation committee
- 101 Liquidation committee: supplemental
- 102 Objective 1: (a) or (b)?
- 103 General powers, duties and effect
- 104 Additional general powers
- 105 Status of bank liquidator

*Tenure of bank liquidator*

- 106 Term of appointment
- 107 Resignation
- 108 Removal by court
- 109 Removal by creditors
- 110 Disqualification
- 111 Release
- 112 Replacement

*Termination of process, &c.*

- 113 Company voluntary arrangement
- 114 Administration
- 115 Dissolution
- 116 Dissolution: supplemental

*Other processes*

- 117 Bank insolvency as alternative order
- 118 Voluntary winding-up
- 119 Exclusion of other procedures
- 120 Notice to FSA of preliminary steps
- 121 Disqualification of directors
- 122 Application of insolvency law

*Miscellaneous*

- 123 Role of FSCS
- 124 Transfer of accounts
- 125 Rules
- 126 Fees
- 127 Insolvency Services Account
- 128 Evidence
- 129 Co-operation between courts
- 130 Building societies
- 131 Credit unions
- 132 Partnerships
- 133 Scottish partnerships
- 134 Northern Ireland
- 135 Consequential provision

**PART 3**

## BANK ADMINISTRATION

*Introduction*

- 136 Overview
- 137 Objectives
- 138 Objective 1: supporting private sector purchaser or bridge bank
- 139 Objective 1: duration
- 140 Objective 2: “normal” administration

*Process*

- 141 Bank administration order
- 142 Application
- 143 Grounds for applying
- 144 Grounds for making
- 145 General powers, duties and effect
- 146 Status of bank administrator
- 147 Administrator’s proposals
- 148 Sharing information

*Multiple transfers*

- 149 General application of this Part
- 150 Bridge bank to private purchaser
- 151 Property transfer from bridge bank
- 152 Property transfer from temporary public ownership

*Termination*

- 153 Successful rescue
- 154 Winding-up or voluntary arrangement

*Miscellaneous*

- 155 Disqualification of directors
- 156 Application of other law
- 157 Other processes
- 158 Building societies
- 159 Credit unions
- 160 Rules
- 161 Fees
- 162 Evidence
- 163 Partnerships
- 164 Scottish partnerships
- 165 Co-operation between courts
- 166 Interpretation: general
- 167 Northern Ireland
- 168 Consequential provision

**PART 4**

## FINANCIAL SERVICES COMPENSATION SCHEME

169	Overview
170	Contingency funding
171	Special resolution regime
172	Investing in National Loans Fund
173	Borrowing from National Loans Fund
174	Procedure for claims
175	Rights in insolvency
176	Information
177	Payments in error
178	Regulations
179	Delegation of functions
180	Functions under this Act

**PART 5**

## INTER-BANK PAYMENT SYSTEMS

*Introduction*

181	Overview
182	Interpretation: “inter-bank payment system”
183	Interpretation: other expressions

*Recognised systems*

184	Recognition order
185	Recognition criteria
186	Procedure
187	De-recognition

*Regulation*

188	Principles
189	Codes of practice
190	System rules
191	Directions
192	Role of FSA

*Enforcement*

193	Inspection
194	Inspection: warrant
195	Independent report
196	Compliance failure
197	Publication
198	Penalty
199	Closure
200	Management disqualification
201	Warning
202	Appeal

*Miscellaneous*

- 203 Fees
- 204 Information
- 205 Pretending to be recognised
- 206 Saving for informal oversight

**PART 6**

BANKNOTES: SCOTLAND AND NORTHERN IRELAND

*Introduction*

- 207 Overview

*Key terms*

- 208 “Banknote”
- 209 “Issue”
- 210 “Authorised bank”
- 211 “Commencement”

*Authorisation to issue*

- 212 Repeal of old authorising enactments
- 213 Saving for existing issuers
- 214 Consequential repeals and amendments

*Regulations and rules*

- 215 Banknote regulations
- 216 Banknote rules

*Specific issues*

- 217 Backing assets
- 218 Information
- 219 Ceasing the business of issuing notes
- 220 Insolvency, &c.

*Enforcement*

- 221 Offence: unlawful issue
- 222 Financial penalty
- 223 Termination of right to issue
- 224 Application to court

*Bank of England*

- 225 Organisation
- 226 Discretionary functions
- 227 Exemption



**PART 7**

## MISCELLANEOUS

*Treasury support for banks*

- 228 Consolidated Fund
- 229 National Loans Fund
- 230 “Financial institution”
- 231 Reports

*Investment banks*

- 232 Definition
- 233 Insolvency regulations
- 234 Regulations: details
- 235 Regulations: procedure
- 236 Review

*Banking (Special Provisions) Act 2008*

- 237 Compensation: valuer

*Bank of England*

- 238 UK financial stability
- 239 Number of directors
- 240 Meetings
- 241 Chair of court
- 242 Quorum
- 243 Tenure
- 244 Immunity
- 245 Weekly return
- 246 Information
- 247 Bank of England Act 1946

*Financial Services Authority*

- 248 Variation of permission
- 249 Functions
- 250 Information

*Central banks*

- 251 Financial assistance to building societies
- 252 Registration of charges
- 253 Registration of charges: Scotland

*Funds attached rule (Scotland)*

- 254 Abolition for cheques

*Financial collateral arrangements*

- 255 Regulations
- 256 Supplemental

**PART 8**

GENERAL

- 257 “Financial assistance”
- 258 “Enactment”
- 259 Statutory instruments
- 260 Money
- 261 Index of defined terms
- 262 Repeal
- 263 Commencement
- 264 Extent
- 265 Short title



# Banking Act 2009

## 2009 CHAPTER 1

An Act to make provision about banking.

[12th February 2009]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### SPECIAL RESOLUTION REGIME

##### *Introduction*

## 1 Overview

- (1) The purpose of the special resolution regime for banks is to address the situation where all or part of the business of a bank has encountered, or is likely to encounter, financial difficulties.
- (2) The special resolution regime consists of—
  - (a) the three stabilisation options,
  - (b) the bank insolvency procedure (provided by Part 2), and
  - (c) the bank administration procedure (provided by Part 3).
- (3) The three “stabilisation options” are—
  - (a) transfer to a private sector purchaser (section 11),
  - (b) transfer to a bridge bank (section 12), and
  - (c) transfer to temporary public ownership (section 13).
- (4) Each of the three stabilisation options is achieved through the exercise of one or more of the “stabilisation powers”, which are—
  - (a) the share transfer powers (sections 15, 16, 26 to 31 and 85), and
  - (b) the property transfer powers (sections 33 and 42 to 46).

- (5) Each of the following has a role in the operation of the special resolution regime –
- (a) the Bank of England,
  - (b) the Treasury, and
  - (c) the Financial Services Authority.
- (6) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 1 to 3	Introduction
Sections 4 to 6	Objectives and code
Sections 7 to 10	Exercise of powers: general
Sections 11 to 13	The stabilisation options
Sections 14 to 32	Transfer of securities
Sections 33 to 48	Transfer of property
Sections 49 to 62	Compensation
Sections 63 to 75	Incidental functions
Sections 76 to 81	Treasury
Sections 82 and 83	Holding companies
Sections 84 to 89	Building societies, &c.

## 2 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include –
- (a) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
  - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) Where a stabilisation power is exercised in respect of a bank, it does not cease to be a bank for the purposes of this Part if it later loses the permission referred to in subsection (1).
- (5) An order under subsection (2)(c) –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

- (6) Section 84 applies this Part to building societies with modifications.
- (7) Section 89 allows the application of this Part to credit unions.

### **3 Interpretation: other expressions**

In this Part –

- “the FSA” means the Financial Services Authority, and
- “financial assistance” has the meaning given by section 257.

#### *Objectives and code*

### **4 Special resolution objectives**

- (1) This section sets out the special resolution objectives.
- (2) The relevant authorities shall have regard to the special resolution objectives in using, or considering the use of –
  - (a) the stabilisation powers,
  - (b) the bank insolvency procedure, or
  - (c) the bank administration procedure.
- (3) For the purpose of this section the relevant authorities are –
  - (a) the Treasury,
  - (b) the FSA, and
  - (c) the Bank of England.
- (4) Objective 1 is to protect and enhance the stability of the financial systems of the United Kingdom.
- (5) Objective 2 is to protect and enhance public confidence in the stability of the banking systems of the United Kingdom.
- (6) Objective 3 is to protect depositors.
- (7) Objective 4 is to protect public funds.
- (8) Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).
- (9) In subsection (4), the reference to the stability of the financial systems of the United Kingdom includes, in particular, a reference to the continuity of banking services.
- (10) The order in which the objectives are listed in this section is not significant; they are to be balanced as appropriate in each case.

### **5 Code of practice**

- (1) The Treasury shall issue a code of practice about the use of –
  - (a) the stabilisation powers,
  - (b) the bank insolvency procedure, and
  - (c) the bank administration procedure.
- (2) The code may, in particular, provide guidance on –

- (a) how the special resolution objectives are to be understood and achieved,
  - (b) the choice between different options,
  - (c) the information to be provided in the course of a consultation under this Part,
  - (d) the giving of advice by one relevant authority to another about whether, when and how the stabilisation powers are to be used,
  - (e) how to determine whether Condition 2 in section 7 is met,
  - (f) how to determine whether the test for the use of stabilisation powers in section 8 is satisfied,
  - (g) sections 63 and 66, and
  - (h) compensation.
- (3) Sections 12 and 13 require the inclusion in the code of certain matters about bridge banks and temporary public ownership.
  - (4) The relevant authorities shall have regard to the code.
  - (5) For the purpose of this section the relevant authorities are –
    - (a) the Treasury,
    - (b) the FSA, and
    - (c) the Bank of England.

## **6 Code of practice: procedure**

- (1) Before issuing the code of practice the Treasury must consult –
  - (a) the FSA,
  - (b) the Bank of England, and
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).
- (2) As soon as is reasonably practicable after issuing the code of practice the Treasury shall lay a copy before Parliament.
- (3) The Treasury may revise and re-issue the code of practice.
- (4) Subsections (1) and (2) apply to re-issue as to the first issue.

### *Exercise of powers: general*

## **7 General conditions**

- (1) A stabilisation power may be exercised in respect of a bank only if the FSA is satisfied that the following conditions are met.
- (2) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the threshold conditions (within the meaning of section 41(1) of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)).
- (3) Condition 2 is that having regard to timing and other relevant circumstances it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will enable the bank to satisfy the threshold conditions.

- (4) The FSA shall treat Conditions 1 and 2 as met if satisfied that they would be met but for financial assistance provided by –
  - (a) the Treasury, or
  - (b) the Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms).
- (5) Before determining whether or not Condition 2 is met the FSA must consult –
  - (a) the Bank of England, and
  - (b) the Treasury.
- (6) The special resolution objectives are not relevant to Conditions 1 and 2.
- (7) The conditions for applying for and making a bank insolvency order are set out in sections 96 and 97.
- (8) The conditions for applying for and making a bank administration order are set out in sections 143 and 144.

## **8 Specific conditions: private sector purchaser and bridge bank**

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 11(2) or 12(2) only if satisfied that Condition A is met.
- (2) Condition A is that the exercise of the power is necessary, having regard to the public interest in –
  - (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of the banking systems of the United Kingdom, or
  - (c) the protection of depositors.
- (3) Before determining whether Condition A is met, and if so how to react, the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury.
- (4) Where the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom, the Bank may exercise a stabilisation power in respect of the bank in accordance with section 11(2) or 12(2) only if satisfied that Condition B is met (instead of Condition A).
- (5) Condition B is that –
  - (a) the Treasury have recommended the Bank of England to exercise the stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank's opinion, exercise of the stabilisation power is an appropriate way to provide that protection.
- (6) The conditions in this section are in addition to the conditions in section 7.

## **9 Specific conditions: temporary public ownership**

- (1) The Treasury may exercise a stabilisation power in respect of a bank in accordance with section 13(2) only if satisfied that one of the following conditions is met.

- (2) Condition A is that the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial systems of the United Kingdom.
- (3) Condition B is that exercise of the power is necessary to protect the public interest, where the Treasury have provided financial assistance in respect of the bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.
- (4) Before determining whether a condition is met the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.
- (5) The conditions in this section are in addition to the conditions in section 7.

## 10 Banking Liaison Panel

- (1) The Treasury shall make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on –
  - (a) banks,
  - (b) persons with whom banks do business, and
  - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about –
  - (a) the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c)),
  - (b) the code of practice under section 5, and
  - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury shall ensure that the panel includes –
  - (a) a member appointed by the Treasury,
  - (b) a member appointed by the Bank of England,
  - (c) a member appointed by the FSA,
  - (d) a member appointed by the scheme manager of the Financial Services Compensation Scheme,
  - (e) one or more persons who in the Treasury’s opinion represent the interests of banks,
  - (f) one or more persons who in the Treasury’s opinion have expertise in law relating to the financial systems of the United Kingdom, and
  - (g) one or more persons who in the Treasury’s opinion have expertise in insolvency law and practice.

### *The stabilisation options*

## 11 Private sector purchaser

- (1) The first stabilisation option is to sell all or part of the business of the bank to a commercial purchaser.
- (2) For that purpose the Bank of England may make –
  - (a) one or more share transfer instruments;
  - (b) one or more property transfer instruments.



## 12 Bridge bank

- (1) The second stabilisation option is to transfer all or part of the business of the bank to a company which is wholly owned by the Bank of England (a “bridge bank”).
- (2) For that purpose the Bank of England may make one or more property transfer instruments.
- (3) The code of practice under section 5 must include provision about the management and control of bridge banks including, in particular, provision about—
  - (a) setting objectives,
  - (b) the content of the articles of association,
  - (c) the content of reports under section 80(1),
  - (d) different arrangements for management and control at different stages, and
  - (e) eventual disposal.
- (4) Where property, rights or liabilities are first transferred by property transfer instrument to a bridge bank and later transferred (whether or not by the exercise of a power under this Part) to another company which is wholly owned by the Bank of England, that other company is an “onward bridge bank”.
- (5) An onward bridge bank—
  - (a) is a bridge bank for the purposes of—
    - (i) subsection (3),
    - (ii) section 77,
    - (iii) section 79, and
    - (iv) section 80(5), but
  - (b) is not a bridge bank for the purposes of—
    - (i) section 30(1),
    - (ii) section 43(1), or
    - (iii) section 80(1).

## 13 Temporary public ownership

- (1) The third stabilisation option is to take the bank into temporary public ownership.
- (2) For that purpose the Treasury may make one or more share transfer orders in which the transferee is—
  - (a) a nominee of the Treasury, or
  - (b) a company wholly owned by the Treasury.
- (3) The code of practice under section 5 must include provision about the management of banks taken into temporary public ownership under this section.

---

*Transfer of securities***14 Interpretation: “securities”**

- (1) In this Part “securities” includes anything falling within any of the following classes.
- (2) Class 1: shares and stock.
- (3) Class 2: debentures, including—
  - (a) debenture stock,
  - (b) loan stock,
  - (c) bonds,
  - (d) certificates of deposit, and
  - (e) any other instrument creating or acknowledging a debt.
- (4) Class 3: warrants or other instruments that entitle the holder to acquire anything in Class 1 or 2.
- (5) Class 4: rights which—
  - (a) are granted by a deposit-taker, and
  - (b) form part of the deposit-taker’s own funds for the purposes of section 1 of Chapter 2 of Title V of Directive 2006/48/EC (on the taking up and pursuit of the business of credit institutions).

**15 Share transfer instrument**

- (1) A share transfer instrument is an instrument which—
  - (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (2) A share transfer instrument may relate to—
  - (a) specified securities, or
  - (b) securities of a specified description.

**16 Share transfer order**

- (1) A share transfer order is an order which—
  - (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that order, by another share transfer order or otherwise).
- (2) A share transfer order may relate to—
  - (a) specified securities, or
  - (b) securities of a specified description.

## 17 Effect

- (1) In this section “transfer” means a transfer provided for by a share transfer instrument or order.
- (2) A transfer takes effect by virtue of the instrument or order (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes –
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A share transfer instrument or order may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).
- (6) A share transfer instrument or order may extinguish rights to acquire securities falling within Class 1 or 2 in section 14.

## 18 Continuity

- (1) A share transfer instrument or order may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A share transfer instrument or order may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A share transfer instrument or order may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A share transfer instrument or order may modify references (express or implied) in an instrument or document to a transferor.
- (5) A share transfer instrument or order may require or permit –
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance.

## 19 Conversion and delisting

- (1) A share transfer instrument or order may provide for securities to be converted from one form or class to another.
- (2) A share transfer instrument or order may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000, to be discontinued.

## 20 Directors

- (1) A share transfer instrument may enable the Bank of England –

- (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) A share transfer order may enable the Treasury –
- (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.
- (4) Appointments under subsection (2)(d) are to be on terms and conditions agreed with the Treasury.

## **21 Ancillary instruments: production, registration, &c.**

- (1) A share transfer instrument or order may permit or require the execution, issue or delivery of an instrument.
- (2) A share transfer instrument or order may provide for a transfer to have effect irrespective of –
- (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
  - (b) registration.
- (3) A share transfer instrument or order may provide for the effect of an instrument executed, issued or delivered in accordance with the instrument or order.
- (4) A share transfer instrument or order may modify or annul the effect of an instrument.
- (5) A share transfer instrument or order may –
- (a) entitle a transferee to be registered in respect of transferred securities;
  - (b) require a person to effect registration.

## **22 Termination rights, &c.**

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).
- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises –
- (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,
  - (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,

- (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses, or
  - (i) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement –
- (a) takes effect only if a specified event occurs or does not occur,
  - (b) takes effect only if a specified situation arises or does not arise,
  - (c) has effect only for so long as a specified event does not occur,
  - (d) has effect only while a specified situation lasts,
  - (e) applies differently if a specified event occurs,
  - (f) applies differently if a specified situation arises, or
  - (g) applies differently while a specified situation lasts.
- (4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) A share transfer instrument or order may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies except in so far as the instrument or order provides otherwise.
- (8) In subsections (6) and (7) a reference to the share transfer instrument or order is a reference to –
- (a) the making of the instrument or order,
  - (b) anything that is done by the instrument or order or is to be, or may be, done under or by virtue of the instrument or order, and
  - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order.
- (9) Provision under subsection (5) may apply subsection (6) or (7) –
- (a) generally or only for specified purposes, cases or circumstances;
  - (b) differently for different purposes, cases or circumstances.
- (10) A thing is not done by virtue of an instrument or order for the purposes of subsection (8)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument or order.

## **23 Incidental provision**

- (1) A share transfer instrument or order may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) a share transfer instrument or order –
- (a) may make provision generally or only for specified purposes, cases or circumstances, and

- (b) may make different provision for different purposes, cases or circumstances.

#### **24 Procedure: instruments**

- (1) As soon as is reasonably practicable after making a share transfer instrument in respect of a bank the Bank of England shall send a copy to –
  - (a) the bank,
  - (b) the Treasury,
  - (c) the FSA, and
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a share transfer instrument the Bank of England shall publish a copy –
  - (a) on the Bank’s internet website, and
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.
- (3) Where the Treasury receive a copy of a share transfer instrument under subsection (1) they shall lay a copy before Parliament.

#### **25 Procedure: orders**

- (1) A share transfer order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) As soon as is reasonably practicable after making a share transfer order in respect of a bank the Treasury shall send a copy to –
  - (a) the bank,
  - (b) the Bank of England,
  - (c) the FSA, and
  - (d) any other person specified in the code of practice under section 5.
- (3) As soon as is reasonably practicable after making a share transfer order the Treasury shall publish a copy –
  - (a) on the Treasury’s internet website, and
  - (b) in two newspapers, chosen by the Treasury to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.

#### **26 Supplemental instruments**

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) (“the original instrument”).
- (2) The Bank of England may make one or more supplemental share transfer instruments.
- (3) A supplemental share transfer instrument is a share transfer instrument which –

- (a) provides for the transfer of securities which were issued by the bank before the original instrument and have not been transferred by the original instrument or another supplemental share transfer instrument;
  - (a) makes provision of a kind that a share transfer instrument may make under section 15(1)(b) (whether or not in connection with a transfer under the original instrument).
- (4) Sections 7 and 8 do not apply to a supplemental share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental share transfer instrument the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury.
- (6) The possibility of making a supplemental share transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 11(2) (and not in reliance on subsection (2) above).

## **27 Supplemental orders**

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more supplemental share transfer orders.
- (3) A supplemental share transfer order is a share transfer order which –
  - (a) provides for the transfer of securities which were issued by the bank before the original order and have not been transferred by the original order or another supplemental share transfer order;
  - (b) makes provision of a kind that a share transfer order may make under section 16(1)(b), whether in connection with a transfer under the original order or in connection with a transfer under that or another supplemental order.
- (4) Sections 7 and 9 do not apply to a supplemental share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental share transfer order the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.
- (6) The possibility of making a supplemental share transfer order in reliance on subsection (2) is without prejudice to the possibility of making of a new order in accordance with section 13(2) (and not in reliance on subsection (2) above).

**28 Onward transfer**

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more onward share transfer orders.
- (3) An onward share transfer order is a share transfer order which –
  - (a) provides for the transfer of –
    - (i) securities which were issued by the bank before the original order and have been transferred by the original order or a supplemental share transfer order, or
    - (ii) securities which were issued by the bank after the original order;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that order, by another share transfer order or otherwise).
- (4) An onward share transfer order may not transfer securities to the transferor under the original order.
- (5) Sections 7 and 9 do not apply to an onward share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making an onward share transfer order the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made an onward share transfer order.

**29 Reverse share transfer**

- (1) This section applies where the Treasury have made a share transfer order in accordance with section 13(2) (“the original order”) providing for the transfer of securities issued by a bank to a person (“the original transferee”).
- (2) The Treasury may make one or more reverse share transfer orders in respect of securities issued by the bank and held by the original transferee (whether or not they were transferred by the original order).
- (3) If the Treasury makes an onward share transfer order in respect of securities transferred by the original order, the Treasury may make one or more reverse share transfer orders in respect of securities –
  - (a) issued by the bank, and
  - (b) held by a transferee under the onward share transfer order of any of the following kinds –
    - (i) a company wholly owned by the Bank of England,
    - (ii) a company wholly owned by the Treasury, or
    - (iii) a nominee of the Treasury.
- (4) A reverse share transfer order is a share transfer order which –



- (a) provides for transfer to the transferor under the original order (where subsection (2) applies);
  - (b) provides for transfer to the original transferee (where subsection (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).
- (5) Sections 7, 9 and 51 do not apply to a reverse share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a reverse share transfer order the Treasury must consult –
- (a) the FSA, and
  - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made a reverse share transfer order.

### **30 Bridge bank: share transfers**

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more bridge bank share transfer instruments.
- (3) A bridge bank share transfer instrument is a share transfer instrument which –
- (a) provides for securities issued by the bridge bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bridge bank (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) Sections 7 and 8 do not apply to a bridge bank share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a bridge bank share transfer instrument the Bank of England must consult –
- (a) the FSA, and
  - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a bridge bank share transfer instrument.

### **31 Bridge bank: reverse share transfer**

- (1) This section applies where the Bank of England has made a bridge bank share transfer instrument in accordance with section 30(2) (“the original instrument”) providing for the transfer of securities to –
- (a) a company wholly owned by the Bank of England,
  - (b) a company wholly owned by the Treasury, or

- (c) a nominee of the Treasury.
- (2) The Bank of England may make one or more bridge bank reverse share transfer instruments in respect of securities issued by the bridge bank and held by a person within subsection (1)(a) to (c).
- (3) A bridge bank reverse share transfer instrument is a share transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).
- (4) Sections 7, 8 and 51 do not apply to a bridge bank reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (5) Before making a bridge bank reverse share transfer instrument the Bank of England must consult—
  - (a) the FSA, and
  - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a bridge bank reverse share transfer instrument.

### 32 Interpretation: general

In this group of sections—

“service contract” has the meaning given by section 227 of the Companies Act 2006, and

“transfer date” means the date or time on or at which a share transfer instrument or order (or the relevant part of it) takes effect.

#### *Transfer of property*

### 33 Property transfer instrument

- (1) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (2) A property transfer instrument may relate to—
  - (a) all property, rights and liabilities of the specified bank,
  - (b) all its property, rights and liabilities subject to specified exceptions,
  - (c) specified property, rights or liabilities, or
  - (d) property, rights or liabilities of a specified description.

### **34 Effect**

- (1) In this section “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes –
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation –
  - (a) occurring or arising, or
  - (b) not occurring or arising.
- (6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subsection (5); and the consequences may include –
  - (a) automatic vesting in the original transferor;
  - (b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
  - (c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about –
  - (a) the terms on which the property is to be held after the instrument takes effect (which provision may remove or alter the terms of the trust), and
  - (b) how any powers, provisions and liabilities in respect of the property are to be exercisable or have effect after the instrument takes effect.

### **35 Transferable property**

- (1) A property transfer instrument may transfer any property, rights or liabilities including, in particular –
  - (a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
  - (b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
  - (c) property outside the United Kingdom,
  - (d) rights and liabilities under the law of a country or territory outside the United Kingdom, and
  - (e) rights and liabilities under an enactment (including legislation of the European Union).
- (2) Section 32 applies for the interpretation of this section (with the necessary modification).

**36 Continuity**

- (1) A property transfer instrument may provide –
  - (a) for a transfer to be, or to be treated as, a succession;
  - (b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification –
  - (a) must achieve a result that could have been achieved by the instrument, and
  - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (8) A property transfer instrument may require or permit –
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance.
- (9) Section 32 applies for the interpretation of this section (with the necessary modification).

**37 Licences**

- (1) A licence in respect of anything transferred by property transfer instrument shall continue to have effect despite the transfer.
- (2) A property transfer instrument may disapply subsection (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.
- (4) In this section “licence” includes permission and approval and any other permissive document in respect of anything transferred.

### 38 Termination rights, &c.

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).
- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises –
  - (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,
  - (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses, or
  - (i) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement –
  - (a) takes effect only if a specified event occurs or does not occur,
  - (b) takes effect only if a specified situation arises or does not arise,
  - (c) has effect only for so long as a specified event does not occur,
  - (d) has effect only while a specified situation lasts,
  - (e) applies differently if a specified event occurs,
  - (f) applies differently if a specified situation arises, or
  - (g) applies differently while a specified situation lasts.
- (4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) A property transfer instrument may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies except in so far as the instrument provides otherwise.
- (8) In subsections (6) and (7) a reference to the property transfer instrument is a reference to –
  - (a) the making of the instrument,
  - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
  - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.
- (9) Provision under subsection (5) may apply subsection (6) or (7) –
  - (a) generally or only for specified purposes, cases or circumstances;
  - (b) differently for different purposes, cases or circumstances.

- (10) A thing is not done by virtue of an instrument for the purposes of subsection (8)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument.

### **39 Foreign property**

- (1) This section applies where a property transfer instrument transfers foreign property.
- (2) In subsection (1) “foreign property” means—
  - (a) property outside the United Kingdom, and
  - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).
- (4) Until the transfer is effective as a matter of foreign law, the transferor must—
  - (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
  - (b) discharge the liability on behalf of the transferee.
- (5) The transferee must meet any expenses of the transferor in complying with this section.
- (6) An obligation imposed by this section is enforceable as if created by contract between the transferor and transferee.
- (7) The transferor must comply with any directions of the Bank of England in respect of the obligations under subsections (3) and (4); and—
  - (a) a direction may disapply subsections (3) and (4) to a specified extent, and
  - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank of England.
- (8) In this section “foreign law” means the law of a country or territory outside the United Kingdom.

### **40 Incidental provision**

- (1) A property transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) an instrument—
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

### **41 Procedure**

- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a bank the Bank of England shall send a copy to—
  - (a) the bank,
  - (b) the Treasury,

- (c) the FSA, and
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a property transfer instrument the Bank of England shall publish a copy –
  - (a) on the Bank’s internet website, and
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.
- (3) Where the Treasury receive a copy of a property transfer instrument under subsection (1) they shall lay a copy before Parliament.

#### **42 Supplemental instruments**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) or 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument which –
  - (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);
  - (b) makes other provision of a kind that an original property transfer instrument may make under section 33(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Sections 7 and 8 do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental property transfer instrument the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury.
- (6) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 11(2) or 12(2) (and not in reliance on subsection (2) above).

#### **43 Onward transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward property transfer instruments.

- (3) An onward property transfer instrument is a property transfer instrument which—
  - (a) provides for property, rights or liabilities of the bridge bank to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bridge bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the bridge bank whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.
- (6) Sections 7, 8 and 52 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Part).
- (7) Before making an onward property transfer instrument the Bank of England must consult—
  - (a) the FSA, and
  - (b) the Treasury.
- (8) Section 42 applies where the Bank of England has made an onward property transfer instrument.

#### **44 Reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 12(2) (“the original instrument”) providing for the transfer of property, rights or liabilities to a bridge bank.
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the bridge bank.
- (3) If the Bank of England makes an onward property transfer instrument under section 43 the Bank may make one or more reverse property transfer instruments in respect of property, rights or liabilities of a transferee of any of the following kinds under the onward property transfer instrument—
  - (a) a company wholly owned by the Bank of England,
  - (b) a company wholly owned by the Treasury, or
  - (c) a company wholly owned by a nominee of the Treasury.
- (4) A reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  - (b) provides for transfer to the bridge bank (where subsection (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).



- (5) Sections 7, 8 and 52 do not apply to a reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a reverse property transfer instrument the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument.

#### **45 Temporary public ownership: property transfer**

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more property transfer orders.
- (3) A property transfer order is an order which –
  - (a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original order);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the order or otherwise).
- (4) Sections 7, 8 and 9 do not apply to a property transfer order.
- (5) A property transfer order is to be treated –
  - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
  - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of powers under this Part).
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Section 42 applies where the Treasury has made a property transfer order.
- (8) Before making a property transfer order the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.

#### **46 Temporary public ownership: reverse property transfer**

- (1) This section applies where the Treasury have made a property transfer order in accordance with section 45(2) (“the original order”) providing for the transfer of property, rights or liabilities to a company wholly owned by –
  - (a) the Bank of England,
  - (b) the Treasury, or
  - (c) a nominee of the Treasury.

- (2) The Treasury may make one or more reverse property transfer orders in respect of property, rights or liabilities of the transferee under the original order.
- (3) A reverse property transfer order is a property transfer order which—
  - (a) provides for transfer to the transferor under the original order;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
- (4) Sections 7, 8 and 9 do not apply to a reverse property transfer order.
- (5) A reverse property transfer order is to be treated—
  - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
  - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of a power under this Part).
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Before making a reverse property transfer order the Treasury must consult—
  - (a) the FSA, and
  - (b) the Bank of England.
- (8) Section 42 applies where the Treasury have made a reverse property transfer order.

#### **47 Restriction of partial transfers**

- (1) In this Part “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all, of the property, rights and liabilities of a bank.
- (2) The Treasury may by order—
  - (a) restrict the making of partial property transfers;
  - (b) impose conditions on the making of partial property transfers;
  - (c) require partial property transfers to include specified provision or provision to a specified effect;
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).
- (3) Provision under subsection (2) may, in particular, refer to particular classes of deposit.
- (4) An order may apply to transfers generally or only to transfers—
  - (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (5) An order—
  - (a) shall be made by statutory instrument, and

- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **48 Power to protect certain interests**

- (1) In this section –
  - (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
  - (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,
  - (c) “set-off” arrangements are arrangements under which two or more debts, claims or obligations can be set off against each other,
  - (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt, and
  - (e) “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) The Treasury may by order –
  - (a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
  - (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
  - (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).
- (3) An order may apply to protected arrangements generally or only to arrangements –
  - (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (4) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.
- (5) In this section “arrangements” includes arrangements which –
  - (a) are formed wholly or partly by one or more contracts or trusts;
  - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
  - (c) wholly or partly arise automatically as a matter of law;

- (d) involve any number of parties;
  - (e) operate partly by reference to other arrangements between other parties.
- (6) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Compensation*

#### **49 Orders**

- (1) This Part provides three methods of protecting the financial interests of transferors and others in connection with share transfer instruments and orders and property transfer instruments.
- (2) A “compensation scheme order” is an order –
- (a) establishing a scheme for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and
  - (b) establishing a scheme for paying any compensation.
- (3) A “resolution fund order” is an order establishing a scheme under which transferors become entitled to the proceeds of the disposal of things transferred –
- (a) in specified circumstances, and
  - (b) to a specified extent.
- (4) A “third party compensation order” is provision made in accordance with section 59 for compensation to be paid to persons other than transferors.

#### **50 Sale to private sector purchaser**

- (1) This section applies if the Bank of England makes a share transfer instrument or a property transfer instrument in accordance with section 11(2).
- (2) The Treasury shall make a compensation scheme order.
- (3) An order made by virtue of subsection (2) may include a third party compensation order.
- (4) In the case of a partial property transfer, an order made by virtue of subsection (2) must include a third party compensation order.

#### **51 Transfer to temporary public ownership**

- (1) This section applies if the Treasury make a share transfer order in accordance with section 13(2).
- (2) The Treasury shall make either –
- (a) a compensation scheme order, or
  - (b) a resolution fund order.
- (3) A resolution fund order made by virtue of subsection (2)(b) may include –

- (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of specified classes of creditor, for rights in addition to any rights they may have by virtue of the resolution fund order).
- (4) A compensation scheme order made by virtue of subsection (2) may include a third party compensation order.

## **52 Transfer to bridge bank**

- (1) This section applies if the Bank of England makes a property transfer instrument in accordance with section 12(2).
- (2) The Treasury shall make a resolution fund order.
- (3) An order made by virtue of subsection (2) may include –
- (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of specified classes of creditor, for rights in addition to any rights they may have by virtue of the resolution fund order).
- (4) In the case of a partial property transfer, the resolution fund order must include a third party compensation order.

## **53 Onward and reverse transfers**

- (1) This section applies where –
- (a) the Treasury make an onward share transfer order under section 28,
  - (b) the Treasury makes a reverse share transfer order under section 29,
  - (c) the Bank of England makes a bridge bank share transfer instrument under section 30,
  - (d) the Bank of England makes a bridge bank reverse share transfer instrument under section 31,
  - (e) the Bank of England makes an onward property transfer instrument under section 43,
  - (f) the Bank of England makes a reverse property transfer instrument under section 44,
  - (g) the Treasury make a property transfer order under section 45, or
  - (h) the Treasury make a reverse property transfer order under section 46.
- (2) The Treasury may make –
- (a) a compensation scheme order;
  - (b) a third party compensation order.

## **54 Independent valuer**

- (1) A compensation scheme order may provide for the amount of any compensation payable to be determined by a person appointed in accordance with the order (the “independent valuer”); and subsections (2) to (5) apply to an order which includes provision for an independent valuer.

- (2) An order must provide for the independent valuer to be appointed by a person appointed by the Treasury (“the appointing person”).
- (3) An order may either –
  - (a) require the Treasury to make arrangements to identify a number of possible independent valuers, one of whom is to be selected by the appointing person, or
  - (b) require the appointing person to make arrangements to select the independent valuer, having regard to any criteria specified in the order.
- (4) The independent valuer may be removed only –
  - (a) on the grounds of incapacity or serious misconduct, and
  - (b) by a person specified by the Treasury in accordance with the compensation scheme order.
- (5) An order must include provision for resignation and replacement of the independent valuer (and subsections (2) and (3) apply to replacement as to the first appointment).

## 55 Independent valuer: supplemental

- (1) An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) The Treasury may by order confer specific functions on independent valuers; in particular, the order may –
  - (a) enable an independent valuer to apply to a court or tribunal for an order requiring the provision of information or the giving of oral or written evidence;
  - (b) enable or require independent valuers to publish, disclose or withhold information.
- (3) Provision under subsection (2) may –
  - (a) confer a discretion on independent valuers;
  - (b) confer jurisdiction on a court or tribunal;
  - (c) make provision about oaths, expenses and other procedural matters relating to the giving of evidence or the provision of information;
  - (d) create a criminal offence;
  - (e) make other provision about enforcement.
- (4) An independent valuer may appoint staff.
- (5) The Treasury may by order make provision about the procedure to be followed by independent valuers.
- (6) The Treasury shall by order make provision for –
  - (a) reconsideration of a decision of an independent valuer, and
  - (b) appeal to a court or tribunal against a decision of an independent valuer.
- (7) Independent valuers (and their staff) are neither servants nor agents of the Crown (and, in particular, are not civil servants).
- (8) Records of an independent valuer are public records for the purposes of the Public Records Act 1958.

- (9) An order under this section –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 56 Independent valuer: money

- (1) The Treasury may by order provide for the payment by the Treasury of remuneration and allowances to –
  - (a) independent valuers,
  - (b) staff of independent valuers,
  - (c) appointing persons, and
  - (d) monitors.
- (2) An order –
  - (a) must provide for the appointment by the Treasury of a person to monitor the operation of the arrangements for remuneration and allowances for independent valuers;
  - (b) may require, or enable a compensation scheme order or third party compensation order to require, the monitor’s approval before specified things may be done in the course of those arrangements;
  - (c) may include provision about records and accounts;
  - (d) may make provision about numbers of staff and the terms and conditions of their appointment (which may include provision requiring the approval of the Treasury or the monitor).
- (3) In subsection (1) a reference to the payment of allowances to a person includes a reference to the payment to or in respect of the person of sums by way of or in respect of pension.
- (4) Independent valuers (and their staff) are not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).
- (5) An order under this section –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 57 Valuation principles

- (1) A compensation scheme order may specify principles (“valuation principles”) to be applied in determining the amount of compensation.
- (2) Valuation principles may, in particular, require an independent valuer –
  - (a) to apply, or not to apply, specified methods of valuation;
  - (b) to assess values or average values at specified dates or over specified periods;
  - (c) to take specified matters into account in a specified manner;
  - (d) not to take specified matters into account.
- (3) In determining an amount of compensation (whether or not in accordance with valuation principles) an independent valuer must disregard actual or potential financial assistance provided by the Bank of England or the Treasury

(disregarding ordinary market assistance offered by the Bank on its usual terms).

- (4) Valuation principles may require or permit an independent valuer to make assumptions; such as, for example, that the bank –
  - (a) has had a permission under Part 4 of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled,
  - (b) is unable to continue as a going concern,
  - (c) is in administration, or
  - (d) is being wound up.
- (5) There is nothing to prevent the application of the valuation principles in an order from resulting in no compensation being payable to a transferor.

## 58 Resolution fund

- (1) A resolution fund order must include provision for determining –
  - (a) who will be entitled to a share of the proceeds on disposal of things transferred,
  - (b) the way in which the proceeds will be calculated, and
  - (c) the way in which shares will be calculated.
- (2) Provision under subsection (1)(b) may, in particular, provide for proceeds to be calculated net of –
  - (a) amounts required for the repayment of loans from public funds or for other payments in respect of public financial assistance;
  - (b) some or all of the administrative or other expenses incurred in connection with the provisions of this Part.
- (3) A resolution fund order may include provision for –
  - (a) an independent valuer to make a determination under the order (in which case sections 54(2) to (5), 55 and 56 shall apply);
  - (b) valuation principles to be applied in making a determination (in which case section 57(2) shall apply).
- (4) A resolution fund order may confer a discretionary function on –
  - (a) a Minister of the Crown,
  - (b) the Treasury,
  - (c) the Bank of England, or
  - (d) any other specified person.
- (5) A resolution fund order may include provision for the determination of disputes about the application of its provisions (whether by conferring jurisdiction on a court or tribunal or otherwise).
- (6) A resolution fund order may require the Bank of England in managing a bridge bank to aim to maximise the proceeds available for distribution in accordance with the order; and an order which includes a requirement must –
  - (a) specify its extent, and
  - (b) include provision about how the Bank is to comply with it.
- (7) A resolution fund order may require the Treasury to ensure that a bank in temporary public ownership in accordance with section 13(2) is managed with the aim of maximising the proceeds available for distribution in accordance with the order; and an order which includes a requirement must –



- (a) specify its extent, and
  - (b) include provision about how the Treasury is to comply with it.
- (8) A requirement under subsection (6) or (7) is to be complied with only in so far as is compatible with –
- (a) pursuit of the special resolution objectives, and
  - (b) compliance with the code of practice under section 5.

#### **59 Third party compensation: discretionary provision**

- (1) A power or duty in this Part to make a third party compensation order is a power or duty to make provision establishing a scheme for paying compensation to persons other than a transferor.
- (2) A third party compensation order may –
- (a) form part of a compensation scheme order or resolution fund order, or
  - (b) be a separate order.
- (3) A third party compensation order may include provision for –
- (a) an independent valuer (in which case sections 54 to 56 shall apply);
  - (b) valuation principles (in which case section 57(2) to (5) shall apply).

#### **60 Third party compensation: mandatory provision**

- (1) The Treasury may make regulations about third party compensation arrangements in the case of partial property transfers.
- (2) In making regulations the Treasury shall, in particular, have regard to the desirability of ensuring that if a residual bank enters insolvency after transfer, pre-transfer creditors do not receive less favourable treatment than they would have received had it entered insolvency immediately before transfer.
- (3) In subsection (2) –
- (a) “residual bank” means a bank that is a transferor under a property transfer instrument,
  - (b) “pre-transfer creditor” means a person who –
    - (i) is a creditor of a residual bank immediately before a property transfer instrument takes effect, and
    - (ii) satisfies conditions specified by the regulations, and
  - (c) the reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) a composition with creditors, and (vii) a scheme of arrangement.
- (4) The regulations may –
- (a) require a compensation scheme order or a resolution fund order to include a third party compensation order;
  - (b) require a third party compensation order to include provision of a specified kind or to specified effect;
  - (c) make provision which is to be treated as forming part of a third party compensation order (whether (i) generally, (ii) only if applied, (iii) unless disappplied, or (iv) subject to express modification).
- (5) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or

combination of factors; in particular, the regulations may provide for entitlement –

- (a) to depend in part upon the amounts which are or may be payable under a resolution fund order;
  - (b) to be contingent upon the occurrence or non-occurrence of specified events;
  - (c) to be determined wholly or partly by an independent valuer (within the meaning of sections 54 to 56) appointed in accordance with a compensation scheme order or resolution fund order.
- (6) Regulations may make provision about payment including, in particular, provision for payments –
- (a) on account subject to terms and conditions;
  - (b) by instalment.
- (7) Regulations –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## **61 Sources of compensation**

- (1) This section applies to –
- (a) compensation scheme orders,
  - (b) resolution fund orders,
  - (c) third party compensation orders, and
  - (d) regulations under section 60.
- (2) An order or regulations may provide for compensation or other payments to be made by –
- (a) the Treasury,
  - (b) the Financial Services Compensation Scheme, subject to section 214B of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime - inserted by section 171 below), or
  - (c) any other specified person.

## **62 Procedure**

- (1) This section applies to –
- (a) compensation scheme orders,
  - (b) resolution fund orders, and
  - (c) third party compensation orders.
- (2) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

*Incidental functions*

**63 General continuity obligation: property transfers**

- (1) In this section and section 64 –
  - (a) “residual bank” means a bank all or part of whose business has been transferred in accordance with section 11(2)(b) or 12(2),
  - (b) “group company” means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual bank,
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation),
  - (d) “the transferred business” means the part of the bank’s business that has been transferred, and
  - (e) “transferee” means a commercial purchaser or bridge bank to whom all or part of the transferred business has been transferred.
- (2) The residual bank and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the residual bank or group company and the transferee.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (5) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.
- (6) The Bank of England may, with the consent of the Treasury, by notice to the residual bank or a group company state that in the Bank’s opinion –
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

**64 Special continuity obligations: property transfers**

- (1) Expressions in this section have the same meaning as in section 63.
- (2) The Bank of England may –
  - (a) cancel a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee);
  - (b) modify the terms of a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee);
  - (c) add or substitute a transferee as a party to a contract or other arrangement between the residual bank and a group company;

- (d) confer and impose rights and obligations on a group company and a transferee, which shall have effect as if created by contract between them;
  - (e) confer and impose rights and obligations on the residual bank and a transferee which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the Bank of England shall aim, so far as is reasonably practicable, to preserve or include –
- (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm’s length.
- (4) The power under subsection (2) –
- (a) may be exercised only in so far as the Bank of England thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively,
  - (b) may be exercised only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

## 65 Continuity obligations: onward property transfers

- (1) In this section –
- (a) “onward transfer” means a transfer of property, rights or liabilities (whether or not under a power in this Part) from –
    - (i) a person who is a transferee under a property transfer instrument under section 12(2) (an “original transferee”), or
    - (ii) a bank, securities issued by which were earlier transferred by a share transfer order under section 13(2), and
  - (b) the person to whom the onward transfer is made is referred to as an “onward transferee”.
- (2) The continuity authority may –
- (a) provide for an obligation under section 63 to apply in respect of an onward transferee;
  - (b) extend section 64 so as to permit action to be taken under section 64(2) for the purpose of enabling an onward transferee to operate transferred business, or part of it, effectively.
- (3) “The continuity authority” means –
- (a) the Bank of England, where subsection (1)(a)(i) applies, and
  - (b) the Treasury, where subsection (1)(a)(ii) applies.
- (4) Subsection (2) may be relied on to impose obligations on –
- (a) an original transferee (where the original transfer was a property transfer),
  - (b) a residual bank within the meaning of section 63 (where the original transfer was a property transfer),
  - (c) the bank (where the original transfer was a share transfer),
  - (d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) or anything within paragraphs (a) to (c), or

- (e) any combination.
- (5) Subsection (2) may be used to impose obligations –
  - (a) in addition to obligations under or by virtue of section 63 or 64, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person –
  - (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 63(3) to (7) and 64(3) and (4) apply to an obligation as applied under subsection (2) –
  - (a) construing “transferred business” as the business transferred by means of the onward transfer, and
  - (b) with any other necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

## **66 General continuity obligation: share transfers**

- (1) In this section and section 67 –
  - (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 11(2)(a) or 13(2),
  - (b) “former group company” means anything which was a group undertaking in relation to the transferred bank immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred bank immediately after the transfer),
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), and
  - (d) “the continuity authority” means –
    - (i) the Bank of England, where ownership was transferred in accordance with section 11(2)(a), and
    - (ii) the Treasury, where ownership was transferred in accordance with section 13(2).
- (2) Each former group company must provide such services and facilities as are required to enable the transferred bank to operate effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the transferred bank and the former group company.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (5) The continuity obligation is not limited to the provision of services or facilities directly to the transferred bank.
- (6) The continuity authority may by notice to a former group company state that in the authority’s opinion –
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;

- (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (8) The Bank of England may act under or by virtue of subsection (6) only with the consent of the Treasury.

#### **67 Special continuity obligations: share transfers**

- (1) Expressions in this section have the same meaning as in section 66.
- (2) The continuity authority may –
  - (a) cancel a contract or other arrangement between the transferred bank and a former group company;
  - (b) modify the terms of a contract or other arrangement between the transferred bank and a former group company;
  - (c) confer and impose rights and obligations on a former group company and the transferred bank, which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the continuity authority shall aim, so far as is reasonably practicable, to preserve or include –
  - (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- (4) The power under subsection (2) –
  - (a) may be exercised only in so far as the continuity authority thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively,
  - (b) may be exercised by the Bank of England only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a share transfer instrument or order (or supplemental instrument or order).

#### **68 Continuity obligations: onward share transfers**

- (1) In this section “onward transfer” means a transfer (whether or not under a power in this Part) of securities issued by a bank where –
  - (a) securities issued by the bank were earlier transferred by share transfer order under section 13(2), or
  - (b) the bank was the transferee under a property transfer instrument under section 12(2).
- (2) The continuity authority may –
  - (a) provide for an obligation under section 66 to apply in respect of the bank after the onward transfer;
  - (b) extend section 67 so as to permit action to be taken under section 67(2) to enable the bank to operate effectively after the onward transfer.
- (3) In this section “continuity authority” has the same meaning as in sections 66 and 67.

- (4) Subsection (2) may be relied on to impose obligations on –
  - (a) the bank,
  - (b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the bank,
  - (c) anything which is or was a group undertaking of the residual bank (in a case to which subsection (1)(b) applies), or
  - (d) any combination.
- (5) Subsection (2) may be used to impose obligations –
  - (a) in addition to obligations under or by virtue of section 66 or 67, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person –
  - (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 66(3) to (7) and 67(3) and (4) apply to an obligation as applied under subsection (2) with any necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

## **69 Continuity obligations: consideration and terms**

- (1) The Treasury may by order specify matters which are to be or not to be considered in determining –
  - (a) what amounts to reasonable consideration for the purpose of sections 63 to 68;
  - (b) what provisions to include in accordance with section 64(3)(b) or 67(3)(b).
- (2) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A continuity authority may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.
- (4) In this section “continuity authority” –
  - (a) in relation to sections 63 and 64, means the Bank of England, and
  - (b) in relation to sections 65 to 68, has the same meaning as in those sections.

## **70 Continuity obligations: termination**

- (1) The continuity authority may by notice terminate an obligation arising under section 63 or 66.
- (2) The power under subsection (1) is exercisable by giving a notice to each person –

- (a) on whom the obligation is imposed, or
  - (b) who has benefited or might have expected to benefit from the obligation.
- (3) In this section “continuity authority” –
- (a) in relation to section 63, means the Bank of England, and
  - (b) in relation to section 66, has the same meaning as in that section.
- (4) A reference in subsection (1) to obligations under a section includes a reference to obligations under that section as applied under section 65 or 68.

## 71 Pensions

- (1) This section applies to –
- (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments.
- (2) An order or instrument may make provision –
- (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the bank.
- (3) In particular, an order or instrument may –
- (a) modify any rights and liabilities;
  - (b) apportion rights and liabilities;
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this section may (but need not) amend the terms of a pension scheme.
- (5) A share or property transfer instrument may make provision in reliance on this section only with the consent of the Treasury.
- (6) In this section –
- (a) “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities, and
  - (b) a reference to a pension scheme of a bank is a reference to a scheme in respect of which the bank, or a group company of the bank, is or was an employer.
- (7) In subsection (6)(b) the reference to a group company of the bank is a reference to anything that is or was a group undertaking in relation to the bank within the meaning given by section 1161(5) of the Companies Act 2006.

## 72 Enforcement

- (1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under –
- (a) a share transfer order,
  - (b) a share transfer instrument, or
  - (c) a property transfer instrument.
- (2) Regulations –
- (a) may confer jurisdiction on a court or tribunal;



- (b) may not impose a penalty or create a criminal offence;
  - (c) may make provision which has effect in respect of an order or instrument only if applied by the order or instrument.
- (3) Regulations –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 73 Disputes

- (1) This section applies to –
  - (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments.
- (2) An order or instrument may include provision for disputes to be determined in a specified manner.
- (3) Provision by virtue of subsection (2) may, in particular –
  - (a) confer jurisdiction on a court or tribunal;
  - (b) confer discretion on a specified person.

### 74 Tax

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of a stabilisation power.
- (2) Regulations may relate to –
  - (a) capital gains tax;
  - (b) corporation tax;
  - (c) income tax;
  - (d) inheritance tax;
  - (e) stamp duty;
  - (f) stamp duty land tax;
  - (g) stamp duty reserve tax.
- (3) Regulations may apply to –
  - (a) anything done in connection with an instrument or order;
  - (b) things transferred or otherwise affected by virtue of an instrument or order;
  - (c) a transferor or transferee under an instrument or order;
  - (d) persons otherwise affected by an instrument or order.
- (4) Regulations may –
  - (a) modify or disapply an enactment;
  - (b) provide for an action to have or not have specified consequences;
  - (c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
  - (d) withdraw or restrict a relief;
  - (e) extend, restrict or otherwise modify a charge to tax;
  - (f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.

- (5) Regulations may make provision for the fiscal consequences of the exercise of a stabilisation power in respect of things done –
  - (a) during the period of three months before the date on which the stabilisation power is exercised, or
  - (b) on or after that date.
- (6) In relation to the exercise of a supplemental or onward instrument or order under section 26, 27, 28, 30, 42, 43 or 45, in subsection (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental or onward instrument or order is made.
- (7) The Treasury may by order amend subsection (2) so as to –
  - (a) add an entry, or
  - (b) remove an entry.
- (8) Regulations or an order under this section –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

## **75 Power to change law**

- (1) The Treasury may by order amend the law for the purpose of enabling the powers under this Part to be used effectively, having regard to the special resolution objectives.
- (2) An order may be made –
  - (a) for the general purpose of the exercise of powers under this Part,
  - (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made (but in relying on this subsection the Treasury shall have regard to the fact that it is in the public interest to avoid retrospective legislation).
- (4) In subsection (1) “amend the law” means –
  - (a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),
  - (b) disapply or modify the effect of a rule of law not set out in legislation, or
  - (c) amend any provision of an instrument or order made in the exercise of a stabilisation power.
- (5) Provision under this section may relate to this Part as it applies –
  - (a) to banks,
  - (b) to building societies,
  - (c) to credit unions (by virtue of section 89), or
  - (d) to any combination.
- (6) Specific powers under this Part are without prejudice to the generality of this section.
- (7) An order –

- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (8) But if the Treasury think it necessary to make an order without complying with subsection (7)(b) –
- (a) the order may be made,
  - (b) the order shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made,
  - (c) the lapse of an order under paragraph (b) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
  - (d) the lapse of an order under paragraph (b) does not prevent the making of a new order (in new terms).

*Treasury*

**76 International obligation notice: general**

- (1) The Bank of England may not exercise a stabilisation power in respect of a bank if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom.
- (2) A notice under subsection (1) –
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (3) If the Treasury give a notice under subsection (1) the Bank of England must consider other exercises of the stabilisation powers with a view to –
  - (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury’s notice was based.
- (4) The Treasury may by notice to the Bank of England disapply subsection (3) in respect of a bank; and a notice may be revoked by further notice.

**77 International obligation notice: bridge bank**

- (1) This section applies where the Bank of England has transferred all or part of a bank’s business to a bridge bank.
- (2) The Bank of England must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations –
  - (a) to take specified action under this Part in respect of the bridge bank, or
  - (b) not to take specified action under this Part in respect of the bridge bank.
- (3) A notice under subsection (1) –
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (4) A notice may include requirements about timing.

**78 Public funds: general**

- (1) The Bank of England may not exercise a stabilisation power in respect of a bank without the Treasury's consent if the exercise would be likely to have implications for public funds.
- (2) In subsection (1) –
  - (a) “public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and
  - (b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds.
- (3) The Treasury may by order specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of subsection (1).
- (4) If the Treasury refuse consent under subsection (1), the Bank of England must consider other exercises of the stabilisation powers with a view to –
  - (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury's refusal was based.
- (5) The Treasury may by notice to the Bank of England disapply subsection (4) in respect of a bank; and a notice may be revoked by further notice.
- (6) An order under subsection (3) –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

**79 Public funds: bridge bank**

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a bridge bank.
- (2) The Bank of England may not take action in respect of the bridge bank without the Treasury's consent if the action would be likely to have implications for public funds.
- (3) Section 78(2) and (3) have effect for the purposes of this section.

**80 Bridge bank: report**

- (1) Where the Bank of England transfers all or part of a bank's business to a bridge bank, the Bank must report to the Chancellor of the Exchequer about the activities of the bridge bank.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the bridge bank.
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) or (3) before Parliament.
- (5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a bridge bank.

- (6) A request under subsection (5) may include provision about –
  - (a) the content of the report;
  - (b) timing.

### **81 Temporary public ownership: report**

- (1) Where the Treasury make one or more share transfer orders under section 13(2) in respect of a bank, the Treasury must lay before Parliament a report about the activities of the bank.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first share transfer order.
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The obligation to produce reports continues to apply in respect of each year until the first during which no securities issued by the bank are owned by –
  - (a) a company wholly owned by the Treasury, or
  - (b) a nominee of the Treasury.

#### *Holding companies*

### **82 Temporary public ownership**

- (1) The Treasury may take a parent undertaking of a bank (the “holding company”) into temporary public ownership, in accordance with section 13(2), if the following conditions are met.
- (2) Condition 1 is that the FSA are satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of the bank.
- (3) Condition 2 is that the Treasury are satisfied that it is necessary to take action in respect of the holding company for the purpose specified in Condition A or B of section 9.
- (4) Condition 3 is that the holding company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (5) Before determining whether Condition 2 is met the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.
- (6) Expressions used in this section have the same meaning as in the Companies Act 2006.

### **83 Supplemental**

- (1) In the following provisions references to banks include references to holding companies –
  - (a) section 10(1),
  - (b) section 13(3),
  - (c) section 16(1), and
  - (d) section 75(5)(a).

- 
- (2) Where the Treasury take a bank's holding company into temporary public ownership in reliance on section 82 –
- (a) section 20(2) applies to (i) directors of the holding company, (ii) directors of the bank, and (iii) directors of a bank in the same group,
  - (b) section 25(2) applies as if references to a bank were references to a holding company,
  - (c) sections 27 to 29 apply as if references to a bank were references to a holding company,
  - (d) a share transfer may be made in respect of securities which were issued by the bank or by another bank which is or was in the same group; and a transfer –
    - (i) shall be made by onward share transfer order under section 28 or by reverse share transfer order under section 29 (in addition to any that may be made under those sections as applied by paragraph (c) above),
    - (ii) may be made under section 28 only in respect of securities held by (or for the benefit of) the holding company or a subsidiary undertaking of the holding company,
    - (iii) is not subject to section 28(4),
    - (iv) may be made under section 29 only in respect of securities held by a person of a kind listed in section 29(3)(b), and
    - (v) is not (otherwise) subject to section 29(3),
  - (e) section 45 applies as if –
    - (i) the reference to a bank in subsection (1) were a reference to a holding company, and
    - (ii) a reference to the bank in subsection (3) were a reference to the holding company, the bank and any other bank which is or was in the same group,
  - (f) sections 65 to 68 apply, with –
    - (i) references to the bank or the transferred bank taken as references to the bank, the holding company and any other bank which is or was in the same group, and
    - (ii) references to securities of the bank taken as including references to securities of the holding company (so that, in particular, sections 65(1)(a)(ii) and 68(1)(a) include references to the earlier transfer of securities issued by the holding company),
  - (g) other provisions of this Act about share transfer orders apply with any necessary modifications,
  - (h) section 214B of the Financial Services and Markets Act 2000 applies (contribution to costs of special resolution regime - inserted by section 171 below), and
    - (i) the reference in section 214B(1)(b) to the bank, and later references in the section, are treated as including references to any other bank which is also a subsidiary undertaking of the holding company (but not to the holding company itself).
- (3) A reference in this Act or another enactment to a share transfer order in respect of securities issued by a bank includes (so far as the context permits) a reference to a share transfer order in respect of securities issued by a holding company.
- (4) In so far as sections 47 and 60 apply in relation to orders treated as property transfer instruments by virtue of section 45(5)(b) or 46(5)(b) (including those sections as applied by virtue of subsection (2) above) the reference in section

47(1) to the property of a bank includes a reference to the property of a holding company and of any other bank which is or was in the same group.

- (5) Expressions used in this section have the same meaning as in the Companies Act 2006.
- (6) A reference to two banks being in the same group is a reference to their being group undertakings in respect of each other.

*Building societies, &c.*

**84 Application of Part 1: general**

This Part shall apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to the provisions of the Table.

Section	Topic	Modification or note
11	Private purchaser sector	A share transfer instrument may not be made.
13	Temporary ownership public	The procedure provided by section 85 has effect in place of share transfer orders.
14 to 32	Transfer of securities	The procedure provided by section 85 has effect in place of share transfer orders; and – (a) sections 28 and 30 do not apply, and (b) section 27 applies following an order under section 85 as following a share transfer order.
33	Property transfer instrument: nature	A property transfer instrument in respect of a building society may – (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).
33 and 36	Property transfer instrument: continuity	A property transfer instrument in respect of a bank which provides for transfer to a building society may confer rights and impose liabilities by way of actual or deemed shares in the building society.
34	Property transfer instrument: effect	A property transfer instrument may, in particular, have effect without causing sections 93 to 102D of the Building Societies Act 1986 (mergers and transfers) to apply.
42	Supplemental property transfer instrument	A supplemental property transfer instrument in respect of a building society may – (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).
45	Temporary ownership: public property transfer	(a) Section 45 applies following an order under section 85 as following a share transfer order. (b) A property transfer order in respect of a building society may cancel shares in the building society.

<i>Section</i>	<i>Topic</i>	<i>Modification or note</i>
49 to 62	Compensation	(a) A reference to a share transfer order includes a reference to an order under section 85. (b) A resolution fund order may not be made under section 51(2)(b). (c) If and in so far as an order under section 85 provides for the issue of new deferred shares, section 51(2) shall not apply.
63 to 75	Incidental functions	A reference to a share transfer order includes a reference to an order under section 85.

## 85 Temporary public ownership

- (1) For the purpose of exercising the third stabilisation option in respect of a building society the Treasury may make one or more orders for the purposes of—
  - (a) arranging for deferred shares of a building society to be publicly owned,
  - (b) cancelling private membership rights in the building society,
  - (c) allowing the building society to continue in business while in public ownership, and
  - (d) eventually either winding up or dissolving the building society.
- (2) For the purpose specified in subsection (1)(a) an order may—
  - (a) arrange for the transfer of existing deferred shares;
  - (b) provide for new deferred shares.
- (3) For the purpose of arranging for the transfer of existing deferred shares an order may—
  - (a) provide for deferred shares to be transferred;
  - (b) make other provision for the purposes of, or in connection with, the transfer of deferred shares (whether or not the transfer has been or is to be effected by the order, by another order under this section or otherwise);
  - (c) relate to all or any specified class or description of deferred shares issued by the building society.
- (4) For the purpose of providing for new deferred shares an order may—
  - (a) issue or allow the Treasury to issue new deferred shares on behalf of the building society;
  - (b) specify or allow the Treasury to specify the terms and effect of new deferred shares;
  - (c) specify or allow the Treasury to specify the recipient of new deferred shares.
- (5) For the purpose specified in subsection (1)(b) an order may—
  - (a) cancel or permit the cancellation of shares (whether or not deferred) in the building society;
  - (b) confer rights and impose liabilities, or allow them to be conferred and imposed, in place of cancelled shares;
  - (c) prevent the issue or acquisition of shares in or other rights in respect of the building society otherwise than in accordance with the order.



- (6) For the purpose specified in subsection (1)(c) an order may make any provision which the Treasury think desirable to facilitate the business of the building society after the making of provision in accordance with subsections (3) to (5).
- (7) An order in respect of a building society may –
  - (a) make provision expressly or impliedly disapplying or modifying the memorandum or rules of the building society;
  - (b) disapply or modify an enactment about, or in its application to, building societies.
- (8) The following sections apply to orders under this section as to share transfer orders: sections 17, 18, 20, 21, 22, 23, 25, 71, 72 and 73.

## **86 Distribution of assets on dissolution or winding up**

- (1) The Treasury may by order make provision about the distribution of surplus assets of a building society which –
  - (a) is the subject of a property transfer instrument or order, and
  - (b) is later wound up or dissolved by consent.
- (2) An order under section 85 may include provision about the distribution of surplus assets of the building society if it is later wound up or dissolved by consent.
- (3) “Surplus” means remaining after the satisfaction of liabilities to creditors and shareholders.
- (4) An order under or by virtue of this section –
  - (a) may include any provision of a kind that may be made by order under section 90B of the Building Societies Act 1986 (power to alter priorities on dissolution or winding up),
  - (b) may be made whether or not the power under that section has been exercised, and
  - (c) shall be treated for all procedural purposes in the same way as an order under that section.

## **87 Interpretation**

- (1) Expressions used in this group of sections and in the Building Societies Act 1986 have the same meaning in this group of sections as in that Act.
- (2) An order under section 119(1) of that Act defining “deferred shares” –
  - (a) may make special provision for the meaning of that expression in the application of this group of sections, and
  - (b) shall otherwise apply to this group of sections as to that Act.

## **88 Consequential provision**

- (1) The Treasury may by order make provision, in addition to the provisions of this group of sections, in consequence of the application of this Part to building societies.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) An order –

- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## 89 Credit unions

- (1) The Treasury may by order provide for the application of this Part to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) subject to modifications set out in the order.
- (2) An order may disapply, modify or apply (with or without modifications) any enactment which relates, or in so far as it relates, to credit unions.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.
- (5) In the application of this section to Northern Ireland the reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985.

## PART 2

### BANK INSOLVENCY

#### *Introduction*

## 90 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that –
  - (a) a bank enters the process by court order,
  - (b) the order appoints a bank liquidator,
  - (c) the bank liquidator aims to arrange for the bank’s eligible depositors to have their accounts transferred or to receive their compensation from the FSCS,
  - (d) the bank liquidator then winds up the bank, and
  - (e) for those purposes, the bank liquidator has powers and duties of liquidators, as applied and modified by the provisions of this Part.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 90 to 93	Introduction
Sections 94 to 98	Bank insolvency order
Sections 99 to 105	Process of bank liquidation

<i>Sections</i>	<i>Topic</i>
Sections 106 to 112	Tenure of bank liquidator
Sections 113 to 116	Termination of process, &c.
Sections 117 to 122	Other processes
Sections 123 to 135	Miscellaneous

### **91 Interpretation: “bank”**

- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include –
  - (a) a building society within the meaning of section 119 of the Building Societies Act 1986,
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
  - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c) –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Section 130 makes provision for the application of this Part to building societies.
- (6) Section 131 makes provision for the application of this Part to credit unions.

### **92 Interpretation: “the court”**

In this Part “the court” means –

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

### **93 Interpretation: other expressions**

- (1) In this Part “the FSA” means the Financial Services Authority.
- (2) In this Part a reference to “the FSCS” is a reference to –
  - (a) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000), or
  - (b) where appropriate, the scheme manager of that Scheme.
- (3) In this Part “eligible depositors” means depositors who are eligible for compensation under the FSCS.

- (4) For the purposes of a reference in this Part to inability to pay debts –
  - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
  - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; andfor the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.
- (5) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (6) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (7) A reference in this Part to action includes a reference to inaction.
- (8) The expression “fair” is used in this Part as a shorter modern equivalent of the expression “just and equitable” (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression).

#### *Bank insolvency order*

### **94 The order**

- (1) A bank insolvency order is an order appointing a person as the bank liquidator of a bank.
- (2) A person is eligible for appointment as a bank liquidator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank insolvency order takes effect in accordance with section 98; and –
  - (a) the process of a bank insolvency order having effect may be described as “bank insolvency” in relation to the bank, and
  - (b) while the order has effect the bank may be described as being “in bank insolvency”.

### **95 Application**

- (1) An application for a bank insolvency order may be made to the court by –
  - (a) the Bank of England,
  - (b) the FSA, or
  - (c) the Secretary of State.
- (2) An application must nominate a person to be appointed as the bank liquidator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below).

### **96 Grounds for applying**

- (1) In this section –

- (a) Ground A is that a bank is unable, or likely to become unable, to pay its debts,
  - (b) Ground B is that the winding up of a bank would be in the public interest, and
  - (c) Ground C is that the winding up of a bank would be fair.
- (2) The Bank of England may apply for a bank insolvency order only if –
- (a) the FSA has informed the Bank of England that the FSA is satisfied that Conditions 1 and 2 in section 7 are met, and
  - (b) the Bank of England is satisfied –
    - (i) that the bank has eligible depositors, and
    - (ii) that Ground A or C applies.
- (3) The FSA may apply for a bank insolvency order only if –
- (a) the Bank of England consents, and
  - (b) the FSA is satisfied –
    - (i) that Conditions 1 and 2 in section 7 are met,
    - (ii) that the bank has eligible depositors, and
    - (iii) that Ground A or C applies.
- (4) The Secretary of State may apply for a bank insolvency order only if satisfied –
- (a) that the bank has eligible depositors, and
  - (b) that Ground B applies.
- (5) The sources of information on the basis of which the Secretary of State may be satisfied of the matters specified in subsection (4) include those listed in section 124A(1) of the Insolvency Act 1986 (petition for winding up on grounds of public interest).

## 97 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the FSA if satisfied –
- (a) that the bank has eligible depositors, and
  - (b) that Ground A or C of section 96 applies.
- (2) The court may make a bank insolvency order on the application of the Secretary of State if satisfied –
- (a) that the bank has eligible depositors, and
  - (b) that Grounds B and C of section 96 apply.
- (3) On an application for a bank insolvency order the court may –
- (a) grant the application in accordance with subsection (1) or (2),
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

## 98 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section.
- (2) In the case where –
- (a) notice has been given to the FSA under section 120 of an application for an administration order or a petition for a winding up order, and

- (b) the FSA or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section, the bank insolvency order is treated as having taken effect when the application or petition was made or presented.
- (3) In any other case, the bank insolvency order is treated as having taken effect when the application for the order was made.
- (4) Unless the court directs otherwise on proof of fraud or mistake, proceedings taken in the bank insolvency, during the period for which it is treated as having had effect, are treated as having been taken validly.

*Process of bank liquidation*

**99 Objectives**

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor –
- (a) has the relevant account transferred to another financial institution, or
  - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank’s creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment).

**100 Liquidation committee**

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part.
- (2) The liquidation committee shall consist initially of 3 individuals, one nominated by each of –
- (a) the Bank of England,
  - (b) the FSA, and
  - (c) the FSCS.
- (3) The bank liquidator must report to the liquidation committee about any matter –
- (a) on request, or
  - (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator –
- (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
  - (b) must notify the liquidation committee when in the bank liquidator’s opinion Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable.

- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either –
  - (a) resolve that Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
  - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (6) Where a liquidation committee passes a full payment resolution –
  - (a) the bank liquidator must summon a meeting of creditors,
  - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,
  - (c) those individuals replace the members nominated by the Bank of England and the FSA,
  - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
  - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about –
  - (a) the establishment of liquidation committees,
  - (b) the membership of liquidation committees,
  - (c) the functions of liquidation committees, and
  - (d) the proceedings of liquidation committees.

#### **101 Liquidation committee: supplemental**

- (1) A meeting of the liquidation committee may be summoned –
  - (a) by any of the members, or
  - (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present.
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).
- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court –
  - (a) for an order under subsection (4) above, or
  - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.

- (7) After the removal of the nominated members under section 100(6)(c) the FSA and the Bank of England –
- (a) may attend meetings of the liquidation committee,
  - (b) are entitled to copies of documents relating to the liquidation committee’s business,
  - (c) may make representations to the liquidation committee, and
  - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) –
- (a) it may be re-formed by a creditors’ meeting summoned by the bank liquidator for the purpose, and
  - (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank’s creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below) –
- (a) ignore a reference in this Part to the liquidation committee,
  - (b) for section 113(2) to (4) substitute requirements for the bank liquidator, before making a proposal –
    - (i) to produce a final report,
    - (ii) to send copies in accordance with section 113(2)(b),
    - (iii) to make it available in accordance with section 113(2)(c), and
    - (iv) to be satisfied as specified in section 113(4)(b),
  - (c) ignore Condition 2 in section 114, and
  - (d) for section 115(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must –
    - (i) produce a final report,
    - (ii) send copies in accordance with section 115(2)(b),
    - (iii) make it available in accordance with section 115(2)(c), and
    - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

## 102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue –
  - (a) Objective 1(a) in section 99,
  - (b) Objective 1(b) in section 99, or
  - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
- (2) In making a recommendation the liquidation committee must consider –
  - (a) the desirability of achieving Objective 1 as quickly as possible, and
  - (b) Objective 2 in section 99.
- (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).



- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court.

### 103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (2) The following provisions of this section provide for—
- (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and
  - (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
- (a) the modifications set out in subsection (4),
  - (b) any other modification specified in the Table, and
  - (c) any other necessary modification.
- (4) The modifications are that—
- (a) a reference to the liquidator is a reference to the bank liquidator,
  - (b) a reference to winding up is a reference to bank insolvency,
  - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
  - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
  - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency,
  - (f) a reference to going into liquidation is a reference to entering bank insolvency,
  - (g) a reference to a winding-up order is a reference to a bank insolvency order, and
  - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE OF APPLIED PROVISIONS

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 127	Avoidance of property dispositions	Ignore section 127(2).

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 128	Avoidance of attachment, &c.	
Section 130	Consequences of winding-up order	Ignore section 130(4).
Section 131	Company's statement of affairs	(a) Treat references to the official receiver as references to the bank liquidator. (b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator.
Section 135	Provisional appointment	(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank insolvency order. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply). (c) Ignore the reference to the official receiver. (d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed. (e) A provisional bank liquidator may not pay dividends to creditors. (f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.
Section 141	Liquidation Committee (England and Wales)	The application of section 141 is subject to – (a) sections 100, 101 and 109 of this Act, (b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and (c) the omission of references to the official receiver.
Section 142	Liquidation Committee (Scotland)	The application of section 142 is subject to – (a) sections 100, 101 and 109 of this Act, (b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and (c) the omission of references to the official receiver.
Section 143	General functions of liquidator	(a) Section 143(1) is subject to Objective 1 in section 99 above. (b) Ignore section 143(2).
Section 144	Custody of property	

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 145	Vesting of property	
Section 146	<i>Duty to summon final meeting</i>	<i>Section 146 is not applied - but section 115 below makes similar provision.</i>
Section 147	Power to stay or sist proceedings	An application may be made only by – (a) the bank liquidator, (b) the FSA, (c) the Bank of England, (d) the FSCS, or (e) a creditor or contributory (but only if the liquidation committee has passed a full payment resolution).
Section 148	List of contributories and application of assets	<i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator - rules by virtue of section 125 may achieve a similar delegation to the bank liquidator.</i>
Section 149	Debts due from contributories	
Section 150	Power to make calls	
Section 152	Order on contributory: evidence	
Section 153	Exclusion of creditors	
Section 154	Adjustment of rights of contributories	
Section 155	Inspection of books by creditors	In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 99 above.
Section 156	Payment of expenses of winding up	
Section 157	Attendance at company meetings (Scotland)	
Section 158	Power to arrest absconding contributory	
Section 159	<i>Powers to be cumulative</i>	<i>Section 159 is not applied - but subsection (5) above makes similar provision.</i>
Section 160	Delegation of powers to liquidator (England and Wales)	
Section 161	Orders for calls on contributories (Scotland)	
Section 162	Appeals from orders (Scotland)	An appeal may be brought only if the liquidation committee has passed a full payment resolution.

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 167 and Schedule 4	General powers of liquidator	<p>(a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 101(3) above).</p> <p>(b) In exercising or considering whether to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 99.</p> <p>(c) A reference to the liquidation committee is to the liquidation committee established by section 100.</p> <p>(d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration.</p> <p><i>Some additional general powers are conferred by section 104 below.</i></p>
Section 168	Supplementary powers of liquidator	<p>(a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution.</p> <p>(b) Section 168(5) also applies in the case of the imposition of bank insolvency by order of the Court of Session.</p> <p>(c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 100 or 102 above).</p>
Section 169	Supplementary powers (Scotland)	<p>(a) Ignore section 169(1).</p> <p>(b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above.</p>
Section 170	Liquidator's duty to make returns	The liquidation committee is added to the list of persons able to apply under section 170(2).
Section 172	Removal of liquidator	<i>Section 172 is not applied to a bank liquidator - but section 108 makes similar provision.</i>
		Section 172(1), (2) and (5) are applied to a provisional bank liquidator.
Section 174	<i>Release of liquidator</i>	<i>Section 174 is not applied - but section 115 makes similar provision.</i>
Section 175	Preferential debts	
Section 176	Preferential charge on goods restrained	
Section 176ZA	Expenses of winding up	

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 176A	Share of assets for unsecured creditors	
Section 177	Appointment of special manager	
Section 178	Power to disclaim onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 183	Effect of execution or attachment (England and Wales)	
Section 184	Execution of writs (England and Wales)	
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order.
Section 186	Rescission of contracts by court	
Section 187	Transfer of assets to employees	
Section 188	Publicity	
Section 189	Interest on debts	
Section 190	Exemption from stamp duty	
Section 191	Company's books as evidence	
Section 192	Information about pending liquidations	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 195	Meetings to ascertain wishes of creditors or contributories	The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99.
Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons (Scotland)	
Section 199	Costs of application for leave to proceed (Scotland)	

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 200	Affidavits	
Section 206	Fraud in anticipation of winding up	
Section 207	Transactions in fraud of creditors	
Section 208	Misconduct in course of winding up	
Section 209	Falsification of company's books	
Section 210	Material omissions	
Section 211	False representations to creditors	
Section 212	Summary remedy against directors, &c.	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	
Section 215	Sections 213 & 214: procedure	
Section 216	Restriction on re-use of company names	
Section 217	Personal liability for debts	
Section 218	Prosecution of officers and members of company	<ul style="list-style-type: none"> <li>(a) Ignore subsections (4) and (6).</li> <li>(b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State.</li> <li>(c) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3).</li> </ul>
Section 219	Obligations under section 218	
Section 231	Appointment of 2 or more persons	
Section 232	Validity of acts	
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	Ignore references to the official receiver
Section 236	Inquiry into company's dealings	Ignore references to the official receiver
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238.

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 239	Preferences (England and Wales)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239.
Section 240	Sections 238 & 239: relevant time	
Section 241	Orders under sections 238 & 239	Having notice of the relevant proceedings means having notice of – (a) an application by the Bank of England, the FSA or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below.
Section 242	Gratuitous alienations (Scotland)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law.
Section 243	Unfair preferences (Scotland)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the purpose of section 243 or any other rule of law.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.
Sections 423 - 425	Transactions defrauding creditors	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423.
Sections 430 to 432 and Schedule 10	Offences	

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

#### **104 Additional general powers**

- (1) A bank liquidator has the following powers.
- (2) Power to effect and maintain insurances in respect of the business and property of the bank.
- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

#### **105 Status of bank liquidator**

A bank liquidator is an officer of the court.

#### *Tenure of bank liquidator*

#### **106 Term of appointment**

A bank liquidator appointed by bank insolvency order remains in office until vacating office—

- (a) by resigning under section 107,
- (b) on removal under section 108 or 109,
- (c) on disqualification under section 110,
- (d) on the appointment of a replacement in accordance with section 112,
- (e) in accordance with sections 113 to 115, or
- (f) on death.

#### **107 Resignation**

- (1) A bank liquidator may resign by notice to the court.
- (2) Rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below) may restrict a bank liquidator's power to resign.
- (3) Resignation shall take effect in accordance with those rules (which shall include provision about release).

#### **108 Removal by court**

- (1) A bank liquidator may be removed by order of the court on the application of—
  - (a) the liquidation committee,
  - (b) the FSA, or



- (c) the Bank of England.
- (2) Before making an application the FSA must consult the Bank of England.
- (3) Before making an application the Bank of England must consult the FSA.
- (4) A bank liquidator removed by order has release with effect from a time determined by –
  - (a) the Secretary of State, or
  - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

### 109 Removal by creditors

- (1) A bank liquidator may be removed by resolution of a meeting of creditors held pursuant to section 195 of the Insolvency Act 1986 (as applied by section 103 above) provided that the following conditions are met.
- (2) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (3) Condition 2 is that the notice given to creditors of the meeting includes notice of intention to move a resolution removing the bank liquidator.
- (4) Condition 3 is that the Bank of England and the FSA –
  - (a) receive notice of the meeting, and
  - (b) are given an opportunity to make representations to it.
- (5) A bank liquidator who is removed under this section has release with effect –
  - (a) from the time when the court is informed of the removal, or
  - (b) if the meeting removing the bank liquidator resolves to disapply paragraph (a), from a time determined by –
    - (i) the Secretary of State, or
    - (ii) in the case of a bank liquidator in Scotland, the Accountant of Court.

### 110 Disqualification

- (1) If a bank liquidator ceases to be qualified to act as an insolvency practitioner, the appointment lapses.
- (2) A bank liquidator whose appointment lapses under subsection (1) has release with effect from a time determined by –
  - (a) the Secretary of State, or
  - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

### 111 Release

A bank liquidator who is released is discharged from all liability in respect of acts or omissions in the bank insolvency and otherwise in relation to conduct as bank liquidator (but without prejudice to the effect of section 212 of the Insolvency Act 1986 as applied by section 103 above).

**112 Replacement**

- (1) Where a bank liquidator vacates office the Bank of England must as soon as is reasonably practicable appoint a replacement bank liquidator.
- (2) But where a bank liquidator is removed by resolution of a meeting of creditors under section 109—
  - (a) a replacement may be appointed by resolution of the meeting, and
  - (b) failing that, subsection (1) above applies.

*Termination of process, &c.*

**113 Company voluntary arrangement**

- (1) A bank liquidator may make a proposal in accordance with section 1 of the Insolvency Act 1986 (company voluntary arrangement).
- (2) Before making a proposal the bank liquidator—
  - (a) shall present a final report on the bank liquidation to the liquidation committee,
  - (b) shall send a copy of the report to—
    - (i) the FSA,
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request.
- (3) A proposal may be made only with the consent of the liquidation committee.
- (4) The liquidation committee may consent only if—
  - (a) it has passed a full payment resolution, and
  - (b) the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositor still eligible for compensation under the scheme will be dealt with in accordance with section 99(2)(a) or (b).
- (5) The bank liquidator must be the nominee (see section 1(2) of the 1986 Act).
- (6) Part 1 of the 1986 Act shall apply to a proposal made by a bank liquidator, with the following modifications.
- (7) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.
- (9) On the termination of a company voluntary arrangement the bank liquidator may apply to the court to lift the suspension of the bank insolvency order.

**114 Administration**

- (1) A bank liquidator who thinks that administration would achieve a better result for the bank's creditors as a whole than bank insolvency may apply to the court for an administration order (under paragraph 38 of Schedule B1 to the Insolvency Act 1986).

- (2) An application may be made only if the following conditions are satisfied.
- (3) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (4) Condition 2 is that the liquidation committee has resolved that moving to administration might enable the rescue of the bank as a going concern.
- (5) Condition 3 is that the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositors still eligible for compensation under the scheme will receive their payments or have their accounts transferred during administration.

### 115 Dissolution

- (1) A bank liquidator who thinks that the winding up of the bank is for practical purposes complete shall summon a final meeting of the liquidation committee.
- (2) The bank liquidator –
  - (a) shall present a final report on the bank insolvency to the meeting,
  - (b) shall send a copy of the report to –
    - (i) the FSA,
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request.
- (3) At the meeting the liquidation committee shall –
  - (a) consider the report, and
  - (b) decide whether to release the bank liquidator.
- (4) If the liquidation committee decides to release the bank liquidator, the bank liquidator –
  - (a) shall notify the court and the registrar of companies, and
  - (b) vacates office, and has release, when the court is notified.
- (5) If the liquidation committee decides not to release the bank liquidator, the bank liquidator may apply to the Secretary of State for release; if the application is granted, the bank liquidator –
  - (a) vacates office when the application is granted, and
  - (b) has release from a time determined by the Secretary of State.
- (6) In the case of a bank liquidator in Scotland, a reference in subsection (5) to the Secretary of State is a reference to the Accountant of Court.
- (7) On receipt of a notice under subsection (4)(a) the registrar of companies shall register it.
- (8) At the end of the period of 3 months beginning with the day of the registration of the notice, the bank is dissolved (subject to deferral under section 116).

**116 Dissolution: supplemental**

- (1) The Secretary of State may by direction defer the date of dissolution under section 115, on the application of a person who appears to the Secretary of State to be interested.
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1).
- (3) Subsection (1) does not apply where the bank insolvency order was made by the court in Scotland; but the court may by direction defer the date of dissolution on an application by a person appearing to the court to have an interest.
- (4) A person who obtains deferral under subsection (1) or (3) shall, within 7 days after the giving of the deferral direction, deliver a copy of the direction to the registrar of companies for registration.
- (5) A person who without reasonable excuse fails to comply with subsection (4) is liable to a fine and, for continued contravention, to a daily default fine, in each case of the same amount as for a contravention of section 205(6) of the Insolvency Act 1986 (dissolution).
- (6) The bank liquidator may give the notice summoning the final meeting under section 115 above at the same time as giving notice of any final distribution of the bank's property; but, if summoned for an earlier date the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the bank liquidator is able to report to the meeting that the winding up of the bank is for practical purposes complete.
- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 115 above.

*Other processes***117 Bank insolvency as alternative order**

- (1) On a petition for a winding up order or an application for an administration order in respect of a bank the court may, instead, make a bank insolvency order.
- (2) A bank insolvency order may be made under subsection (1) only –
  - (a) on the application of the FSA made with the consent of the Bank of England, or
  - (b) on the application of the Bank of England.

**118 Voluntary winding-up**

A resolution for voluntary winding up of a bank under section 84 of the Insolvency Act 1986 shall have no effect without the prior approval of the court.

### 119 Exclusion of other procedures

- (1) The following paragraphs of Schedule B1 to the Insolvency Act 1986 (administration) apply to a bank insolvency order as to an administration order.
- (2) Those paragraphs are –
  - (a) paragraph 40 (dismissal of pending winding-up petition), and
  - (b) paragraph 42 (moratorium on insolvency proceedings).
- (3) For that purpose –
  - (a) a reference to an administration order is a reference to a bank insolvency order,
  - (b) a reference to a company being in administration is a reference to a bank being in bank insolvency, and
  - (c) a reference to an administrator is a reference to a bank liquidator.

### 120 Notice to FSA of preliminary steps

- (1) An application for an administration order in respect of a bank may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a bank may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a bank may not be made unless the conditions below are satisfied.
- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the FSA has been notified –
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the bank, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).
- (7) Condition 3 is that –
  - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) both –
    - (i) the FSA has informed the person who gave the notice that it does not intend to apply for a bank insolvency order, and
    - (ii) the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order or to exercise a stabilisation power under Part 1.
- (8) Condition 4 is that no application for a bank insolvency order is pending.

- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a bank's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (10) Where the FSA receives notice under Condition 1 –
  - (a) the FSA shall inform the Bank of England,
  - (b) the FSA shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a bank insolvency order, and
  - (c) if the Bank of England decides to apply for a bank insolvency order or to exercise a stabilisation power under Part 1, the Bank shall inform the person who gave the notice, within the period in Condition 3(a).

## 121 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act –
  - (a) a reference to liquidation includes a reference to bank insolvency,
  - (b) a reference to winding up includes a reference to making or being subject to a bank insolvency order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank insolvency order, and
  - (d) a reference to a liquidator includes a reference to a bank liquidator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank insolvency order, the responsible office-holder is the bank liquidator.
- (4) After section 21 of the Disqualification Act (interaction with Insolvency Act) insert –

### “21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

## 122 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly –
  - (a) provide for an enactment about insolvency to apply to bank insolvency (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency in consequence of this Part.
- (2) An order under subsection (1) –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

*Miscellaneous*

**123 Role of FSCS**

- (1) For the purpose of co-operating in the pursuit of Objective 1 in section 99 the FSCS –
  - (a) may make or arrange for payments to or in respect of eligible depositors of the bank, and
  - (b) may make money available to facilitate the transfer of accounts of eligible depositors of the bank.
- (2) The FSCS may include provision about expenditure under this section; and, in particular –
  - (a) money may be raised through the imposition of a levy under Part 15 of the Financial Services and Markets Act in respect of expenditure or possible expenditure under this section, and
  - (b) sums raised in connection with the scheme (whether or not under paragraph (a)) may be expended under this section.
- (3) In section 220(3)(a) of the Financial Services and Markets Act 2000 (Compensation Scheme: information) after “liquidator” insert “, bank liquidator”.
- (4) The FSCS is entitled to participate in proceedings for or in respect of a bank insolvency order.
- (5) A bank liquidator must –
  - (a) comply with a request of the FSCS for the provision of information, and
  - (b) provide the FSCS with any other information which the bank liquidator thinks might be useful for the purpose of co-operating in the pursuit of Objective 1.
- (6) A bank liquidator may enter into an agreement under section 221A of the Financial Services and Markets Act 2000 (Compensation Scheme: delegation of functions) for the bank liquidator to exercise functions of the scheme manager for the purpose of facilitating the pursuit of Objective 1.
- (7) Where a bank insolvency order is made in respect of a bank, the fact that it later ceases to be an authorised person does not prevent the operation of the compensation scheme in respect of it; and for that purpose the bank is a relevant person within the meaning of section 213(9) of the Financial Services and Markets Act 2000 despite the lapse of authorisation.

**124 Transfer of accounts**

- (1) This section applies where a bank liquidator arranges, in pursuit of Objective 1 in section 99, for the transfer of eligible depositors’ accounts from the bank to another financial institution.
- (2) The arrangements may disapply, or provide that they shall have effect despite, any restriction arising by virtue of contract or legislation or in any other way.
- (3) In subsection (2) “restriction” includes –
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and

- (b) a requirement for consent (by any name).
- (4) In making the arrangements mentioned in subsection (1) the bank liquidator must ensure that eligible depositors will be able to remove money from transferred accounts as soon as is reasonably practicable after transfer.

## 125 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1) insert –
  - “(1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made –
    - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of –
      - (i) the Treasury, and
      - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
    - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2) –
  - (a) after “subsection (1),” insert “(1A)”;
  - (b) in paragraph (b), after “Secretary of State” insert “or the Treasury”.
- (4) After subsection (2B) insert –
  - “(2C) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2009.”
- (5) In subsection (3) –
  - (a) after “provisional liquidator” insert “or bank liquidator”, and
  - (b) after “Parts I to VII of this Act” insert “or Part 2 of the Banking Act 2009”.
- (6) In subsection (5), after “the Secretary of State” insert “or the Treasury”.
- (7) In paragraph 27 of Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules), after “Secretary of State” insert “or the Treasury”.
- (8) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

## 126 Fees

After section 414(8) of the Insolvency Act 1986 (fees orders) insert –

- “(8A) This section applies in relation to Part 2 of the Banking Act 2009 (bank insolvency) as in relation to Parts I to VII of this Act.”



### **127 Insolvency Services Account**

A bank liquidator who obtains money by realising assets in the course of the bank insolvency must pay it into the Insolvency Services Account (kept by the Secretary of State).

### **128 Evidence**

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (a) insert (before the “and”) –

“(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency);”.

### **129 Co-operation between courts**

(1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).

(2) At the end of that section add –

“(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.”

### **130 Building societies**

(1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.

(2) An order may –

- (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
- (b) amend an enactment amended by this Part;
- (c) replicate, with or without modifications, any provision of this Part;
- (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.

(3) An order –

- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies.

### **131 Credit unions**

(1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.

(2) An order may –

- (a) amend the Credit Unions Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, any provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.

### **132 Partnerships**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

### **133 Scottish partnerships**

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **134 Northern Ireland**

In the application of this Part to Northern Ireland –

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) references to the Secretary of State, except in section 122, are to be treated as references to the Department of Enterprise, Trade and Investment,
- (d) a reference to the Insolvency Services Account is to be treated as a reference to the Insolvency Account,

- (e) a reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985,
- (f) the Judgments Enforcement (Northern Ireland) Order 1981 has effect in place of sections 183 and 184 of the Insolvency Act 1986 (applied by section 103 above), and
- (g) the reference in section 132 to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

### 135 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## PART 3

### BANK ADMINISTRATION

#### *Introduction*

### 136 Overview

- (1) This Part provides for a procedure to be known as bank administration.
- (2) The main features of bank administration are that –
  - (a) it is used where part of the business of a bank is sold to a commercial purchaser in accordance with section 11 or transferred to a bridge bank in accordance with section 12 (and it can also be used in certain cases of multiple transfers under Part 1),
  - (b) the court appoints a bank administrator on the application of the Bank of England,
  - (c) the bank administrator is able and required to ensure that the non-sold or non-transferred part of the bank (“the residual bank”) provides services or facilities required to enable the commercial purchaser (“the private sector purchaser”) or the transferee (“the bridge bank”) to operate effectively, and
  - (d) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 136 to 140	Introduction
Sections 141 to 148	Process

<i>Sections</i>	<i>Topic</i>
Sections 149 to 152	Multiple transfers
Sections 153 and 154	Termination
Sections 155 to 168	Miscellaneous

### 137 Objectives

- (1) A bank administrator has two objectives –
  - (a) Objective 1: support for commercial purchaser or bridge bank (see section 138), and
  - (b) Objective 2: “normal” administration (see section 140).
- (2) Objective 1 takes priority over Objective 2 (but a bank administrator is obliged to begin working towards both objectives immediately upon appointment).

### 138 Objective 1: supporting private sector purchaser or bridge bank

- (1) Objective 1 is to ensure the supply to the private sector purchaser or bridge bank of such services and facilities as are required to enable it, in the opinion of the Bank of England, to operate effectively.
- (2) For the purposes of Objective 1 –
  - (a) the reference to services and facilities includes a reference to acting as transferor or transferee under a supplemental or reverse property transfer instrument, and
  - (b) the reference to “supply” includes a reference to supply by persons other than the residual bank.
- (3) In the case of bank administration following a private sector purchase the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the private sector purchaser; and –
  - (a) in pursuing Objective 1 the bank administrator must have regard to the terms of that or any other agreement entered into between the residual bank and the private sector purchaser,
  - (b) in particular, the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms,
  - (c) if in doubt about the effect of those terms the bank administrator may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below), and
  - (d) the private sector purchaser may refer to the court a dispute about any agreement with the residual bank, by applying for directions under paragraph 63 of Schedule B1.
- (4) In the case of bank administration following transfer to a bridge bank, the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the bridge bank; and –
  - (a) the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with an agreement,

- (b) the bank administrator must ensure that so far as is reasonably practicable an agreement entered into includes provision for consideration at market rate,
  - (c) paragraph (b) does not prevent the bank administrator from entering into an agreement on any terms that the bank administrator thinks necessary in pursuit of Objective 1, and
  - (d) this subsection does not apply after Objective 1 ceases.
- (5) Where a bank administrator requires the Bank of England’s consent or approval to any action in accordance with this Part, the Bank may withhold consent or approval only on the grounds that the action might prejudice the achievement of Objective 1.

### 139 Objective 1: duration

- (1) Objective 1 ceases if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank.
- (2) A bank administrator who thinks that Objective 1 is no longer required may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1) above.
- (3) If immediately upon the making of a bank administration order the Bank of England thinks that the residual bank is not required in connection with the private sector purchaser or bridge bank, the Bank of England may give a notice under subsection (1).
- (4) A notice under subsection (1) is referred to in this Part as an “Objective 1 Achievement Notice”.

### 140 Objective 2: “normal” administration

- (1) Objective 2 is to –
  - (a) rescue the residual bank as a going concern (“Objective 2(a)”), or
  - (b) achieve a better result for the residual bank’s creditors as a whole than would be likely if the residual bank were wound up without first being in bank administration (“Objective 2(b)").
- (2) In pursuing Objective 2 a bank administrator must aim to achieve Objective 2(a) unless of the opinion either –
  - (a) that it is not reasonably practicable to achieve it, or
  - (b) that Objective 2(b) would achieve a better result for the residual bank’s creditors as a whole.
- (3) In pursuing Objective 2(b) in bank administration following transfer to a bridge bank, the bank administrator may not realise any asset unless –
  - (a) the asset is on a list of realisable assets agreed between the bank administrator and the Bank of England, or
  - (b) the Bank of England has given an Objective 1 Achievement Notice.

---

*Process***141 Bank administration order**

- (1) A bank administration order is an order appointing a person as the bank administrator of a bank.
- (2) A person is eligible for appointment as a bank administrator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank administration order takes effect in accordance with its terms; and –
  - (a) the process of a bank administration order having effect may be described as “bank administration” in relation to the bank, and
  - (b) while the order has effect the bank may be described as being “in bank administration”.

**142 Application**

- (1) An application for a bank administration order may be made to the court by the Bank of England.
- (2) An application must nominate a person to be appointed as the bank administrator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 160 below).

**143 Grounds for applying**

- (1) The Bank of England may apply for a bank administration order in respect of a bank if the following conditions are met.
- (2) Condition 1 is that the Bank of England has made or intends to make a property transfer instrument in respect of the bank in accordance with section 11(2) or 12(2).
- (3) Condition 2 is that the Bank of England is satisfied that the residual bank –
  - (a) is unable to pay its debts, or
  - (b) is likely to become unable to pay its debts as a result of the property transfer instrument which the Bank intends to make.

**144 Grounds for making**

- (1) The court may make a bank administration order if satisfied that the conditions in section 143 were met.
- (2) On an application for a bank administration order the court may –
  - (a) grant the application,
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

### 145 General powers, duties and effect

- (1) A bank administrator may do anything necessary or expedient for the pursuit of the Objectives in section 137.
- (2) The following provisions of this section provide for—
  - (a) general powers and duties of bank administrators (by application of provisions about administrators), and
  - (b) the general process and effects of bank administration (by application of provisions about administration).
- (3) The provisions set out in the Tables apply in relation to bank administration as in relation to administration, with—
  - (a) the modifications set out in subsection (4),
  - (b) any other modification specified in the Tables, and
  - (c) any other necessary modification.
- (4) The modifications are that—
  - (a) a reference to the administrator is a reference to the bank administrator,
  - (b) a reference to administration is a reference to bank administration,
  - (c) a reference to an administration order is a reference to a bank administration order,
  - (d) a reference to a company is a reference to the bank,
  - (e) a reference to the purpose of administration is a reference to the Objectives in section 137, and
  - (f) in relation to provisions of the Insolvency Act 1986 other than Schedule B1, the modifications in section 103 above apply (but converting references into references to bank administration or administrators rather than to bank insolvency or liquidators).
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE 1 OF APPLIED PROVISIONS

#### SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 40(1)(a)	Dismissal of pending winding-up petition	
Para. 41	Dismissal of administrative or other receiver	
Para. 42	Moratorium on insolvency proceedings	Ignore sub-paras. (4) and (5).

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 43	Moratorium on other legal process	<p>(a) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice consent of the bank administrator may not be given for the purposes of para. 43 without the approval of the Bank of England.</p> <p>(b) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice, in considering whether to give permission under sub-para. (6) to a winding-up the court must have regard to the Objectives in section 137.</p> <p>(c) In considering whether to give permission for the purposes of para. 43 the court must have regard to the Objectives in section 137.</p>
Para. 44(1)(a) and (5)	Interim moratorium	
Para. 46	Announcement of appointment	Ignore sub-para. (6)(b) and (c).
Paras. 47 & 48	Statement of affairs	
Para. 49	Administrator's proposals	<p>(a) Para. 49 does not apply unless the Bank of England has given an Objective 1 Achievement Notice; <i>for bank administrator's proposals before the Bank of England has given an Objective 1 Achievement Notice, see section 147.</i></p> <p>(b) Treat the reference in sub-para. (1) to the purpose of administration as a reference to Objective 2.</p> <p>(c) Before making proposals under sub-para. (1) in the case of bank administration following transfer to a bridge bank, the bank administrator must consult the Bank of England about the chances of a payment to the residual bank from a scheme established by resolution fund order under section 49(3).</p> <p>(d) Treat the reference in sub-para. (2)(b) to the objective mentioned in para. 3(1)(a) or (b) as a reference to Objective 2(a).</p> <p>(e) Ignore sub-para.(3)(b).</p> <p>(f) Treat references in sub-para. (5) to the company's entering administration as references to satisfaction of the condition in para. (a) above.</p>



<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Paras. 50 - 58	Creditors' meeting	<ul style="list-style-type: none"> <li>(a) Treat references in para. 51(2) to the company's entering administration as references to the giving of an Objective 1 Achievement Notice.</li> <li>(b) The bank administrator may comply with a request under para. 56(1)(a) only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.</li> <li>(c) A creditors' meeting may not establish a creditors' committee in reliance on para. 57 until the Bank of England has given an Objective 1 Achievement Notice.</li> <li>(d) Until that time the Bank of England shall have the functions of the creditors' committee.</li> </ul>
Para. 59	General powers	A bank administrator may not rely on para. 59 (or subsection (1) above) for the purpose of recovering property transferred by property transfer instrument.
Para. 60 and Schedule 1	General powers	<ul style="list-style-type: none"> <li>(a) The exercise of powers under Schedule 1 is subject to section 137(2).</li> <li>(b) In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice powers under the following paragraphs of Schedule 1 may be exercised only with the Bank of England's consent: 2, 3, 11, 14, 15, 16, 17, 18 and 21.</li> </ul>
Para. 61	Directors	
Para. 62	Power to call meetings of creditors	
Para. 63	Application to court for directions	<ul style="list-style-type: none"> <li>(a) Before the Bank of England has given an Objective 1 Achievement Notice, the bank administrator may apply for directions if unsure whether a proposed action would prejudice the pursuit of Objective 1; and before making an application in reliance on this paragraph the bank administrator must give notice to the Bank of England, which shall be entitled to participate in the proceedings.</li> <li>(b) In making directions the court must have regard to the Objectives in section 137.</li> </ul>
Para. 64.	Management powers.	
Para. 65	Distribution to creditors	<ul style="list-style-type: none"> <li>(a) In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice a bank administrator may make a distribution only with the Bank of England's consent.</li> <li>(b) Ignore sub para. (3).</li> </ul>

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 66	Payments	
Para. 67	Taking custody of property	
Para. 68	Management	Before the approval of proposals under para. 53 a bank administrator shall manage the bank's affairs, business and property in accordance with principles agreed between the bank administrator and the Bank of England.
Para. 69	Agency	
Para. 70	Floating charges	The bank administrator may take action only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 71	Fixed charges	The court may make an order only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 72	Hire-purchase property	In the case of administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice an application may be made only with the Bank of England's consent.
Para. 73	Protection for secured and preferential creditors	<p>(a) Treat a reference to proposals as including a reference to the principles specified in the modification of para. 68 set out above.</p> <p>(b) Para. 73(1)(a) does not apply until the Bank of England has given an Objective 1 Achievement Notice.</p>
Para. 74	Challenge to administrator's conduct	<p>(a) The Bank of England may make an application to the court, on any grounds, including grounds of insufficient pursuit of Objective 1 in section 137 (in addition to applications that may anyway be made under para. 74).</p> <p>(b) Until the Bank of England has given an Objective 1 Achievement Notice, an order may be made on the application of a creditor only if the court is satisfied that it would not prejudice pursuit of Objective 1 in section 137.</p>
Para. 75	Misfeasance	In addition to applications that may anyway be made under para. 75, an application may be made by the bank administrator or the Bank of England.
Para. 80	Termination: successful rescue	<i>See section 153.</i>
Para. 84	Termination: no more assets for distribution	<i>See section 154.</i>
Para. 85	Discharge of administration order	
Para. 86	Notice to Companies Registrar of end of administration	<i>See section 153.</i>

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 87	Resignation	A bank administrator may resign only by notice in writing – (a) to the court, copied to the Bank of England, or (b) in the case of a bank administrator appointed by the creditors' committee under para. 90, to the creditors' committee.
Para. 88	Removal	Until the Bank of England has given an Objective 1 Achievement Notice, an application for an order may be made only with the Bank of England's consent.
Para. 89	Disqualification	The notice under sub-para. (2) must be given to the Bank of England.
Paras. 90 & 91	Replacement	(a) Until an Objective 1 Notice has been given, the Bank of England, and nobody else, may make an application under para. 91(1). (b) After that, either the Bank of England or a creditors' committee may apply. (c) Ignore para. 91(1)(b) to (e) and (2).
Para. 96	Substitution of floating charge-holder	Para. 96 applies to a bank administrator, but – (a) only after an Objective 1 Achievement Notice has been given, and (b) ignoring references to priority of charges.
Para. 98	Discharge	Discharge takes effect – (a) where the person ceases to be bank administrator before an Objective 1 Achievement Notice has been given, at a time determined by the Bank of England, and (b) otherwise, at a time determined by resolution of the creditors' committee (for which purpose ignore sub-para. (3)).
Para. 99	Vacation of office: charges and liabilities	In the application of sub-para. (3), payments may be made only – (a) in accordance with directions of the Bank of England, and (b) if the Bank is satisfied that they will not prejudice Objective 1 in section 137.
Paras. 100-103	Joint administrators	Until an Objective 1 Achievement Notice has been given, an application under para. 103 may be made only by the Bank of England.
Para. 104	Validity	
Para. 106 (and section 430 and Schedule 10)	Fines	

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Paras. 107 - 109	Extension of time limits	<p>(a) Until an Objective 1 Achievement Notice has been given, an application under para. 107 may be made only with the Bank of England's consent.</p> <p>(b) In considering an application under para. 107 the court must have regard to Objective 1 in section 137.</p> <p>(c) In para. 108(1) "consent" means consent of the Bank of England.</p>
Para. 110	<i>Amendment of provisions about time</i>	<i>An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this section (whether or not in the same way as it amends the provision as it applies otherwise).</i>
Para. 111	Interpretation	
Paras. 112 - 116	Scotland	

TABLE 2 OF APPLIED PROVISIONS

## OTHER PROVISIONS OF THE INSOLVENCY ACT 1986

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 135	Provisional appointment	<p>(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank administration order.</p> <p>(b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply).</p> <p>(c) Ignore the reference to the official receiver.</p> <p>(d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed.</p> <p>(e) The court may only confer on a provisional bank administrator functions in connection with the pursuance of Objective 1; and section 138(2)(a) does not apply before a bank administration order is made.</p> <p>(f) A provisional bank administrator may not pursue Objective 2.</p> <p>(g) The appointment of a provisional bank administrator lapses on the appointment of a bank administrator.</p> <p>(h) Section 172(1), (2) and (5) apply to a provisional bank administrator.</p>

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 168(4) (and para. 13 of Schedule 4)	Discretion in managing and distributing assets	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice distribution may be made only – (a) with the Bank of England’s consent, or (b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.
Section 176A	Unsecured creditors	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice distribution may be made in reliance on s. 176A only – (a) with the Bank of England’s consent, or (b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.
Section 178	Disclaimer of onerous property	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice notice of disclaimer may be given only with the Bank of England’s consent.
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 188	Publicity	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	Ignore subsection (6).
Section 233	Utilities	
Section 234	Getting in company’s property	
Section 235	Co-operation with liquidator	
Section 236	Inquiry into company’s dealings	
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Ss. 238 & 239: relevant time	

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 241	Orders under ss. 238 & 239	(a) In considering making an order in reliance on section 241 the court must have regard to Objective 1 of section 137. (b) Ignore subsections (2A)(a) and (3) to (3C).
Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	In considering the grant of a decree under subsection (5) the court must have regard to Objective 1 of section 137.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank administration.
Sections 423 - 425	Transactions defrauding creditors	(a) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 137. (b) In considering making an order in reliance on section 425 the court must have regard to Objective 1 of section 137.
Sections 430 - 432 & Schedule 10	Offences	
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

#### 146 Status of bank administrator

A bank administrator is an officer of the court.

### 147 Administrator's proposals

- (1) This section applies before the giving of an Objective 1 Achievement Notice (at which point paragraph 49 of Schedule B1 to the Insolvency Act 1986 applies in accordance with section 145).
- (2) The bank administrator must as soon as is reasonably practicable after appointment make a statement setting out proposals for achieving the Objectives in section 137.
- (3) The statement must say whether the bank administrator proposes to pursue Objective 2(a) or 2(b) in section 140.
- (4) The statement must have been agreed with the Bank of England.
- (5) But a bank administrator who is unable to agree a statement with the Bank of England may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (as applied by section 145); and the court may make any order, including dispensing with the need for the Bank of England's agreement.
- (6) The bank administrator must send the statement to the FSA.
- (7) The bank administrator may revise the statement (and subsections (4) to (6) apply to a revised statement as to the original).
- (8) The statement shall be treated in the same way (subject to this section) as a statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986.

### 148 Sharing information

- (1) This section applies to bank administration following transfer to a bridge bank.
- (2) Within the period of 5 days beginning with the day on which the bank administrator is appointed, the Bank of England must give the bank administrator information about the financial positions of the residual bank and the bridge bank.
- (3) While the residual bank is in bank administration the bridge bank must give the bank administrator on request information about the financial position of the bridge bank that the bank administrator requires for the purposes of pursuing Objective 1 in section 137.
- (4) Until the Bank of England has given an Objective 1 Achievement Notice, the bank administrator must –
  - (a) give the Bank of England information on request,
  - (b) allow the Bank of England access to records on request,
  - (c) give the bridge bank information on request,
  - (d) allow the bridge bank access to records on request,
  - (e) keep the Bank of England informed about, and allow the Bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137, and
  - (f) keep the bridge bank informed about, and allow the bridge bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137.

- (5) The Treasury shall by regulations prescribe –
  - (a) the classes of information that must be provided under subsections (2) to (4), and
  - (b) the classes of record to which access must be allowed under subsection (4).
- (6) Regulations under subsection (5) –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Multiple transfers*

### **149 General application of this Part**

- (1) This section applies where more than one property transfer instrument is made in respect of a bank.
- (2) For that purpose “property transfer instrument” includes –
  - (a) supplemental instruments under section 42,
  - (b) onward property transfer instruments under section 43, and
  - (c) property transfer orders under section 45.
- (3) This Part applies to the bank with any modifications specified by the Treasury in regulations.
- (4) The regulations –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### **150 Bridge bank to private purchaser**

- (1) This section applies where the Bank of England gives a bank administrator –
  - (a) an Objective 1 Achievement Notice in respect of a bridge bank, and
  - (b) notice that Objective 1 is still required to be pursued in respect of a commercial purchaser who has acquired all or part of the business of the bridge bank.
- (2) An Objective 1 Achievement Notice accompanied by a notice under subsection (1)(b) is referred to in this Part as an Objective 1 Interim Achievement Notice.
- (3) Where an Objective 1 Interim Achievement Notice is given, Objective 1 continues to apply –
  - (a) in accordance with section 138(3), and
  - (b) with the commercial purchaser being treated as the “private sector purchaser”.
- (4) An Objective 1 Interim Achievement Notice in respect of the bridge bank –
  - (a) has effect as between the bank administrator and the bridge bank, but
  - (b) has no other effect for the purposes of provisions of this Part which refer to the giving of an Objective 1 Achievement Notice.



- (5) When the Bank of England gives the bank administrator an Objective 1 Achievement Notice in respect of the commercial purchaser, section 139 and other provisions of this Part which refer to the giving of an Objective 1 Achievement Notice shall have effect.

### **151 Property transfer from bridge bank**

- (1) This section applies where the Bank of England –
  - (a) transfers all or part of the business of a bank (“the original bank”) to a bridge bank (“the original bridge bank”) by making a property transfer instrument in accordance with section 12(2), and
  - (b) later makes or proposes to make an onward property transfer instrument under section 43(2) from the bridge bank to a transferee (“the onward transferee”).
- (2) If the onward transferee is a company which is wholly owned by the Bank of England –
  - (a) the onward transferee is treated as a bridge bank for the purposes of this Part, and
  - (b) the original bridge bank is treated as a residual bank for the purposes of this Part.
- (3) In any other case, the Bank of England may determine that the original bridge bank is to be treated as a residual bank for the purposes of this Part.
- (4) Where the original bridge bank is put into bank administration in reliance on subsection (2)(b), Objective 1 shall apply in accordance with section 138(4) in relation to both –
  - (a) services provided by the original bank to the original bridge bank, and
  - (b) services provided by the original bridge bank to the onward transferee.
- (5) Where the original bridge bank is put into bank administration in reliance on a determination under subsection (3), Objective 1 shall apply in accordance with –
  - (a) section 138(3) in relation to services provided by the original bridge bank to the onward transferee, and
  - (b) section 138(4) in relation to services provided by the original bank to the original bridge bank.
- (6) But the Bank may determine –
  - (a) that subsection (5) does not apply, and
  - (b) that section 150 shall apply as if the Bank had given –
    - (i) an Objective 1 Interim Achievement Notice in respect of the original bridge bank, and
    - (ii) a notice under section 150(1)(b) in respect of the onward transferee.

### **152 Property transfer from temporary public ownership**

- (1) This section applies where the Treasury –
  - (a) make a share transfer order, in respect of securities issued by a bank (or a bank’s holding company), in accordance with section 13(2), and

- (b) later make a property transfer order from the bank (or from another bank which is or was in the same group as the bank) under section 45(2).
- (2) This Part applies to the transferor under the property transfer order as to the transferor under a property transfer instrument.
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and the regulations—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Termination*

#### **153 Successful rescue**

- (1) This section applies if—
  - (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator has pursued Objective 2(a) in section 140 and believes that it has been achieved.
- (2) The bank administrator may give a notice under paragraph 80 of Schedule B1 to the Insolvency Act 1986 (notice bringing administrator's appointment to an end on achievement of objectives).
- (3) A bank administrator who gives a notice in accordance with subsection (2) must send a copy to the FSA.
- (4) Failure without reasonable excuse to comply with subsection (3) is an offence.

#### **154 Winding-up or voluntary arrangement**

- (1) This section applies if—
  - (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator pursues Objective 2(b) in section 140.
- (2) The bank administrator may—
  - (a) give a notice under paragraph 84 of Schedule B1 to the Insolvency Act 1986 (no more assets for distribution), or
  - (b) make a proposal in accordance with section 1 of that Act (company voluntary arrangement).
- (3) Part 1 of that Act shall apply to a proposal made by a bank administrator, with the following modifications.
- (4) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (5) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank administration order.
- (6) On the termination of a company voluntary arrangement the bank administrator may apply to the court to lift the suspension of the bank administration order.

- (7) The bank administrator may not act under subsection (2) above unless satisfied that the bank has received any funds it is likely to receive from any scheme under a resolution fund order under section 52.

*Miscellaneous*

**155 Disqualification of directors**

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act –
  - (a) a reference to liquidation includes a reference to bank administration,
  - (b) a reference to winding up includes a reference to making or being subject to a bank administration order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank administration order, and
  - (d) a reference to a liquidator includes a reference to a bank administrator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank administration order, the responsible office-holder is the bank administrator.
- (4) After section 21A of the Disqualification Act (bank insolvency - inserted by section 121 above) insert –

**“21B Bank administration**

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.”

**156 Application of other law**

- (1) The Secretary of State and the Treasury may by order made jointly –
  - (a) provide for an enactment about insolvency or administration to apply to bank administration (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency or administration in consequence of this Part.
- (2) An order under subsection (1) –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**157 Other processes**

- (1) Before exercising an insolvency power in respect of a residual bank the FSA must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.
- (2) In subsection (1) –
  - (a) “residual bank” means a bank all or part of whose business has been transferred to a commercial purchaser in accordance with section 11 or to a bridge bank in accordance with section 12, and
  - (b) “insolvency power” means –

- (i) section 359 of the Financial Services and Markets Act 2000 (application for administration order), and
- (ii) section 367 of that Act (winding-up petition).

### 158 Building societies

- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.
- (2) An order may –
  - (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, a provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies.

### 159 Credit unions

- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may –
  - (a) amend the Credit Union Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, a provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.

### 160 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.

- (2) After subsection (1A) (inserted by section 125 above) insert –
- “(1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made –
- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of –
    - (i) the Treasury, and
    - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
  - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2), after “(1A)” (inserted by section 125 above) insert “or (1B)”.
- (4) After subsection (2C) (inserted by section 125 above) insert –
- “(2D) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2009.”
- (5) In subsection (3) –
- (a) after “bank liquidator” (inserted by section 125 above) insert “or administrator”, and
  - (b) after “Part 2” (inserted by section 125 above) insert “or 3”.
- (6) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

## 161 Fees

After section 414(8A) of the Insolvency Act 1986 (fees orders - inserted by section 126 above) insert –

“(8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.”

## 162 Evidence

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (aa) (inserted by section 128 above) insert (before the “and”) –

“(ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration),”.

## 163 Partnerships

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).

- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

#### **164 Scottish partnerships**

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **165 Co-operation between courts**

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).
- (2) At the end of that section (after the subsection added by section 129) add –

“(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.”

#### **166 Interpretation: general**

- (1) In this Part “the court” means –
  - (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.
- (2) In this Part “the FSA” means the Financial Services Authority.
- (3) For the purposes of a reference in this Part to inability to pay debts –
  - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
  - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and

for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.
- (4) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (5) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (6) A reference in this Part to action includes a reference to inaction.

#### **167 Northern Ireland**

- In the application of this Part to Northern Ireland –
- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,

- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) the reference in section 159 to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985, and
- (d) in section 163 –
  - (i) the reference to the Secretary of State is to be treated as a reference to the Department for Enterprise, Trade and Investment, and
  - (ii) the reference to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

### 168 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## PART 4

### FINANCIAL SERVICES COMPENSATION SCHEME

### 169 Overview

This Part makes a number of amendments in connection with the Financial Services Compensation Scheme provided for by Part 15 of the Financial Services and Markets Act 2000.

### 170 Contingency funding

- (1) After section 214 of the Financial Services and Markets Act 2000 (compensation scheme: general) insert –

#### “214A Contingency funding

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.
- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about –
  - (a) the number and size of funds;
  - (b) the circumstances and timing of their establishment;
  - (c) the classes of person from whom contributions to the funds may be levied;

- (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);
  - (e) refunds;
  - (f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
  - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
  - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.”
- (2) At the end of section 213(7) (compensation scheme: further provision) add “(except where limitations are expressly stated)”.
- (3) In section 218 (compensation scheme: annual report) –
- (a) in subsection (1) after “to the Authority” insert “and the Treasury”, and
  - (b) at the end of subsection (2)(b) add “or in contingency fund regulations.”

## 171 Special resolution regime

- (1) After section 214A of the Financial Services and Markets Act 2000 (contingency funding - inserted by section 170 above) insert –

### “214B Contribution to costs of special resolution regime

- (1) This section applies where –
- (a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union (within the meaning of that Part), and
  - (b) the Treasury think that the bank, building society or credit union was, or but for the exercise of the stabilisation power would have become, unable to satisfy claims against it.
- (2) Where this section applies –
- (a) the Treasury may require the scheme manager to make payments in connection with the exercise of the stabilisation power, and
  - (b) payments shall be treated as expenditure under the scheme for all purposes (including levies, contingency funds and borrowing).
- (3) The Treasury shall make regulations –
- (a) specifying what expenses the scheme manager may be required to incur under subsection (2),
  - (b) providing for independent verification of the nature and amount of expenses incurred in connection with the exercise of



- the stabilisation power (which may include provision about appointment and payment of an auditor), and
- (c) providing for the method by which amounts to be paid are to be determined.
- (4) The regulations must ensure that payments required do not exceed the amount of compensation that would have been payable under the scheme if the stabilisation power had not been exercised and the bank had been unable to satisfy claims against it; and for that purpose the amount of compensation that would have been payable does not include –
- (a) amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered by the scheme from the bank, or
- (b) any compensation actually paid to an eligible depositor of the bank.
- (5) The regulations must provide for the appointment of an independent valuer (who may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power) to calculate the amounts referred to in subsection (4)(a); and the regulations –
- (a) must provide for the valuer to be appointed by the Treasury or by a person designated by the Treasury,
- (b) must include provision enabling the valuer to reconsider a decision,
- (c) must provide a right of appeal to a court or tribunal,
- (d) must provide for payment of the valuer,
- (e) may replicate or apply a provision of section 54 or 55, and
- (f) may apply or include any provision that is or could be made under that section.
- (6) Payments required to be made by the scheme by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation) shall be treated for the purposes of subsection (4) as if required to be made under this section.
- (7) The regulations may include provision for payments (including payments under those provisions of the Banking Act 2009) to be made –
- (a) before verification in accordance with subsection (3)(b), and
- (b) before the calculation of the limit imposed by subsection (4), by reference to estimates of that limit and subject to any necessary later adjustment.
- (8) The regulations may include provision –
- (a) about timing;
- (b) about procedures to be followed;
- (c) for discretionary functions to be exercised by a specified body or by persons of a specified class;
- (d) about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

- (9) The compensation scheme may include provision about payments under and levies in connection with this section, provided that it is not inconsistent with this section or regulations under it.”
- (2) At the end of section 223(3) of the Financial Services and Markets Act 2000 (management expenses) add “;  
(c) under section 214B.”.

## 172 Investing in National Loans Fund

After section 223 of the Financial Services and Markets Act 2000 (management expenses) insert –

### “223A Investing in National Loans Fund

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).
- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).”

## 173 Borrowing from National Loans Fund

After section 223A of the Financial Services and Markets Act 2000 (investing in National Loans Fund - inserted by section 172 above) insert –

### “223B Borrowing from National Loans Fund

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine –
  - (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) The Treasury may make regulations –
  - (a) about the amounts that may be borrowed under this section;
  - (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);

- (c) about the classes of person on whom those levies may be imposed;
  - (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.”

#### **174 Procedure for claims**

- (1) After section 214(1) of the Financial Services and Markets Act 2000 (the compensation scheme: powers) insert –
- “(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so.
  - (1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).
  - (1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.”
- (2) In section 417(1) (definitions) at the appropriate place insert –
- ““claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);”.

#### **175 Rights in insolvency**

- (1) This section amends section 215 of the Financial Services and Markets Act 2000 (rights of scheme following insolvency).
- (2) For section 215(1) substitute –
- “(1) The compensation scheme may make provision –
  - (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
  - (b) giving the scheme manager a right of recovery in respect of those rights or obligations.”
- (3) In section 215(2) for “the relevant person’s insolvency” substitute “a person’s insolvency”.
- (4) The heading of section 215 becomes “Rights of the scheme in insolvency”.

#### **176 Information**

- (1) Before section 219 of the Financial Services and Markets Act 2000 (scheme

manager’s power to require information) insert –

**“218A Authority’s power to require information**

- (1) The Authority may make rules enabling the Authority to require authorised persons to provide information, which may then be made available to the scheme manager by the Authority.
  - (2) A requirement may be imposed only if the Authority thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.
  - (3) A requirement under this section may apply –
    - (a) to authorised persons generally or only to specified persons or classes of person;
    - (b) to the provision of information at specified periods, in connection with specified events or in other ways.
  - (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the Authority thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.
  - (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the Authority’s general rules.”
- (2) Section 219 is amended as follows.
- (3) In subsection (1) for “given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person” substitute “require a person”.
- (4) After subsection (1) insert –
- “(1A) A requirement may be imposed only –
- (a) on a person (P) against whom a claim has been made under the scheme,
  - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
  - (c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or
  - (d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
- (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular –
- (a) apply or replicate, with or without modifications, a provision of an enactment;
  - (b) confer discretion on a specified person).”

- (5) In subsection (3) for paragraphs (a) and (b) substitute “to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P”.
- (6) After subsection (3) insert –  
“(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, the scheme manager may by notice in writing require the bank or the Bank of England to provide information that the scheme manager requires for the purpose of applying regulations under section 214B(3) above.”
- (7) In subsection (6) for “the relevant person” substitute “P”.
- (8) Omit subsection (8).
- (9) Omit subsection (10).

### 177 Payments in error

After section 223B of the Financial Services and Markets Act 2000 (borrowing from National Loans Fund - inserted by section 173 above) insert –

#### “223C Payments in error

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.”

### 178 Regulations

In section 429(2) of the Financial Services and Markets Act 2000 (parliamentary control of subordinate legislation: affirmative resolution) after “90B” insert “, 214A, 214B”.

### 179 Delegation of functions

- (1) Before section 222 of the Financial Services and Markets Act 2000 (scheme manager: statutory immunity) insert –

#### “221A Delegation of functions

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).
  - (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent –
    - (a) is competent to discharge the function, and
    - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.
  - (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager).”
- (2) In section 222(1) of that Act after “officer” insert “, scheme agent”.

**180 Functions under this Act**

At the end of Part 15 of the Financial Services and Markets Act 2000 add –

**“224A Functions under the Banking Act 2009**

A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.”

**PART 5****INTER-BANK PAYMENT SYSTEMS***Introduction***181 Overview**

This Part enables the Bank of England to oversee certain systems for payments between financial institutions.

**182 Interpretation: “inter-bank payment system”**

- (1) In this Part “inter-bank payment system” means arrangements designed to facilitate or control the transfer of money between financial institutions who participate in the arrangements.
- (2) The fact that persons other than financial institutions can participate does not prevent arrangements from being an inter-bank payment system.
- (3) In subsection (1) “financial institutions” means –
  - (a) banks, and
  - (b) building societies.
- (4) In subsection (1) “money” includes credit.
- (5) A system is an inter-bank payment system for the purposes of this Part whether or not it operates wholly or partly in relation to persons or places outside the United Kingdom.

**183 Interpretation: other expressions**

In this Part –

- (a) a reference to the “operator” of an inter-bank payment system is a reference to any person with responsibility under the system for managing or operating it,
- (b) a reference to the operation of a system includes a reference to its management,
- (c) “the UK financial system” has the meaning given to “the financial system” by section 3(2) of the Financial Services and Markets Act 2000 (market confidence),
- (d) a reference to the Bank of England’s role as a monetary authority is to be construed in accordance with section 244(2)(c), and
- (e) “the FSA” means the Financial Services Authority.

*Recognised systems*

**184 Recognition order**

- (1) The Treasury may by order (“recognition order”) specify an inter-bank payment system as a recognised system for the purposes of this Part.
- (2) A recognition order must specify in as much detail as is reasonably practicable the arrangements which constitute the inter-bank payment system.
- (3) The Treasury may not specify an inter-bank system operated solely by the Bank of England.

**185 Recognition criteria**

- (1) The Treasury may make a recognition order in respect of an inter-bank payment system only if satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely –
  - (a) to threaten the stability of, or confidence in, the UK financial system, or
  - (b) to have serious consequences for business or other interests throughout the United Kingdom.
- (2) In considering whether to specify a system the Treasury must have regard to –
  - (a) the number and value of the transactions that the system presently processes or is likely to process in the future,
  - (b) the nature of the transactions that the system processes,
  - (c) whether those transactions or their equivalent could be handled by other systems,
  - (d) the relationship between the system and other systems, and
  - (e) whether the system is used by the Bank of England in the course of its role as a monetary authority.

**186 Procedure**

- (1) Before making a recognition order in respect of a payment system the Treasury must –
  - (a) consult the Bank of England,
  - (b) notify the operator of the system, and
  - (c) consider any representations made.
- (2) The Treasury must also consult the FSA before making a recognition order in respect of a payment system the operator of which –
  - (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000,
  - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or
  - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities).
- (3) In considering whether to make a recognition order in respect of a payment system the Treasury may rely on information provided by the Bank of England or the FSA.

**187 De-recognition**

- (1) The Treasury may revoke a recognition order.
- (2) The Treasury must revoke a recognition order if not satisfied that the criteria in section 185 are met in respect of the recognised inter-bank payment system.
- (3) Before revoking a recognition order the Treasury must –
  - (a) consult the Bank of England,
  - (b) notify the operator of the recognised inter-bank payment system, and
  - (c) consider any representations made.
- (4) The Treasury must also consult the FSA before revoking a recognition order in respect of a payment system the operator of which –
  - (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000,
  - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or
  - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities).
- (5) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the revocation of its recognition order.

*Regulation***188 Principles**

- (1) The Bank of England may publish principles to which operators of recognised inter-bank payment systems are to have regard in operating the systems.
- (2) Before publishing principles the Bank must obtain the approval of the Treasury.

**189 Codes of practice**

The Bank of England may publish codes of practice about the operation of recognised inter-bank payment systems.

**190 System rules**

- (1) The Bank of England may require the operator of a recognised inter-bank payment system –
  - (a) to establish rules for the operation of the system;
  - (b) to change the rules in a specified way or so as to achieve a specified purpose;
  - (c) to notify the Bank of any proposed change to the rules;
  - (d) not to change the rules without the approval of the Bank.
- (2) A requirement under subsection (1)(c) or (d) may be general or specific.



## 191 Directions

- (1) The Bank of England may give directions to the operator of a recognised inter-bank payment system.
- (2) A direction may –
  - (a) require or prohibit the taking of specified action in the operation of the system;
  - (b) set standards to be met in the operation of the system.
- (3) Before giving a direction the Bank must notify the Treasury.
- (4) The Treasury may by order confer immunity from liability in damages in respect of action or inaction in accordance with a direction.
- (5) An immunity does not extend to action or inaction –
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (6) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 192 Role of FSA

- (1) In exercising powers under this Part the Bank of England shall have regard to any action that the FSA has taken or could take.
- (2) Before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2), the Bank of England must consult the FSA.
- (3) If the FSA gives the Bank of England notice that the FSA is considering taking action in respect of the operator of a recognised inter-bank payment system who satisfies section 186(2), the Bank may not take action under this Part in respect of the operator unless –
  - (a) the FSA consents, or
  - (b) the notice is withdrawn.

### *Enforcement*

## 193 Inspection

- (1) The Bank of England may appoint one or more persons to inspect the operation of a recognised inter-bank payment system.
- (2) The operator of a recognised inter-bank payment system must –
  - (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the system is operated, and
  - (b) otherwise co-operate with an inspector.

**194 Inspection: warrant**

- (1) A justice of the peace may on the application of an inspector issue a warrant entitling an inspector or a constable to enter premises if—
  - (a) any part of the management or operation of a recognised inter-bank payment system is conducted on the premises (whether by an operator of the system or by someone providing services used by an operator), and
  - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—
  - (a) a requirement under section 204 in connection with the payment system has not been complied with, and
  - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 204 were imposed in connection with the payment system in respect of information on the premises—
  - (a) the requirement would not be complied with, and
  - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
  - (a) gave reasonable notice of a wish to enter the premises, and
  - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
  - (a) permits an inspector or a constable to enter the premises,
  - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
  - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.
- (8) In the application of this section to Scotland—
  - (a) the reference to a justice of the peace includes a reference to a sheriff, and
  - (b) ignore subsection (7).
- (9) In the application of this section to Northern Ireland—
  - (a) the reference to a justice of the peace is a reference to a lay magistrate, and
  - (b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.

**195 Independent report**

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.
- (2) The Bank may impose a requirement only if it thinks—

- (a) the operator is not taking sufficient account of principles published by the Bank under section 188,
  - (b) the operator is failing to comply with a code of practice under section 189, or
  - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.
- (3) The Bank may impose requirements about –
- (a) the nature of the expert to be appointed;
  - (b) the content of the report;
  - (c) treatment of the report (including disclosure and publication);
  - (d) timing.

### **196 Compliance failure**

In this Part “compliance failure” means a failure by the operator of a recognised inter-bank payment system to –

- (a) comply with a code of practice under section 189,
- (b) comply with a requirement under section 190,
- (c) comply with a direction under section 191, or
- (d) ensure compliance with a requirement under section 195.

### **197 Publication**

- (1) The Bank of England may publish details of a compliance failure by the operator of a recognised inter-bank payment system.
- (2) The Bank may publish details of a sanction imposed under sections 198 to 200.

### **198 Penalty**

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty –
  - (a) must be paid to the Bank of England, and
  - (b) may be enforced by the Bank as a debt.
- (3) The Bank must prepare a statement of the principles which it will apply in determining –
  - (a) whether to impose a penalty, and
  - (b) the amount of a penalty.
- (4) The Bank must –
  - (a) publish the statement on its internet website,
  - (b) send a copy to the Treasury,
  - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
  - (d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

**199 Closure**

- (1) This section applies if the Bank of England thinks that a compliance failure –
  - (a) threatens the stability of, or confidence in, the UK financial system, or
  - (b) has serious consequences for business or other interests throughout the United Kingdom.
- (2) The Bank may give the operator of the inter-bank payment system concerned an order to stop operating the system (a “closure order”) –
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) A closure order may apply to –
  - (a) all activities of the payment system, or
  - (b) specified activities.
- (4) An operator who fails to comply with a closure order commits an offence.
- (5) A person guilty of an offence is liable –
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

**200 Management disqualification**

- (1) The Bank of England may by order prohibit a specified person from being an operator of a recognised inter-bank payment system –
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (2) The Bank may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised inter-bank payment system –
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) A person who breaches a prohibition under subsection (1) or (2) commits an offence.
- (4) A person guilty of an offence is liable –
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

**201 Warning**

- (1) Before imposing a sanction on the operator of an inter-bank payment system or on another person the Bank of England must –
  - (a) give the operator or other person a notice (a “warning notice”),
  - (b) give the operator or other person at least 21 days to make representations,

- (c) consider any representations made, and
  - (d) as soon as is reasonably practicable, give the operator or other person a notice stating whether or not the Bank intends to impose the sanction.
- (2) In subsection (1) “imposing a sanction” means –
  - (a) publishing details under section 197(1),
  - (b) requiring the payment of a penalty under section 198,
  - (c) giving a closure order under section 199, or
  - (d) making an order under section 200.
- (3) Despite subsection (1), if satisfied that it is necessary the Bank may without notice –
  - (a) give a closure order under section 199, or
  - (b) make an order under section 200.

## **202 Appeal**

- (1) Where the Bank of England notifies a person under section 201(1)(d) that the Bank intends to impose a sanction, the person may appeal to the Financial Services and Markets Tribunal.
- (2) Where the Bank of England imposes a sanction on a person without notice in reliance on section 201(3), the person may appeal to the Financial Services and Markets Tribunal.
- (3) Part 9 of the Financial Services and Markets Act 2000 applies to appeals under this section; and for that purpose –
  - (a) a reference to the FSA is to be taken as a reference to the Bank of England,
  - (b) for section 133(9) of that Act substitute the proposition that a sanction may not be imposed while an appeal could be brought or is pending.
  - (c) Part 9 is to be read with any other necessary modifications.

### *Miscellaneous*

## **203 Fees**

- (1) The Bank of England may require operators of recognised inter-bank payment systems to pay fees.
- (2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.
- (3) Regulations under subsection (2) –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A requirement under subsection (1) may be enforced by the Bank as a debt.

## **204 Information**

- (1) The Bank of England may by notice in writing require a person to provide information –

- 
- (a) which the Bank thinks will help the Treasury in determining whether to make a recognition order, or
    - (b) which the Bank otherwise requires in connection with its functions under this Part.
  - (2) In particular, a notice may require the operator of a recognised inter-bank payment system to notify the Bank if events of a specified kind occur.
  - (3) A notice may require information to be provided –
    - (a) in a specified form or manner;
    - (b) at a specified time;
    - (c) in respect of a specified period.
  - (4) The Bank may disclose information obtained by virtue of this section to –
    - (a) the Treasury;
    - (b) the FSA;
    - (c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to inter-bank payment systems;
    - (d) the European Central Bank;
    - (e) the Bank for International Settlements.
  - (5) Subsection (4) –
    - (a) overrides a contractual or other requirement to keep information in confidence, and
    - (b) is without prejudice to any other power to disclose information.
  - (6) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.
  - (7) The Bank may publish information obtained by virtue of this section.
  - (8) The Treasury may make regulations about the manner and extent of publication under subsection (7).
  - (9) Regulations under this section –
    - (a) shall be made by statutory instrument, and
    - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
  - (10) It is an offence –
    - (a) to fail without reasonable excuse to comply with a requirement under this section;
    - (b) knowingly or recklessly to give false information in pursuance of this section.
  - (11) A person guilty of an offence is liable –
    - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
    - (b) on conviction on indictment, to a fine.

## **205 Pretending to be recognised**

- (1) It is an offence for the operator of a non-recognised inter-bank payment system –

- (a) to assert that the system is recognised, or
  - (b) to do anything which suggests that the system is recognised.
- (2) A person guilty of an offence is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## 206 Saving for informal oversight

- (1) Nothing in this Part prevents the Bank of England from having dealings with the operators of payment systems to which this Part does not apply.
- (2) Nothing in this Part prevents the Bank from having dealings, other than through the provisions of this Part, with the operators of payment systems to which this Part does apply.

## PART 6

### BANKNOTES: SCOTLAND AND NORTHERN IRELAND

#### *Introduction*

## 207 Overview

This Part –

- (a) repeals existing provisions about permission to issue banknotes in Scotland and Northern Ireland, and
- (b) replaces the provisions, but only for banks which already have permission to issue banknotes.

#### *Key terms*

## 208 “Banknote”

In this Part “banknote” means a promissory note, bill of exchange or other document which –

- (a) records an engagement to pay money,
- (b) is payable to the bearer on demand, and
- (c) is designed to circulate as money.

## 209 “Issue”

- (1) For the purposes of this Part a banknote is issued when it passes –
  - (a) from a person who holds it not as bearer but as a person carrying on the business of banking (“the issuing bank”), and
  - (b) to a person taking as bearer (“the bearer”).
- (2) In subsection (1)(a) the reference to a banknote passing from the issuing bank includes a reference to it passing –
  - (a) from the issuing bank’s agent, or

- (b) from a person printing or preparing the banknote for, or taking it to, the issuing bank or its agent.
- (3) For the purposes of subsection (1)(b) it does not matter whether the bearer also holds the banknote for use in the business of banking.

## 210 “Authorised bank”

In this Part “authorised bank” means a bank which immediately before commencement was authorised to issue banknotes in Scotland or Northern Ireland.

## 211 “Commencement”

In this Part “commencement” means the date set for the coming into force of section 212 (under the commencement power in section 263).

### *Authorisation to issue*

## 212 Repeal of old authorising enactments

The following shall cease to have effect—

- (a) section 1 of the Bank Notes (Scotland) Act 1845 (authorisation to issue banknotes), and
- (b) section 8 of the Bankers (Ireland) Act 1845 (authorisation to issue banknotes).

## 213 Saving for existing issuers

An authorised bank may continue to issue banknotes after commencement, but only—

- (a) in accordance with the provisions of this Part, and
- (b) in the part of the United Kingdom in which it was authorised to issue banknotes before commencement.

## 214 Consequential repeals and amendments

- (1) In the Bankers (Ireland) Act 1845—
  - (a) sections 9 to 23 cease to have effect,
  - (b) in section 26 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 213 of the Banking Act 2009”,
  - (c) section 28 ceases to have effect, and
  - (d) Schedules A and B cease to have effect.
- (2) In the Bank Notes (Scotland) Act 1845—
  - (a) every section ceases to have effect except for sections 16, 18, 21 and 22, and
  - (b) in section 18 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 213 of the Banking Act 2009”.



- (3) The following cease to have effect –
- (a) section 12 of the Bank Charter Act 1844,
  - (b) section 9 of the Currency and Bank Notes Act 1928,
  - (c) sections 1 and 3 of, and the Schedule to, the Bankers (Northern Ireland) Act 1928, and
  - (d) in the Coinage Act 1971 –
    - (i) section 12(4)(b) and (c), and
    - (ii) in Schedule 2 the entries relating to –
      - (a) the Bankers (Ireland) Act 1845,
      - (b) the Bank Notes (Scotland) Act 1845, and
      - (c) section 3 of the Bankers (Northern Ireland) Act 1928.

*Regulations and rules*

**215 Banknote regulations**

- (1) The Treasury shall make regulations about the treatment, holding and issuing of banknotes by authorised banks (“banknote regulations”).
- (2) Banknote regulations –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**216 Banknote rules**

- (1) Banknote regulations may require or permit the Bank of England to make rules (“banknote rules”) about any aspect of the treatment, holding or issuing of banknotes by authorised banks.
- (2) In particular, banknote regulations may require or permit banknote rules to do anything which banknote regulations may do.
- (3) Banknote rules –
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

*Specific issues*

**217 Backing assets**

- (1) Banknote regulations must require authorised banks to have backing assets.
- (2) “Backing assets” means assets of a kind specified by banknote regulations; and the regulations may, in particular, specify –
  - (a) banknotes issued by the Bank of England,
  - (b) current coins of the United Kingdom, and
  - (c) funds in a specified kind of account held with the Bank of England or with another specified institution or class of institution.
- (3) The regulations must –

- (a) require banknote rules to include provision for determining the value of backing assets to be held,
  - (b) require backing assets in the form of banknotes to be held either –
    - (i) by the Bank of England, or
    - (ii) at one or more locations approved by the Bank of England, and
  - (c) require backing assets held in the form of coins to be held at one or more locations approved by the Bank of England.
- (4) The regulations may make other provision about backing assets; including, in particular –
- (a) provision requiring a proportion of a bank’s backing assets to consist of assets of a specified kind;
  - (b) provision about the manner in which backing assets may or must be held;
  - (c) provision about ownership of and interests in backing assets;
  - (d) provision permitting backing assets to be held by an agent of an authorised bank.
- (5) Banknote regulations may make provision about the treatment of backing assets in relation to insolvency; in particular, the regulations may –
- (a) modify or disapply a provision or rule of law about insolvency;
  - (b) protect backing assets from being treated in the same way as other assets of the bank;
  - (c) provide for banknotes to be exchanged by bearers within a specified period;
  - (d) allow the Treasury to extend the period for exchange;
  - (e) provide for exchange to be funded from backing assets;
  - (f) provide for the Bank of England to acquire or control a bank’s backing assets for the purpose of administering arrangements for exchange.
- (6) In subsection (5) a reference to “insolvency” includes a reference to –
- (a) liquidation,
  - (b) bank insolvency,
  - (c) administration,
  - (d) bank administration,
  - (e) receivership,
  - (f) a composition between a bank and its creditors,
  - (g) a scheme of arrangement of a bank’s affairs, and
  - (h) a process under the law of a country or territory outside the United Kingdom which the Treasury identify, in banknote regulations, as serving a similar purpose to any of the processes listed in paragraphs (a) to (g).

## 218 Information

- (1) Banknote regulations or rules may make provision about –
- (a) reports to be made by an authorised bank in respect of the treatment, holding or issue of banknotes or in respect of compliance with banknote regulations or rules, and
  - (b) information to be given by an authorised bank or an agent of an authorised bank.

- (2) Banknote regulations may make provision enabling the publication or disclosure of—
  - (a) information provided in accordance with banknote regulations or rules;
  - (b) details of anything done in contravention of this Part or banknote regulations or rules;
  - (c) details of action taken under sections 221 to 224 (which may include details of the reason for the action and its result).
- (3) Her Majesty’s Revenue and Customs shall transfer to the Bank of England any information acquired or held in connection with functions in respect of the issue of banknotes in Scotland or Northern Ireland.
- (4) The Bank of England may use information received in accordance with subsection (3) only for the purposes of its functions under or by virtue of this Part.

### **219 Ceasing the business of issuing notes**

- (1) If an authorised bank at any time after commencement stops issuing banknotes, it may not resume issuing banknotes in reliance on section 213.
- (2) Banknote regulations or rules—
  - (a) may specify procedures to be followed by an authorised bank that intends to stop issuing banknotes, and
  - (b) may apply to an authorised bank for two years after it stops issuing banknotes.

### **220 Insolvency, &c.**

- (1) Banknote regulations may make provision in connection with the application to an authorised bank of—
  - (a) the special resolution regime (under Parts 1 to 3), or
  - (b) a provision about insolvency within the meaning of section 217(6).
- (2) The regulations may, in particular—
  - (a) provide for the destruction of banknotes which have not been issued;
  - (b) provide for the destruction of banknotes which have been exchanged in accordance with section 217(5)(c);
  - (c) extinguish a claim to or interest in un-issued or exchanged banknotes.
- (3) A right to rely on section 213 cannot be transferred by or acquired from an authorised bank (and, in particular, cannot be acquired by virtue of or in connection with anything done under Part 1).
- (4) The fact that an authorised bank is taken into temporary public ownership in accordance with section 13 does not itself prevent the bank from relying on section 213.
- (5) If an authorised bank enters insolvency (within the meaning of section 217(6)) it loses the right to rely on section 213.
- (6) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the

section for a specified transitional period or in respect of a specified class of transitional case.

- (7) A reference in this section to the special resolution regime includes a reference to any provision of the law of a country or territory outside the United Kingdom which the Treasury identifies, in banknote regulations, as serving a similar purpose.

### *Enforcement*

#### **221 Offence: unlawful issue**

- (1) A person who issues banknotes in Scotland or Northern Ireland otherwise than in reliance on section 213 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) An offence under subsection (1) committed by a body corporate is also committed by an officer of the body (“O”) if the offence –
  - (a) is committed with O’s consent or connivance, or
  - (b) is attributable to O’s negligence.
- (4) In subsection (3) “officer” means –
  - (a) a director,
  - (b) a manager,
  - (c) a secretary or similar officer, and
  - (d) a person purporting to act as an officer within paragraphs (a) to (c).
- (5) Subsection (3) applies to a partnership constituted under the law of Scotland as to a body corporate; for which purpose “officer” means –
  - (a) a partner, or
  - (b) a person purporting to act as a partner.
- (6) Proceedings for an offence under subsection (1) may be instituted –
  - (a) in England and Wales, only by the Director of Public Prosecutions, and
  - (b) in Northern Ireland, only by the Director of Public Prosecutions for Northern Ireland.

#### **222 Financial penalty**

- (1) Banknote regulations may enable the Bank of England to impose a penalty on an authorised bank that fails to comply with banknote regulations or rules.
- (2) A penalty –
  - (a) shall be paid to the Bank of England, and
  - (b) is enforceable by the Bank of England as a debt.
- (3) Banknote regulations must establish a method for determining the maximum amount of a penalty.

### **223 Termination of right to issue**

- (1) The Treasury may determine –
  - (a) that an authorised bank has failed to comply with banknote regulations or banknote rules, and
  - (b) that, having regard to the nature of the failure, the authorised bank should no longer be permitted to issue banknotes in reliance on section 213.
- (2) Before making a determination the Treasury must consult the Bank of England.
- (3) On making a determination the Treasury shall notify the authorised bank.
- (4) Upon receipt of the notice the authorised bank loses the right to rely on section 213.
- (5) If an authorised bank ceases to have permission under Part 4 of the Financial Services and Markets Act 2000 (regulated activities) to carry on the regulated activity of accepting deposits, it loses the right to rely on section 213 above.
- (6) The reference in subsection (5) to Part 4 of the Financial Services and Markets Act 2000 includes a reference to any provision of the law of another country which the Treasury identify, in banknote regulations, as serving a similar purpose.
- (7) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case.

### **224 Application to court**

Banknote regulations may enable the Bank of England to apply to the High Court or Court of Session for –

- (a) relief in respect of failure to comply with banknote regulations or rules, or
- (b) any order designed to ensure, or facilitate monitoring of, compliance with a provision of banknote regulations or rules.

*Bank of England*

### **225 Organisation**

Expenses incurred and sums received by the Bank of England in connection with its functions under this Part are to be treated as expenses and receipts of the Issue Department.

### **226 Discretionary functions**

- (1) Banknote regulations may confer a discretionary function on the Bank of England.
- (2) In particular, banknote regulations –

- (a) may require compliance with conditions to be imposed (whether generally or only for specified cases or circumstances) by the Bank of England, and
  - (b) may make a permission or option subject to the approval of the Bank of England (which may be general or only for specified cases or circumstances).
- (3) Subsection (2) is in addition to express references in this Part to Bank of England approval.

## 227 Exemption

Section 221(1) does not prohibit the issue of banknotes by the Bank of England.

## PART 7

### MISCELLANEOUS

#### *Treasury support for banks*

## 228 Consolidated Fund

- (1) There shall be paid out of money provided by Parliament expenditure incurred –
  - (a) by the Treasury for any purpose in connection with Parts 1 to 3 of this Act,
  - (b) by the Treasury, or by the Secretary of State with the consent of the Treasury, in respect of, or in connection with giving, financial assistance to or in respect of a bank or other financial institution (other than in respect of loans made in accordance with section 229), or
  - (c) by the Treasury in respect of financial assistance to the Bank of England.
- (2) For the purpose of subsection (1)(b) expenditure is incurred in respect of financial assistance in respect of banks or other financial institutions if it is incurred in respect of an activity, transaction or arrangement, or class of activity, transaction or arrangement, which is expected to facilitate any part of the business of one or more banks or other financial institutions; and for that purpose it does not matter –
  - (a) whether or not that is the sole or principal expected effect of the activity, transaction or arrangement, or
  - (b) whether the sole or principal motive for the activity, transaction or arrangement is (i) its effect on banks or other financial institutions, (ii) its effect on the economy as a whole, (iii) its effect on a particular industry or sector of the economy, or (iv) its effect on actual or potential customers of banks or other financial institutions.
- (3) In this section “financial assistance” has the meaning given by section 257 (and an order under that section may restrict or expand the effect of subsection (2)).
- (4) This section has effect in relation to expenditure whether incurred –
  - (a) before or after Royal Assent, and
  - (b) in pursuance of obligations entered into before or after Royal Assent.

- (5) Expenditure which could be paid out of money provided by Parliament under subsection (1) shall be charged on and paid out of the Consolidated Fund if the Treasury are satisfied that the need for the expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament.
- (6) Where money is paid in reliance on subsection (5) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

## **229 National Loans Fund**

- (1) Where the Treasury propose to make a loan to or in respect of a bank or other financial institution, they may arrange for money to be paid out of the National Loans Fund.
- (2) The Treasury may make arrangements under subsection (1) only where they think it necessary to make the loan urgently in order to protect the stability of the financial systems of the United Kingdom.
- (3) The Treasury shall determine –
  - (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) Sums received by the Treasury in respect of loans by virtue of this section shall be paid into the National Loans Fund.
- (5) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this section.
- (6) Where money is paid in reliance on subsection (1) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

## **230 “Financial institution”**

- (1) The Treasury may by order provide that a specified institution, or an institution of a specified class, is or is not to be treated as a financial institution for the purposes of section 228 or 229.
- (2) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **231 Reports**

- (1) The Treasury shall prepare reports about any arrangements entered into which involve or may require reliance on section 228(1).
- (2) A report must be prepared in respect of –

- (a) the period beginning with 1st April 2009 and ending with 30th September 2009, and
  - (b) each successive period of 6 months;
- but no report is required for a period in respect of which there is nothing to record.
- (3) The Treasury shall lay each report before the House of Commons as soon as is reasonably practicable.
  - (4) A report must not –
    - (a) specify individual arrangements, or
    - (b) identify, or enable the identification of, individual beneficiaries.
  - (5) The Treasury must aim to give as much information as possible in a report, subject to subsection (4) and other considerations of public interest.

#### *Investment banks*

### **232 Definition**

- (1) In this group of sections “investment bank” means an institution which satisfies the following conditions.
- (2) Condition 1 is that the institution has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of –
  - (a) safeguarding and administering investments,
  - (b) dealing in investments as principal, or
  - (c) dealing in investments as agent.
- (3) Condition 2 is that the institution holds client assets.
- (4) In this group of sections “client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust and whether or not the undertaking has been complied with).
- (5) Condition 3 is that the institution is incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) The Treasury may by order –
  - (a) provide that a specified class of institution, which has a permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, is to be treated as an investment bank for the purpose of this group of sections;
  - (b) provide that a specified class of institution is not to be treated as an investment bank for the purpose of this group of sections;
  - (c) provide that assets of a specified kind, or held in specified circumstances, are to be or not to be treated as client assets for the purpose of this group of sections;
  - (d) amend a provision of this section in consequence of provision under paragraph (a), (b) or (c).

### **233 Insolvency regulations**

- (1) The Treasury may by regulations (“investment bank insolvency regulations”) –



- (a) modify the law of insolvency in its application to investment banks;
  - (b) establish a new procedure for investment banks where –
    - (i) they are unable, or are likely to become unable, to pay their debts (within the meaning of section 93(4)), or
    - (ii) their winding up would be fair (within the meaning of section 93(8)).
- (2) Investment bank insolvency regulations may, in particular –
- (a) apply or replicate (with or without modifications) or make provision similar to provision made by or under the Insolvency Act 1986 or Part 2 or 3 of this Act;
  - (b) establish a new procedure either (i) to operate for investment banks in place of liquidation or administration (under the Insolvency Act 1986), or (ii) to operate alongside liquidation or administration in respect of a particular part of the business or affairs of investment banks.
- (3) In making investment bank insolvency regulations the Treasury shall have regard to the desirability of –
- (a) identifying, protecting, and facilitating the return of, client assets,
  - (b) protecting creditors' rights,
  - (c) ensuring certainty for investment banks, creditors, clients, liquidators and administrators,
  - (d) minimising the disruption of business and markets, and
  - (e) maximising the efficiency and effectiveness of the financial services industry in the United Kingdom.
- (4) A reference to returning client assets includes a reference to –
- (a) transferring assets to another institution, and
  - (b) returning or transferring assets equivalent to those which an institution undertook to hold for clients.

#### **234 Regulations: details**

- (1) Investment bank insolvency regulations may provide for a procedure to be instituted –
- (a) by a court, or
  - (b) by the action of one or more specified classes of person.
- (2) Investment bank insolvency regulations may –
- (a) confer functions on persons appointed in accordance with the regulations (which may, in particular, (i) be similar to the functions of a liquidator or administrator under the Insolvency Act 1986, or (ii) involve acting as a trustee of client assets), and
  - (b) specify objectives to be pursued by a person appointed in accordance with the regulations.
- (3) Investment bank insolvency regulations may make the application of a provision depend –
- (a) on whether an investment bank is, or is likely to become, unable to pay its debts,
  - (b) on whether the winding up of an investment bank would be fair, or
  - (c) partly on those and partly on other considerations.

- 
- (4) Investment bank insolvency regulations may make provision about the relationship between a procedure established by the regulations and –
    - (a) liquidation or administration under the Insolvency Act 1986,
    - (b) bank insolvency or bank administration under Part 2 or 3 of this Act, and
    - (c) provision made by or under any other enactment in connection with insolvency.
  - (5) Regulations by virtue of subsection (4) may, in particular –
    - (a) include provision for temporary or permanent moratoria;
    - (b) amend an enactment.
  - (6) Investment bank insolvency regulations may include provision –
    - (a) establishing a mechanism for determining which assets are client assets (subject to section 232);
    - (b) establishing a mechanism for determining that assets are to be, or not to be, treated as client assets (subject to section 232);
    - (c) about the treatment of client assets;
    - (d) about the treatment of unsettled transactions (and related collateral);
    - (e) for the transfer to another financial institution of assets or transactions;
    - (f) for the creation or enforcement of rights (including rights that take preference over creditors' rights) in respect of client assets or other assets;
    - (g) indemnifying a person who is exercising or purporting to exercise functions under or by virtue of the regulations;
    - (h) for recovery of assets transferred in error.
  - (7) Provision may be included under subsection (6)(f) only to the extent that the Treasury think it necessary having regard to the desirability of protecting both –
    - (a) client assets, and
    - (b) creditors' rights.
  - (8) Investment bank insolvency regulations may confer functions on –
    - (a) a court or tribunal,
    - (b) the Financial Services Authority,
    - (c) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000),
    - (d) the scheme manager of that Scheme, and
    - (e) any other specified person.
  - (9) Investment bank insolvency regulations may include provision about institutions that are or were group undertakings (within the meaning of section 1161(5) of the Companies Act 2006) of an investment bank.
  - (10) Investment bank insolvency regulations may replicate or apply, with or without modifications, a power to make procedural rules.
  - (11) Investment bank insolvency regulations may include provision for assigning or apportioning responsibility for the cost of the application of a procedure established or modified by the regulations.

### **235 Regulations: procedure**

- (1) Investment bank insolvency regulations shall be made by statutory instrument.
- (2) Investment bank insolvency regulations may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) The Treasury must consult before laying draft investment bank insolvency regulations before Parliament.
- (4) If the power to make investment bank insolvency regulations has not been exercised before the end of the period of 2 years beginning with the date on which this Act is passed, it lapses.
- (5) An order under section 232(6) –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### **236 Review**

- (1) The Treasury shall arrange for a review of the effect of any investment bank insolvency regulations.
- (2) The review must be completed during the period of 2 years beginning with the date on which the regulations come into force.
- (3) The Treasury shall appoint one or more persons to conduct the review; and a person appointed must have expertise in connection with the law of insolvency or financial services.
- (4) The review must consider, in particular –
  - (a) how far the regulations are achieving the objectives specified in section 233(3), and
  - (b) whether the regulations should continue to have effect.
- (5) The review must result in a report to the Treasury.
- (6) The Treasury shall lay a copy of the report before Parliament.
- (7) If a review recommends further reviews –
  - (a) the Treasury may arrange for the further reviews, and
  - (b) subsections (3) to (6) (and this subsection) shall apply to them.

### *Banking (Special Provisions) Act 2008*

### **237 Compensation: valuer**

Without prejudice to the generality of section 12 of the Banking (Special Provisions) Act 2008 (consequential and supplementary provision), it is declared that the power under section 9 of that Act to make provision for the appointment of a valuer includes power to replicate, or to make provision of a kind that may be made under, section 55(1) to (3) of this Act.

---

*Bank of England***238 UK financial stability**

- (1) After section 2 of the Bank of England Act 1998 (functions of court of directors) insert –

**“2A Financial Stability Objective**

- (1) An objective of the Bank shall be to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom (the “Financial Stability Objective”).
- (2) In pursuing the Financial Stability Objective the Bank shall aim to work with other relevant bodies (including the Treasury and the Financial Services Authority).
- (3) The court of directors shall, consulting the Treasury, determine and review the Bank’s strategy in relation to the Financial Stability Objective.

**2B Financial Stability Committee**

- (1) There shall be a sub-committee of the court of directors of the Bank (the “Financial Stability Committee”) consisting of –
  - (a) the Governor of the Bank, who shall chair the Committee (when present),
  - (b) the Deputy Governors of the Bank, and
  - (c) 4 directors of the Bank, appointed by the chair of the court of directors (designated under paragraph 13 of Schedule 1).
- (2) The Committee shall have the following functions –
  - (a) to make recommendations to the court of directors, which they shall consider, about the nature and implementation of the Bank’s strategy in relation to the Financial Stability Objective,
  - (b) to give advice about whether and how the Bank should act in respect of an institution, where the issue appears to the Committee to be relevant to the Financial Stability Objective,
  - (c) in particular, to give advice about whether and how the Bank should use stabilisation powers under Part 1 of the Banking Act 2009 in particular cases,
  - (d) to monitor the Bank’s use of the stabilisation powers,
  - (e) to monitor the Bank’s exercise of its functions under Part 5 of the Banking Act 2009 (inter-bank payment systems), and
  - (f) any other functions delegated to the Committee by the court of directors for the purpose of pursuing the Financial Stability Objective.
- (3) The Treasury may appoint a person to represent the Treasury at meetings of the Committee; and the Treasury’s representative –
  - (a) may not vote in proceedings of the Committee,
  - (b) shall in all other respects be a member of the Committee, and
  - (c) may be replaced by the Treasury.
- (4) The Committee may co-opt other non-voting members.

- (5) The chair of the court of directors may replace members of the Committee appointed under subsection (1)(c).

## **2C Financial Stability Committee: supplemental**

- (1) The Committee shall determine its own procedure (including quorum).
- (2) If a member of the Committee has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee –
  - (a) he shall disclose his interest to the Committee when it considers the dealing or business, and
  - (b) he shall have no vote in proceedings of the Committee in relation to any question arising from its consideration of the dealing or business, unless the Committee has resolved that the interest does not give rise to a conflict of interest.
- (3) The Committee may delegate a function under section 2B(2)(b) to (e) to two or more of its members, excluding –
  - (a) the Treasury representative, and
  - (b) co-opted non-voting members.”
- (2) At the end of section 2 of the Bank of England Act 1998 add –
  - “(5) Sections 2A and 11 set objectives for the Bank in relation to financial stability and monetary policy; and subsections (2) to (4) above are subject to those sections.”

## **239 Number of directors**

- (1) Section 1 of the Bank of England Act 1998 (court of directors) is amended as follows.
- (2) In subsection (2) omit “16”.
- (3) After subsection (2) insert –
  - “(2A) The number of directors must not exceed 9.”
- (4) The directors immediately before the day on which this section comes into force shall vacate office on that day (without prejudice to re-appointment).

## **240 Meetings**

- (1) Paragraph 12 of Schedule 1 to the Bank of England 1998 (court of directors: meetings) is amended as follows.
- (2) In sub-paragraph (1) for “once a month” substitute “7 times in each calendar year”.
- (3) For sub-paragraph (2) substitute –
  - “(2) Either of the following may summon a meeting at any time on giving such notice as the circumstances appear to require –
    - (a) the Governor of the Bank (or in his absence a Deputy Governor), and
    - (b) the chair of the court.”

**241 Chair of court**

- (1) For paragraph 13(3) of Schedule 1 to the Bank of England Act 1998 (court of directors: chairing meetings) substitute –
  - “(3) The Chancellor of the Exchequer may designate –
    - (a) a member of the court to chair its meetings (“the chair of the court”), and
    - (b) one or more members of the court as deputies to chair its meetings in the absence of the chair of the court.”
- (2) For section 3(4) of that Act (sub-committee: chair) substitute –
  - “(4) The chair of the court (designated under paragraph 13 of Schedule 1) shall chair meetings of the sub-committee (when present).”

**242 Quorum**

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 3 (functions delegated to sub-committee) –
  - (a) omit subsection (3),
  - (b) in subsection (7) for “(3)” substitute “(4)”, and
  - (c) at the end of subsection (7) add “(including quorum)”.
- (3) In paragraph 13 of Schedule 1 (court of directors: proceedings) –
  - (a) omit sub-paragraph (2),
  - (b) in sub-paragraph (6) for “(2)” substitute “(3)”, and
  - (c) at the end of sub-paragraph (6) add “(including quorum)”.

**243 Tenure**

- (1) At the end of paragraph 1 of Schedule 1 to the Bank of England Act 1998 (Governor and Deputies: appointment) add –
  - “(3) A person may not be appointed as Governor more than twice.
  - (4) A person may not be appointed as Deputy Governor more than twice.”
- (2) At the end of paragraph 6 of that Schedule (re-appointment) insert “(subject to paragraph 1(3) and (4))”.
- (3) After paragraphs 1 and 2 of Schedule 3 to that Act (Monetary Policy Committee: appointment) insert –
  - “2A A person may not be appointed as a member of the Committee under section 13(2)(c) more than twice.”
- (4) At the end of paragraph 6 of that Schedule (re-appointment) insert “(subject to paragraph 2A)”.

**244 Immunity**

- (1) The Bank of England has immunity in its capacity as a monetary authority.
- (2) In this section –

- (a) a reference to the Bank of England is a reference to the Bank and anyone who acts or purports to act as a director, officer, servant or agent of the Bank,
  - (b) “immunity” means immunity from liability in damages in respect of action or inaction, and
  - (c) a reference to the Bank’s capacity as a monetary authority includes a reference to functions exercised by the Bank for the purpose of or in connection with—
    - (i) acting as the central bank of the United Kingdom, or
    - (ii) protecting or enhancing the stability of the financial systems of the United Kingdom.
- (3) The immunity does not extend to action or inaction—
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.

#### **245 Weekly return**

Section 6 of the Bank Charter Act 1844 (Bank to produce weekly account) shall cease to have effect.

#### **246 Information**

- (1) The Bank of England may disclose information that it thinks relevant to the financial stability of—
- (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) Information about the business or other affairs of a specified or identifiable person may be disclosed under subsection (1) only to—
- (a) the Treasury;
  - (b) the Financial Services Authority;
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);
  - (d) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the Financial Services Authority in relation to financial stability;
  - (e) the European Central Bank.
- (3) This section—
- (a) overrides a contractual or other requirement to keep information in confidence, and
  - (b) is without prejudice to any other power to disclose information.

#### **247 Bank of England Act 1946**

Nothing in this Act affects the generality of section 4 of the Bank of England Act 1946 (directions and relations with other banks).

---

*Financial Services Authority***248 Variation of permission**

At the end of section 45(1)(c) of the Financial Services and Markets Act 2000 (variation of permission to carry on regulated activities) add “(whether of the services of the authorised person or of the services of other authorised persons)”.

**249 Functions**

- (1) A reference in an enactment to functions conferred on the Financial Services Authority by or under the Financial Services and Markets Act 2000 (or any part of it) includes a reference to functions conferred on the Authority by or under this Act.
- (2) A reference in an enactment to functions of the Financial Services Authority includes a reference to functions conferred by or under this Act (irrespective of whether the enactment was passed or made before or after the commencement of this Act).
- (3) The Treasury may by order disapply subsection (1) or (2) to a specified extent; and an order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) At the end of section 1 of the Financial Services and Markets Act 2000 (the Authority) add –

“(4) Section 249 of the Banking Act 2009 provides for references to functions of the Authority (whether generally or under this Act) to include references to functions conferred on the Authority by that Act (subject to any order under that section).”

**250 Information**

- (1) The Financial Services Authority shall collect information that it thinks is or may be relevant to the stability of –
  - (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) The Authority may perform its function under subsection (1) by the exercise of the power in section 165 of the Financial Services and Markets Act 2000 (power to require information - as qualified by section 249 above) or in any other way.

*Central banks***251 Financial assistance to building societies**

- (1) The Treasury may by order modify the Building Societies Act 1986 for the purpose of facilitating, or in connection with, the provision of financial assistance to building societies by –
  - (a) the Treasury,
  - (b) the Bank of England,



- (c) another central bank of a Member State of the European Economic Area, or
  - (d) the European Central Bank.
- (2) An order may affect any provision of the Building Societies Act 1986 which appears to the Treasury otherwise capable of preventing, impeding or affecting the provision of financial assistance; including, in particular, provision –
  - (a) about the establishment, constitution or powers of building societies,
  - (b) restricting or otherwise dealing with raising funds or borrowing,
  - (c) restricting or otherwise dealing with what may be done by or in relation to building societies,
  - (d) about security, or
  - (e) about the application of insolvency law or other legislation relating to companies.
- (3) An order –
  - (a) may disapply or modify a provision;
  - (b) may (but need not) take the form of textual amendment.
- (4) Incidental provision of an order (included in reliance on section 259(1)(c)) may, in particular –
  - (a) impose conditions, limits or other restrictions on what may be done in reliance on a provision of the order;
  - (b) confer a discretion on the Treasury, the Bank of England or another person or class of person.
- (5) Incidental or consequential provision of an order (included in reliance on section 259(1)(c)) may disapply or modify an enactment, whether by textual amendment or otherwise.
- (6) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (7) The Treasury may by order create exceptions to or otherwise modify the effect of section 9B of the Building Societies Act 1986 (restriction on creation of floating charges); and –
  - (a) the Treasury may make an order only if they think it is likely to help building societies to use, give effect to or take advantage of financial assistance of the kind specified in subsection (1),
  - (b) an order may have effect in relation to transactions between building societies and persons not listed in subsection (1),
  - (c) an order shall be made by statutory instrument, and
  - (d) an order may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (8) In this section, “financial assistance” has the meaning given by section 257.

## 252 Registration of charges

- (1) Part 25 of the Companies Act 2006 (registration of charges) does not apply to a charge if the person interested in it is –
  - (a) the Bank of England,

- (b) the central bank of a country or territory outside the United Kingdom, or
  - (c) the European Central Bank.
- (2) The reference in subsection (1) to Part 25 of the Companies Act 2006 includes a reference to –
- (a) Part 12 of the Companies Act 1985 (which has effect until the commencement of Part 25 of the 2006 Act),
  - (b) Part 13 of the Companies (Northern Ireland) Order 1986 (which has effect until the commencement of Part 25 of the 2006 Act), and
  - (c) any provision about registration of charges made under section 1052 of the Companies Act 2006 (overseas companies).

### 253 Registration of charges: Scotland

- (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.
- (2) In section 38 (creation of floating charges) –
- (a) in subsection (3), after “to” insert “subsection (3A) and”, and
  - (b) after that subsection insert –
    - “(3A) If a floating charge is granted in favour of a central institution, it is created only when the document granting the floating charge is executed by the company granting the charge.”
- (3) In section 39 (advance notice of floating charges), after subsection (3) add –
- “(4) This section does not apply where a company proposes to grant a floating charge in favour of a central institution.”
- (4) In section 42 (assignment of floating charges), after subsection (3) add –
- “(4) This section does not apply where a floating charge is assigned (whether in whole or to a specified extent) to or by a central institution.”
- (5) In section 43 (alteration of floating charges) –
- (a) in subsection (4), for “But paragraph” substitute “Paragraph”, and
  - (b) after that subsection insert –
    - “(4A) Paragraph (b) of subsection (3) above does not apply in respect of an alteration if –
      - (a) the holder of the floating charge is a central institution, or
      - (b) the holder of the floating charge is not a central institution but the alteration is to be made in connection with a floating charge which is held (or which has been or is to be held) by a central institution.”
- (6) In section 44 (discharge of floating charges), after subsection (3) add –
- “(4) This section does not apply where the floating charge to be discharged (whether in whole or to a specified extent) is or has been held by a central institution.”
- (7) In section 47 (interpretation), after “Part –” insert –
- ““central institution” means –

- (a) the Bank of England,
- (b) the central bank of a country or territory outside the United Kingdom, or
- (c) the European Central Bank;”

*Funds attached rule (Scotland)*

**254 Abolition for cheques**

- (1) A reference to the “funds attached” rule is a reference to the rule of law in Scotland by virtue of which a bill of exchange, when presented to the drawee for payment, operates as an assignation of the sum for which it is drawn (or, if the drawee holds insufficient funds, of those funds) in favour of the holder of the bill.
- (2) The “funds attached” rule is abolished for cheques presented for payment after the commencement of this section.
- (3) Expressions used in this section have the same meaning as in the Bills of Exchange Act 1882.
- (4) In that Act—
  - (a) in section 53(2) (funds in hands of drawee: Scotland)—
    - (i) the words “Subject to section 75A of this Act,” cease to have effect, and
    - (ii) after “drawee of a bill” insert “other than a cheque”, and
  - (b) section 75A(countermanded cheques) ceases to have effect.
- (5) Section 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (countermanded cheques) ceases to have effect.

*Financial collateral arrangements*

**255 Regulations**

- (1) The Treasury may make regulations about financial collateral arrangements.
- (2) “Financial collateral arrangements” are arrangements under which financial collateral is used as security in respect of a loan or other liability; and for that purpose—
  - (a) collateral may be in cash, securities or any other form,
  - (b) use as security may involve transfer of the collateral or the creation or transfer of any kind of right, interest or charge (fixed or floating) in respect of it, and
  - (c) in particular, use as security can include use under arrangements of a kind described commercially as “title transfer financial collateral arrangements”.
- (3) The regulations—
  - (a) may make any provision that the Treasury think necessary or desirable for the purpose of, or in connection with, implementation of the Financial Collateral Arrangements Directive (2002/47/EC) (or any replacement), but

- (b) are not restricted to provision required in connection with the Directive, and may make any provision that the Treasury think necessary or desirable for the purpose of enabling financial collateral arrangements, whether or not with an international element, to be commercially useful and effective.
- (4) The regulations may, in particular –
- (a) disapply or modify an enactment or rule of law about formalities or evidence,
  - (b) disapply or modify an enactment about insolvency, administration, receivership or any similar procedure,
  - (c) disapply or modify an enactment about property law,
  - (d) disapply or modify an enactment about companies or other commercial entities or groupings,
  - (e) provide for provisions of financial collateral arrangements to have effect despite a reorganisation, winding-up or other process affecting a party to the arrangements,
  - (f) make provision for the enforcement of financial collateral arrangements (which may include, in particular, provision –
    - (i) about sale, appropriation and set-off,
    - (ii) about the use of collateral while subject to the arrangements,
    - (iii) about “close out netting arrangements”, under which obligations under a number of contracts may be set off against each other in the event of default under a specified contract,
    - (iv) permitting a person to foreclose or exercise another right under the arrangements with or without an order of a court,
    - (v) permitting or requiring the disclosure of information, and
    - (vi) for enforcement after the commencement of, and despite, reorganisation, winding-up or another process),
  - (g) make provision for the choice of law according to which, or under which, matters arising under financial collateral arrangements are to be determined, and
  - (h) apply to persons whether or not provisions of the Directive apply to them.
- (5) The regulations may, in particular –
- (a) do anything done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003,
  - (b) provide for those regulations, or a specified provision, to be treated as having had effect despite any lack of vires,
  - (c) provide for anything done under or in reliance on those regulations to be treated as having had effect despite any lack of vires, and
  - (d) make any provision which the Treasury think necessary or desirable to achieve or restore certainty and stability in connection with the matters to which those regulations relate.

## 256 Supplemental

- (1) Regulations under section 255 –
- (a) shall be made by statutory instrument, and
  - (b) shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution,

prorogation or adjournment of either House for more than 4 days) beginning with the day on which the regulations are made.

- (2) The lapse of regulations under subsection (1)(b) –
  - (a) does not invalidate anything done under or in reliance on the regulations before the lapse and at a time when neither House has declined to approve the regulations, and
  - (b) does not prevent the making of new regulations (in new terms).

## PART 8

### GENERAL

#### 257 “Financial assistance”

- (1) In this Act “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (2) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Act; and subsection (1) is subject to this subsection.
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### 258 “Enactment”

In this Act “enactment” includes –

- (a) subordinate legislation,
- (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and
- (c) Northern Ireland legislation.

#### 259 Statutory instruments

- (1) A statutory instrument under this Act –
  - (a) may make provision that applies generally or only for specified purposes, cases or circumstances,
  - (b) may make different provision for different purposes, cases or circumstances, and
  - (c) may include incidental, consequential or transitional provision.
- (2) No statutory instrument under this Act shall be treated as a hybrid instrument under Standing Orders of either House of Parliament.
- (3) The Table lists the powers to make statutory instruments under this Act and the arrangements for Parliamentary scrutiny in each case (which are subject to subsections (4) to (6)).

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
<b>PART 1 - Special resolution regime</b>		
2	Meaning of “bank”	Draft affirmative resolution
25	Share transfer orders	Negative resolution
47	Partial transfers	Draft affirmative resolution
48	Protection of interests	Draft affirmative resolution
55	Independent valuer	Negative resolution
56	Independent valuer: money	Negative resolution
60	Third party compensation	Draft affirmative resolution
62	Compensation orders	Draft affirmative resolution
69	Continuity obligations: consideration and terms	Negative resolution
72	Transfers: enforcement	Negative resolution
74	Tax	Draft affirmative resolution (Commons only)
75	Power to change law	Draft affirmative resolution (except for urgent cases)
78	Public funds	Negative resolution (Commons only)
85	Building societies: orders	Negative resolution
86	Building societies: assets	(As for orders under section 90B of the Building Societies Act 1986)
88	Building societies: consequential	Draft affirmative resolution
89	Credit unions	Draft affirmative resolution
<b>PART 2 - Bank insolvency</b>		
91	Meaning of “bank”	Draft affirmative resolution
122	Application of insolvency law	Draft affirmative resolution
125	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
130	Building societies	Draft affirmative resolution
131	Credit unions	Draft affirmative resolution
132	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
133	Scottish partnerships	Negative resolution
135	Consequential provision	Draft affirmative resolution
<b>PART 3 - Bank administration</b>		

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
148	Sharing information	Negative resolution
149	Multiple original transfers	Draft affirmative resolution
152	Transfer from temporary public ownership	Draft affirmative resolution
156	Application of other law	Draft affirmative resolution
158	Building societies	Draft affirmative resolution
159	Credit unions	Draft affirmative resolution
160	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
163	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
164	Scottish partnerships	Negative resolution
168	Consequential provision	Draft affirmative resolution
<b>PART 4 - Financial Services Compensation Scheme</b>		
170	Contingency funding	Draft affirmative resolution
171	Special resolution regime	Draft affirmative resolution
173	Borrowing from National Loans Fund	Negative resolution
<b>PART 5 - Inter-bank payment systems</b>		
191	Bank of England directions: immunity	Negative resolution
203	Fees regulations	Negative resolution
204	Information	Negative resolution
<b>PART 6 - Banknotes: Scotland and Northern Ireland</b>		
215	Banknote regulations	Draft affirmative resolution
<b>PART 7 - Miscellaneous</b>		
230	Financial institution	Negative resolution
232	Investment banks: definition	Draft affirmative resolution
233	Investment banks: insolvency	Draft affirmative resolution
249	FSA - functions	Draft affirmative resolution
251	Central banks: assistance to building societies	Draft affirmative resolution
255	Financial collateral arrangements	Affirmative resolution
<b>PART 8 - General</b>		
257	Financial assistance	Negative resolution

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>
262	Repeal of Banking (Special Provisions) Act 2008	None
263	Commencement	None

- (4) A power listed in subsection (5) may be exercised without a draft being laid before and approved by resolution of each House of Parliament if –
- (a) the power is being exercised for the first time, and
  - (b) the person exercising it is satisfied that it is necessary to exercise it without laying a draft for approval.
- (5) The powers are those in –
- (a) section 2 (special resolution regime: meaning of “bank”),
  - (b) section 47 (special resolution regime: partial transfers),
  - (c) section 48 (special resolution regime: protection of interests),
  - (d) section 60 (special resolution regime: third party compensation),
  - (e) section 88 (special resolution regime: building societies: consequential),
  - (f) section 91 (bank insolvency: meaning of “bank”),
  - (g) section 122 (bank insolvency: application of insolvency law),
  - (h) section 130 (bank insolvency: building societies),
  - (i) section 135 (bank insolvency: consequential provision),
  - (j) section 149 (bank administration: multiple original transfers),
  - (k) section 152 (bank administration: transfer from temporary public ownership),
  - (l) section 156 (bank administration: application of other law),
  - (m) section 158 (bank administration: building societies),
  - (n) section 168 (bank administration: consequential provision), and
  - (o) section 171 (Financial Services Compensation Scheme: special resolution regime).
- (6) Where an instrument is made in reliance on subsection (5) –
- (a) it shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the instrument is made,
  - (b) the lapse of an instrument under paragraph (a) does not invalidate anything done under or in reliance on it before its lapse and at a time when neither House has declined to approve it, and
  - (c) the lapse of an instrument under paragraph (a) does not prevent the making of a new one (in new terms).

## 260 Money

Expenditure of the Treasury under, by virtue of or in connection with a provision of this Act shall be paid out of money provided by Parliament.

## 261 Index of defined terms

The Table sets out expressions defined in this Act for general purposes.



<i>Expression</i>	<i>Section</i>
Action	93 and 166
Bank (Part 1)	2
Bank (Part 2)	91
Bank administration	136
Bank administration order	141
Bank insolvency	90
Bank insolvency order	94
Bridge bank	12
Bridge bank reverse share transfer instrument	31
Bridge bank share transfer instrument	30
Compensation scheme order	49
The court (Part 2)	92
The court (Part 3)	166
Eligible depositors	93
Enactment	258
FSA	3, 93 & 166
FSCS	93
Fair	93
Financial assistance	257
Financial institution	230
Full payment resolution	100
Independent valuer	54
Inter-bank payment system	182
Liquidation committee	100
Objective 1 Achievement Notice	139
Onward bridge bank	12
Onward property transfer instrument	43
Onward share transfer order	28
Partial property transfer	47
Property transfer instrument	33
Property transfer order	45
Resolution fund order	49
Reverse property transfer instrument	44

<i>Expression</i>	<i>Section</i>
Reverse property transfer order	46
Reverse share transfer order	29
Securities	14
Share transfer instrument	15
Share transfer order	16
Special resolution regime	1
Special resolution objectives	4
Stabilisation options	1
Stabilisation powers	1
Supplemental property transfer instrument	42
Supplemental share transfer instrument or order	26 & 27
Third party compensation order	49 & 59
Unable to pay debts	93 & 166

## 262 Repeal

- (1) The Treasury may by order repeal the Banking (Special Provisions) Act 2008.
- (2) An order –
  - (a) may include savings, and
  - (b) shall be made by statutory instrument.
- (3) Subsection (2)(a) is without prejudice to the generality of, or the application to this section of, section 259.

## 263 Commencement

- (1) The preceding provisions of this Act shall come into force in accordance with provision made by the Treasury by order.
- (2) Subsection (1) does not apply to section 254, which comes into force at the end of the period of 2 months beginning with the date of Royal Assent.
- (3) An order under subsection (1) –
  - (a) may make provision generally or only in relation to specific provisions or purposes,
  - (b) may make different provision for different provisions or purposes,
  - (c) may include incidental or transitional provision (including savings), and
  - (d) shall be made by statutory instrument.
- (4) Where the Treasury or another authority are required to consult or take other action before exercising a power or fulfilling a duty to make legislation or to do any other thing under, by virtue of or in connection with this Act, the Treasury or other authority may rely on consultation or other action carried out before the commencement of the relevant provision of this Act.

**264 Extent**

- (1) This Act extends to—
  - (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
  
- (2) But—
  - (a) sections 253 and 254 extend to Scotland only, and
  - (b) an amendment of an enactment has the same extent as the enactment (or the relevant part).

**265 Short title**

This Act may be cited as the Banking Act 2009.