



Financial Services Act 2012

2012 CHAPTER 21

PART 8

AMENDMENTS OF BANKING ACT 2009

Special resolution regime and bank administration

102 Application to UK clearing houses

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert—

“Sections 89B to 89G | UK clearing houses”.

(3) In section 2 (interpretation: “bank”), after subsection (8) insert—

“(9) Section 89B applies this Part to UK clearing houses with modifications.”

(4) After section 39 insert—

“39A Banks which are clearing houses

Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house.”

(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert—

“(cb) to UK clearing houses, or”.

(6) After section 89A (and in Part 1) insert—

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“UK clearing houses

89B Application to UK clearing houses

- (1) This Part applies to UK clearing houses as it applies to banks, subject to—
 - (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
 - (b) any other necessary modifications.
- (2) For section 13 substitute—

“13 Transfer of ownership

- (1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”
- (3) For sections 28 and 29 substitute—

“28 Onward transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
 - (a) provides for the transfer of—
 - (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
 - (ii) securities which were issued by the UK clearing house after the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
 - (a) the Bank of England,
 - (b) a nominee of the Treasury, or

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- (c) a company wholly owned by the Bank of England or the Treasury.
- (6) Sections 7 and 8 do not apply to an onward 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).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

29 Reverse share transfer

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a UK clearing house to a person (“the original transferee”).
- (2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
 - (a) provides for transfer to the transferor under the original instrument (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) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
 - (a) the original transferee is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or

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- (b) the reverse share transfer instrument is made with the written consent of the original transferee.
- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—
 - (a) the onward transferee is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Sections 7 and 8 do not apply to a 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).
- (8) Before making a reverse share transfer instrument the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorised person, the PRA, and
 - (b) the FCA.
- (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute—

“45 Transfer of ownership: property transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
 - (a) provides for property, rights or liabilities of the UK clearing house 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 UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
 - (a) the Bank of England,
 - (b) a company wholly owned by the Bank of England or the Treasury, or

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- (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.
- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.
- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.

46 Transfer of ownership: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A reverse property transfer instrument is a property 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 property, rights or liabilities which are, could be or could have been transferred.
- (4) The Bank of England must not make a reverse property transfer instrument unless—
 - (a) the transferee under the original instrument is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
- (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”

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(5) For section 81 substitute—

“81 Transfer of ownership: report

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”

(6) The table mentioned in subsection (1)(a) is as follows—

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b) and (c). In subsection (3)(c), for “to temporary public ownership” substitute “of ownership”. In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “15, 26 and 28 to 31”.
Section 4	Ignore subsection (2)(b) and (c). Ignore subsection (3)(a), (b) and (ba). In subsection (5), for “banking” substitute “financial”. In subsection (6), for “protect depositors” substitute “maintain the continuity of central counterparty clearing services”. Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c). In subsection (3)— (a) for “Sections 12 and 13 require” substitute “Section 12 requires”, and (b) ignore the words “and temporary public ownership”.
Section 6	In subsection (4)— (a) after “Before” insert “issuing or”, and (b) ignore paragraph (d). In subsection (5) after “after” insert “issuing or”.
Section 7	In subsection (1), for “PRA” substitute “Bank of England”.

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<i>Provision</i>	<i>Modification</i>
	<p>In subsection (2), for the words following “satisfy the” substitute “recognition requirements”.</p> <p>The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house.</p> <p>In subsection (3), for “satisfy the threshold conditions” substitute “maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements”.</p> <p>In subsection (4), for “PRA” substitute “Bank of England”.</p> <p>Ignore subsection (4A).</p> <p>In subsection (5)—</p> <ul style="list-style-type: none">(a) for “PRA” substitute “Bank of England”, and(b) ignore paragraph (a) unless the UK clearing house is a PRA- authorised person, in which case for “Bank of England” substitute “PRA”. <p>Ignore subsections (7) and (8).</p> <p>For the purposes of section 7—</p> <ul style="list-style-type: none">(a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and(b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.
Section 8	<p>In subsection (1), omit “in accordance with section 11(2) or 12(2)”.</p> <p>Ignore subsection (2)(c) and (d).</p> <p>In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA- authorised person.</p> <p>In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.</p>
Section 9	Ignore section 9.
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA- authorised person.
Section 25	Ignore section 25.
Section 26	In subsection (1), for “11(2)” substitute “13(2)”.

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<i>Provision</i>	<i>Modification</i>
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
	In subsection (6), for “11(2)” substitute “13(2)”.
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 31	In subsection (4), for “7, 8 and 51” substitute “7 and 8”.
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 42A	In subsection (5), for “7, 8 and 50” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 43	In subsection (6), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 44	In subsection (5), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.
	In subsection (4)(b), for “compensation scheme order” substitute “the order under section 89F”.
Section 55	In subsection (10), for “to which section 62 applies” substitute “under section 89F”.
Section 56	In subsection (6), for “to which section 62 applies” substitute “under section 89F”.
Section 57	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.
	In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities)

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<i>Provision</i>	<i>Modification</i>
Section 58	<p>varied or cancelled” substitute “no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part”.</p> <p>In subsection (1), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>Ignore subsection (3).</p> <p>In subsection (4), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>In subsection (5), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>Ignore subsections (6) to (8).</p>
Section 59	<p>Ignore section 59.</p>
Section 60	<p>In subsection (3)(c), ignore the references to bank insolvency and bank administration.</p> <p>In subsection (4)—</p> <ul style="list-style-type: none">(a) ignore paragraphs (a) and (b), and(b) in paragraph (c), for “a third party compensation order” substitute “an order under section 89F”. <p>In subsection (5)—</p> <ul style="list-style-type: none">(a) ignore paragraph (a), and(b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “an order under section 89F”.
Section 61	<p>In subsection (1)—</p> <ul style="list-style-type: none">(a) ignore paragraphs (a) to (c), and(b) treat the subsection as including a reference to orders under section 89F. <p>Ignore subsection (2)(b).</p>
Section 62	<p>Ignore section 62.</p>
Section 65	<p>In subsection (1)(a)(ii), for “order” substitute “instrument”.</p> <p>In subsection (3)—</p> <ul style="list-style-type: none">(a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and(b) ignore paragraph (b).
Section 66	<p>In subsection (1)—</p> <ul style="list-style-type: none">(a) in paragraph (a), ignore the reference to section 11(2)(a),(b) in paragraph (d)(i), ignore the words following “England”, and(c) ignore paragraph (d)(ii).

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<i>Provision</i>	<i>Modification</i>
Section 68	In subsection (1)(a), for “order” substitute “instrument”.
Section 69	In subsection (4)— (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and (b) ignore paragraph (b).
Section 70	In subsection (3)— (a) in paragraph (a), ignore the words “in relation to section 63”, and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.
Section 81B	In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2)”. Ignore subsection (3)(c) and (d). In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”. Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

89C Clearing house rules

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.
- (2) In particular, an instrument may—
 - (a) modify or amend the rules of a UK clearing house;
 - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect—
 - (a) for a specified period, or
 - (b) until a specified event occurs or does not occur.

89D Clearing house membership

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.
- (2) In particular, an instrument may—
 - (a) make provision modifying the terms on which a person is a member of a UK clearing house;
 - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

89E Recognition of transferee company

- (1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—
 - (a) for a specified period, or
 - (b) until a specified event occurs.
- (2) The provision may have effect—
 - (a) for a period specified in the instrument, or
 - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
 - (a) may be exercised only with the consent of the Treasury, and
 - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

89F Clearing house compensation orders

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
 - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
 - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
 - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
 - (a) is to be made by statutory instrument, and

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

89G Interpretation: “UK clearing house” &c.

- (1) In this Part “UK clearing house” means a clearing house—
- (a) which is incorporated in, or formed under the law of any part of, the United Kingdom,
 - (b) which provides central counterparty clearing services, and
 - (c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.
- (2) But “UK clearing house” does not include a clearing house which is also—
- (a) a bank,
 - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
 - (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
 - (d) an investment firm.
- (3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.
- (4) In this Part—
- “central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and
 - “PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.”
- (7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert—

“89F	Clearing house compensation orders		Draft affirmative resolution”
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- (8) In the Table in section 261 (index of defined terms)—
- (a) after the entry relating to “bridge bank share transfer instrument” insert—

“central counterparty clearing services		89G”,
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 - (b) after the entry relating to “partial property transfer” insert—

“PRA-authorised person		89G”
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 - (c) at the end insert—

“UK clearing house		89G”.
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