
STATUTORY INSTRUMENTS

2008 No. 2546

The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008

PART 1

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008.

(2) This Order comes into force at 8.00a.m on 29th September 2008.

Interpretation: general

2. In this Order—

“the 1985 Act” means the Companies Act 1985⁽¹⁾;

“the 2000 Act” means the Financial Services and Markets Act 2000⁽²⁾;

“the 2006 Act” means the Companies Act 2006⁽³⁾;

“Abbey” means Abbey National plc, company registered number 2294747;

“the Act” means the Banking (Special Provisions) Act 2008;

“the Authority” means the Financial Services Authority;

“the Bank” means the Governor and Company of the Bank of England;

“Bradford & Bingley” means Bradford & Bingley plc, company registered number 3938288;

“Bradford & Bingley International” means Bradford & Bingley International Limited, a company registered in the Isle of Man, company number 052221C;

“Bradford & Bingley’s registrar” means the person appointed by Bradford & Bingley, as its agent, among other things to maintain its register of members;

“the COMP Sourcebook” means the Compensation Sourcebook made by the Authority under the 2000 Act;

“the Companies Acts” has the meaning given by section 2 of the 2006 Act;

“the dated subordinated notes” means the following debt issued by Bradford & Bingley —

- (a) the £125,000,000 7.625 per cent. subordinated notes due February 2010;
- (b) the £125,000,000 6.625 per cent. subordinated notes due 16 June 2023;
- (c) the £200,000,000 fixed-rate step-up subordinated notes due 2022;

(1) 1985 c.6.
(2) 2000 c.8.
(3) 2006 c.46.

- (d) the £150,000,000 floating rate dated subordinated notes due March 2054;
- (e) the £250,000,000 fixed rate/floating rate callable step-up subordinated notes due January 2018; and
- (f) any further subordinated debt which ranks or is expressed to rank *pari passu* with any of the notes referred to in (a) to (e);

“eligible claimant” has the meaning given in rule 4.2.1 of the COMP Sourcebook;

“the FEES 6 Chapter” means Chapter 6 (Financial Services Compensation Scheme Funding) of the Fees Manual made by the Authority under the 2000 Act;

“the Financial Services Compensation Scheme” means the scheme established by the Authority under Part 15 (the financial services compensation scheme) of the 2000 Act;

“the first transfer” means the transfer effected by article 3;

“the first transfer time” has the meaning given by article 3(2);

“FSCS” means the body corporate established by the Authority under section 212 (the scheme manager) of the 2000 Act;

“protected deposit” has the meaning given in rule 5.3.1 of the COMP Sourcebook;

“qualifying claimant” means an eligible claimant who immediately before the first transfer time had a claim against Bradford & Bingley for a protected deposit;

“relevant undertaking” means Bradford & Bingley or any of its UK subsidiary undertakings;

“retail deposits” means liabilities represented by amounts standing to the credit of retail deposit accounts including instant access accounts, fixed term and notice savings accounts, savings bonds and individual savings accounts, together with interest and other sums accruing to the benefit of such accounts;

“the second transfer” means the transfer effected by article 16;

“the second transfer time” has the meaning given by article 16(2);

“shares in Bradford & Bingley” means the ordinary shares issued by Bradford & Bingley;

“the transitional period” means the period of 18 months beginning with the date of this Order;

“the Treasury Solicitor” has the same meaning as in the Treasury Solicitor Act 1876(4) and whose address is One Kemble Street, London WC2B 4TS;

“UK subsidiary undertaking” means a subsidiary undertaking of Bradford & Bingley that is a body corporate incorporated, or a partnership established, under the law of any part of the United Kingdom; and

“the USRs” means the Uncertificated Securities Regulations 2001(5).

PART 2

THE FIRST TRANSFER AND RELATED PROVISIONS

The first transfer

3.—(1) By virtue of this Order, the shares in Bradford & Bingley are transferred to the Treasury Solicitor as nominee of the Treasury.

(4) 1876 c.18.

(5) S.I. 2001/3755; as amended by S.I. 2003/1633, there are other amending instruments but none is relevant.

(2) The transfer under paragraph (1) takes place at the time this Order comes into force (“the first transfer time”).

(3) The transfer of the shares effected under paragraph (1) shall vest title in the Treasury Solicitor—

- (a) free from all trusts, liabilities and incumbrances; and
- (b) together with all rights, benefits or privileges which attach or accrue to or arise from such shares on or after the first transfer time.

Registration of shares and issue of certificates

4.—(1) The Treasury Solicitor is entitled with effect from the first transfer time to be entered in the register of members of Bradford & Bingley as holder of the shares in Bradford & Bingley without the need for delivery of any instrument of transfer or other instrument or document and notwithstanding—

- (a) the absence of any required consent or concurrence to or with the transfer; and
- (b) any other restriction relating to the transfer.

(2) The operator of a relevant system in which any shares in Bradford & Bingley are held immediately prior to the first transfer time (“relevant shares”) shall forthwith after the first transfer time—

- (a) withdraw his permission for title to the relevant shares to be transferred by means of the relevant system with effect from the first transfer time; and
- (b) inform all the system-members and Bradford & Bingley’s registrar of the date and time the relevant shares ceased to be securities participating in the system.

(3) Bradford & Bingley shall procure that Bradford & Bingley’s registrar shall forthwith after the first transfer time—

- (a) take such action as the operator of a relevant system may require to convert any relevant shares held in such a system immediately prior to the first transfer time into certificated form; and
- (b) register in Bradford & Bingley’s register of members (including its issuer register of members) the Treasury Solicitor as the holder of shares in Bradford & Bingley.

(4) The operator of a relevant system in which any relevant shares are held immediately prior to the first transfer time, Bradford & Bingley and Bradford & Bingley’s registrar shall each—

- (a) provide each other with such information as shall be necessary to comply with this article; and
- (b) co-operate to ensure that the issuer register of members of Bradford & Bingley reconciles with the operator register of members of Bradford & Bingley immediately prior to the first transfer time.

(5) From the first transfer time and until the Treasury Solicitor is entered in Bradford & Bingley’s register of members (including its issuer register of members)—

- (a) he is deemed for all purposes (including for the purposes of the Companies Acts and the USRs) to be—
 - (i) the sole member of Bradford & Bingley; and
 - (ii) entered as holder on the operator register of members of Bradford & Bingley and in Bradford & Bingley’s register of members (including its issuer register of members); and
- (b) no other person may exercise or purport to exercise in respect of Bradford & Bingley any right deriving from any shares in Bradford & Bingley.

(6) The Treasury Solicitor is entitled from the first transfer time to all the rights and advantages of a member of Bradford & Bingley to the exclusion of all other persons, notwithstanding that he is not entered in either Bradford & Bingley’s register of members (including its issuer register of members) or the operator register of members of Bradford & Bingley.

(7) Part 21 of the 2006 Act (certification and transfer of securities) applies to Bradford & Bingley with the following modifications—

- (a) the transfer effected by article 3(1) is deemed to be a transfer falling within section 776(2) (a) (duty of company as to issue of certificates etc on transfer); and
- (b) sections 776(3) and (4), 777 (issue of certificates etc: cases within the Stock Transfer Act 1982) and 778 (issue of certificates etc: allotment or transfer to financial institution) do not apply.

(8) In this article “certificated”, “issuer register of members”, “operator”, “operator register of members”, “relevant system” and “system-member” have the meanings given in the USRs.

Extinguishment of rights in relation to shares in Bradford & Bingley

5. By virtue of this Order, with effect from the first transfer time, any right or entitlement of a person to receive shares in Bradford & Bingley (whether by subscription, conversion or otherwise) is extinguished if the right or entitlement was granted by—

- (a) a relevant undertaking; or
- (b) a person not within sub-paragraph (a) and is enjoyed by reason of or in connection with—
 - (i) any person’s office or employment with a relevant undertaking; or
 - (ii) the services provided by any person to a relevant undertaking.

Modification of interests, rights and liabilities associated with the dated subordinated notes

6.—(1) This article applies, with effect from the first transfer time, in respect of the dated subordinated notes.

(2) By virtue of this Order, the rights and liabilities associated with the dated subordinated notes shall be modified in accordance with paragraph (3).

- (3) A default in the payment of any principal due in respect of a dated subordinated note—
 - (a) shall not constitute an event of default under the note; and
 - (b) shall not give rise to the consequences specified in paragraph (3) of article 7 in respect of any relevant instrument under that article.

Modification of rights in relevant instruments

7.—(1) The consequences specified in paragraph (3) shall not arise in respect of any relevant instrument as a result of the first transfer, or any other thing done, or matter arising, by virtue of or in connection with the first transfer.

(2) Any circumstances which, but for paragraph (1), would give rise to the consequences specified in paragraph (3) shall be taken not to have arisen for the purposes of any relevant instrument.

- (3) The consequences are—
 - (a) the termination of the relevant instrument or any rights or obligations under it;
 - (b) any right to terminate the relevant instrument or any right or obligation under it becoming exercisable;
 - (c) any amount becoming due and payable or capable of being declared due and payable;

- (d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (e) any right to withhold, net or set off any payment becoming exercisable;
- (f) any event of default or breach of any right arising;
- (g) any right not to advance any amount becoming exercisable;
- (h) any obligation to provide or transfer any deposit or collateral;
- (i) any right to give or withhold any consent or approval; or
- (j) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (i)) arising or becoming exercisable.

(4) Without prejudice to paragraph (3), any provision in a relevant instrument that, as a result of the first transfer or any other thing done, or matter arising, by virtue of or in connection with the first transfer, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(5) This article does not apply to any action taken by the Treasury under article 10.

(6) In this article, “relevant instrument” has the meaning given in paragraph 4(3) of Schedule 1 to the Act and the specified connection referred to in paragraph 4(3)(c) of that Schedule is between Bradford & Bingley and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Bradford & Bingley.

PART 3

MEMBERS, MEETINGS, DIRECTORS AND PROCEEDINGS

Minimum membership for carrying on business

8.—(1) While Bradford & Bingley is wholly owned by the Treasury, section 24 of the 1985 Act (minimum membership for carrying on business) shall not apply in relation to Bradford & Bingley or any member of Bradford & Bingley.

(2) While Bradford & Bingley is wholly owned by the Treasury, no petition shall be presented for the winding up of Bradford & Bingley on the ground that the number of its members is less than the number required by law, nor shall any person be liable on that ground as a member of the company for the payment of any of its debts.

Resolutions and meetings

9.—(1) While Bradford & Bingley is wholly owned by the Treasury, any meeting of members of Bradford & Bingley shall, if the Treasury Solicitor is present in person, by proxy or authorises a corporate representative to attend, be deemed to be a duly constituted general meeting of the company notwithstanding that it may not have been properly called, or notice of it may not have been properly given, or any quorum required by Bradford & Bingley’s articles of association may not be present.

(2) Notwithstanding any provision in the articles of association of Bradford & Bingley, an appointment of a proxy for the Treasury Solicitor—

- (a) may be in any written form (including in an electronic communication);
- (b) need not be given with any period of notice;
- (c) shall not require the approval of the board of Bradford & Bingley; and
- (d) is deemed to be given in accordance with the articles of association.

(3) A resolution of the company adopted after the first transfer time is effective notwithstanding that special notice (notice of intention to move it given to company at least 28 days before the meeting at which it is moved) of the resolution is required by any provision of the 1985 Act or 2006 Act but has not been given.

Removal of directors

10.—(1) While Bradford & Bingley is wholly owned by the Treasury, the Treasury may in accordance with this article—

- (a) remove any person as a director of a relevant undertaking;
- (b) terminate a director’s service contract with any relevant undertaking.

(2) For the purposes of any contract or arrangement between a person and a relevant undertaking, action taken under paragraph (1) shall be treated as having been carried out by the relevant undertaking and, in the case of paragraph (1)(a), under and in accordance with its articles of association.

(3) The Treasury may remove a person as a director of a relevant undertaking and may terminate his service contract by written notice to the relevant undertaking.

(4) Any notice given in accordance with paragraph (3) shall take effect from the date specified in the notice.

(5) A relevant undertaking which receives notice under paragraph (3) shall notify the person to whom the notice relates of that fact as soon as reasonably practicable.

(6) A person—

- (a) removed as director of a relevant undertaking, or
- (b) whose service contract with a relevant undertaking is terminated,

in accordance with this article shall not have any right or claim against the Treasury or any company wholly owned by the Treasury (other than a relevant undertaking) in consequence of the Treasury’s actions under this article.

(7) This article does not—

- (a) deprive any person removed under it of compensation or damages payable to him by a relevant undertaking in respect of—
 - (i) the termination of his appointment as director or of any appointment terminating with that as director; or
 - (ii) the termination of his service contract; or
- (b) derogate from any power to remove a director or to terminate a director’s service contract that may exist apart from this article.

(8) In this article and in article 11, “service contract” has the meaning given by section 227 of the 2006 Act (directors’ service contracts).

Appointment of directors

11.—(1) While Bradford & Bingley is wholly owned by the Treasury, the Treasury may appoint one or more directors of a relevant undertaking in accordance with this article and notwithstanding any provision in the articles of association of the relevant undertaking.

(2) The Treasury may appoint a director of a relevant undertaking by written notice to the relevant undertaking provided the appointee has agreed to act in such a capacity.

(3) The appointment shall take effect from the date specified in the notice.

(4) The Treasury may determine the terms (including remuneration) of the service contract of a person appointed as a director under this article in whatever written form they see fit.

(5) Any appointment, contract or arrangement which is made or the terms of which are determined under this article is to be treated as made or entered into by the relevant undertaking in question.

(6) This article does not derogate from any power to appoint a director or determine the remuneration and other terms and conditions of a director's service contract that may exist apart from this article.

Proceedings against directors

12.—(1) No director of a relevant undertaking shall be liable for any act or omission of the director, acting in such capacity, which occurs while Bradford & Bingley is wholly owned by the Treasury and accordingly no proceedings may be brought (or in Scotland, raised) against any such director in respect of such matters.

(2) The Treasury may in writing—

- (a) disapply paragraph (1), and
- (b) give consent to bring (or in Scotland, raise) such proceedings against such directors.

(3) Where paragraph (1) applies, section 232 of the 2006 Act (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

“proceedings” includes proceedings under Part 11 of the 2006 Act (derivative claims and proceedings by members);

“director” means—

- (a) a person who is appointed as a director while Bradford & Bingley is wholly owned by the Treasury, whether or not he has ceased to be a director when proceedings in respect of that liability commenced;
- (b) a person who was a director immediately before the first transfer time and whose continuing appointment as director while Bradford & Bingley is wholly owned by the Treasury, the Treasury approves in writing, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced; and
- (c) an alternate director of a person falling within sub-paragraph (a) or (b).

Shadow directorship

13.—(1) While Bradford & Bingley is wholly owned by the Treasury, for the purposes of the provisions listed in Schedule 1 to this Order, none of the persons listed in paragraph (3) shall be regarded as a shadow director of or (unless otherwise appointed as a director) a person discharging managerial responsibilities of a relevant undertaking.

(2) For the purposes of the definition of “director” in section 417 of the 2000 Act (definitions), while Bradford & Bingley is wholly owned by the Treasury, none of the persons listed in paragraph (3) shall be regarded as a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of a relevant undertaking are accustomed to act.

(3) The persons are—

- (a) a Minister of the Crown;
- (b) the Treasury;
- (c) the Treasury Solicitor;

- (d) the Bank;
- (e) persons—
 - (i) employed by or under; or
 - (ii) acting on behalf of,any of the persons specified in sub-paragraphs (a) to (d).

PART 4

DE-LISTING, APPROVAL ETC.

De-listing

14.—(1) By virtue of this Order, the listing of any shares of Bradford & Bingley is discontinued with effect from the first transfer time without the need for any notice to, or consent of, Bradford & Bingley or any other person.

(2) In paragraph (1), “listing” has the meaning given in section 74 of the 2000 Act (the official list)(6).

Approved persons

15.—(1) While Bradford & Bingley is wholly owned by the Treasury, the requirements imposed on a relevant undertaking by section 59 of the 2000 Act (approval for particular arrangements) in relation to directors (including non-executive directors) and the chief executive officer shall be deemed to be satisfied in relation to the relevant undertaking, provided that at all material times the Authority is satisfied that at least two individuals who effectively direct the business of the relevant undertaking are of sufficiently good repute and have sufficient experience to perform controlled functions in that respect.

(2) The Treasury may give written notice to the Authority that paragraph (1) is no longer to apply in respect of a relevant undertaking.

(3) At least one month prior to giving a notice under paragraph (2) the Treasury shall give written notice to the relevant undertaking of their intention to give a notice to the Authority under that paragraph.

(4) In paragraph (1), “controlled functions” has the meaning given in section 59(3) of the 2000 Act.

PART 5

THE SECOND TRANSFER

The second transfer

16.—(1) By virtue of this Order—

- (a) the rights and liabilities of Bradford & Bingley specified in paragraph 1 of Schedule 2;
- (b) the property specified in paragraph 3 of Schedule 2;
- (c) the contracts, agreements and other arrangements specified in paragraph 4 of Schedule 2;

(6) Section 74 was amended by S.I. 2005/381 and 2005/1433.

(d) the personal property specified in paragraph 5 of Schedule 2; and
(e) the intellectual property specified in paragraph 6 of Schedule 2,
are transferred to Abbey.

(2) The transfer under paragraph (1) takes place immediately after the first transfer time (“the second transfer time”).

Isle of Man deposits

17.—(1) Subject to the prior approval of the Financial Services Commission of the Isle of Man of the proposed change of control of Bradford & Bingley International, as soon as practicable after the second transfer time, Bradford & Bingley shall—

- (a) transfer the Bradford & Bingley International shares to Abbey; and
- (b) take such steps as are reasonably necessary to ensure that—
 - (i) the transfer in sub-paragraph (a) is effective under Manx law (including but not limited to duly executing requisite transfers, paying related Manx taxes such as stamp duty and delivering the relevant share certificates to Abbey);
 - (ii) the Bradford & Bingley International shares are transferred to Abbey free from all trusts, liabilities and incumbrances;
 - (iii) any right or other entitlement to receive shares in Bradford & Bingley International (whether by subscription, conversion or otherwise) is extinguished with effect from the relevant time; and
 - (iv) Abbey is entered in the register of members of Bradford & Bingley International.

(2) By virtue of this Order—

- (a) the intercompany undertaking is terminated from the relevant time, except in relation to liabilities arising from or in respect of a breach of contract or other duty or of any legal or regulatory requirement occurring before the relevant time; and
- (b) subject to sub-paragraph (a) any interests, rights, entitlements or claims that have accrued in connection with the intercompany undertaking are extinguished.

(3) Articles 18 to 22 apply to any transfer made under this article as they apply to the second transfer.

(4) In this article—

“the Bradford & Bingley International shares” means all shares in Bradford & Bingley International held by or on behalf of Bradford & Bingley at the relevant time;

“the intercompany undertaking” means the undertaking by Bradford & Bingley, dated 4 December 2000, to discharge the liabilities of Bradford & Bingley International;

“the relevant time” means the time at which the transfer under paragraph (1) is effected.

No consent or concurrence required

18. The second transfer is effective despite the absence of any required consent or concurrence to or with the transfer.

Associated liability and interference

19.—(1) The second transfer takes effect as if—

- (a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and

(b) there were no associated interference with the property, rights and liabilities transferred.

(2) In this article, “associated liability” and “associated interference” have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Termination etc. of interest or right

20.—(1) Subject to paragraph (2)—

- (a) from the coming into force of this Order until the second transfer time, no person is entitled to terminate, modify, acquire or claim any interest or right to be transferred by article 16, or to treat such an interest or right as terminated or modified; and
- (b) any purported termination, modification, acquisition or claim in contravention of sub-paragraph (a), and any action taken in consequence of a contravention of that sub-paragraph, shall have no effect.

(2) This article shall not apply to the ordinary course of dealings by a depositor in relation to his retail deposit.

Interests, rights and liabilities of third parties relating to property, rights and liabilities transferred

21.—(1) No interest or right of any third party relating to any property, right or liability of Bradford & Bingley, whether or not it is transferred by article 16, shall arise or become exercisable by virtue of or in connection with the second transfer.

(2) Save as otherwise provided in this Order, no third party shall, by virtue of or in connection with the second transfer, incur any liability or be subject to any obligation relating to any property, right or liability of Bradford & Bingley, whether or not it is transferred by article 16.

(3) Without prejudice to the generality of paragraphs (1) and (2)—

- (a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with that transfer; and
- (b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall be taken not to have arisen for the purposes of any relevant instrument.

(4) The consequences are—

- (a) the termination of a relevant instrument or any rights or obligations under it;
- (b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;
- (c) any amount becoming due and payable or capable of being declared due and payable;
- (d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (e) any right to withhold, net or set off any payment becoming exercisable;
- (f) any event of default or breach of any right arising;
- (g) any right not to advance any amount becoming exercisable;
- (h) any obligation to provide or transfer any deposit or collateral;
- (i) any right to give or withhold any consent or approval; or
- (j) any other right or remedy (whether or not similar in kind to those referred to in sub-paragraphs (a) to (i)) arising or becoming exercisable.

(5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with that transfer, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(6) In this article—

“relevant instrument” has the same meaning as in paragraph 4(3) of Schedule 1 to the Act and the specified connection referred to in paragraph 4(3)(c) of that Schedule is between Bradford & Bingley and those undertakings whose assets and liabilities, profits and losses are consolidated in the consolidated accounts of Bradford & Bingley; and

“third party” shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

Modification of rights and liabilities transferred

22.—(1) Where a transferred obligation conflicts with an obligation of Abbey existing at the second transfer time, the transferred obligation is modified to the extent required to avoid that conflict.

(2) No person shall be entitled to acquire, claim, modify or terminate any interest or right by virtue of or in connection with paragraph (1).

(3) In this article a “transferred obligation” means an obligation, covenant, undertaking or restriction under a contract, agreement or arrangement transferred to Abbey under article 16(1)(c) or treated as made or done by or in relation to Abbey in accordance with article 25(a).

Foreign property etc.

23. Bradford & Bingley must take such steps as are reasonably requested by Abbey for securing the vesting in Abbey under the relevant foreign law of any foreign property, foreign rights or liabilities expressed to be transferred by article 16.

Subsequent transactions

24.—(1) To the extent that any property, rights or liabilities—

(a) transferred by Bradford & Bingley to Abbey in connection with the second transfer do not relate mainly to the retail deposit business or to any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d); or

(b) retained by Bradford & Bingley after the second transfer time relate mainly to the retail deposit business or to any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d),

the Treasury Solicitor and Abbey shall procure that such property, rights and liabilities are promptly transferred for no further consideration to Bradford & Bingley or Abbey as appropriate.

(2) This article shall not apply to any contract of employment or qualifying financial contract.

(3) Articles 18 to 22 apply to any transfer made under this article as they apply to the second transfer.

(4) For the purposes of this article “qualifying financial contract” means any agreement entered into either with the purpose of borrowing or lending money (not being a retail deposit), or in connection with a transaction on the financial markets, including (howsoever documented) any loan agreement, securities contract, derivative contract, commodities contract, forward contract, repurchase contract, swap agreement, margin lending agreement and master agreement.

Construction of documents etc.

25. As from the second transfer time, and save as otherwise provided in this Order—
- (a) agreements made or other things done by or in relation to Bradford & Bingley shall be treated, so far as may be necessary for the purposes of or in connection with the second transfer, but not otherwise, as made or done by or in relation to Abbey, as the case may be; and
 - (b) references to Bradford & Bingley, or to any officer or employee of Bradford & Bingley, in instruments or documents relating to the property, rights and liabilities transferred by or under article 16 shall have effect as if they were references to Abbey, or to any officer or employee of Abbey, as the case may be.

Pensions

26. Schedule 3 shall have effect.

Employees

27.—(1) The Transfer of Undertakings (Protection of Employment) Regulations 2006(7) (the “transfer regulations”) and sections 257 and 258 of the Pensions Act 2004(8) shall apply upon the second transfer on the basis that any individual other than a director of Bradford & Bingley who is employed by a relevant undertaking and—

- (a) whose work relates wholly or mainly to—
 - (i) the retail deposit business of Bradford and Bingley; or
 - (ii) any property, rights or liabilities transferred to Abbey by article 16(1)(b) or (d); or
- (b) whose normal place of work is any real property transferred by article 16(1)(b),

is assigned to the organised grouping of resources or employees that is subject to the relevant transfer.

(2) Paragraph (1) is without prejudice to the application of the transfer regulations or sections 257 and 258 of the Pensions Act 2004 in respect of any individual not referred to in that paragraph.

PART 6

FINANCIAL SERVICES COMPENSATION SCHEME

Sums to be paid to Abbey following the second transfer

- 28.—(1) The following liabilities arise on the occurrence of the second transfer—
- (a) the FSCS is liable to pay, as soon as practicable, to Abbey an amount equal to the amount that qualifying claimants would, immediately before the first transfer time, have been entitled to claim from the FSCS in respect of claims against Bradford & Bingley for protected deposits; and
 - (b) the Treasury are liable to pay, as soon as practicable, to Abbey an amount equal to the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a) less the amount specified in sub-paragraph (a) and less £612 000 000,

(7) S.I. 2006/246.

(8) 2004 c.35.

and the Treasury shall subsequently make the necessary adjustments such that Bradford & Bingley obtains the benefit of the reduction of £612 000 000 referred to in sub-paragraph (b).

(2) For the purposes of paragraph (1)(a), if the quantification date for a claim would have been a date other than the date on which Bradford & Bingley was determined to be in default for the purposes of section 6.3 of the COMP Sourcebook, the amount that a qualifying claimant would have been entitled to claim from the FSCS is the lesser of—

- (a) the amount which the FSCS quantifies as being the value of that claim as at immediately before the first transfer time; and
- (b) the amount that would have been payable at the quantification date, if different, for that claim.

(3) In paragraph (2), “quantification date” has the meaning given in rule 12.3.1 of the COMP Sourcebook.

(4) Immediately after the second transfer time—

- (a) Bradford & Bingley shall estimate the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a);
- (b) the FSCS shall pay to Abbey the amount it is liable to pay under paragraph (1)(a) as estimated by the Authority; and
- (c) the Treasury shall pay to Abbey an amount equal to the amount estimated by Bradford & Bingley in accordance with sub-paragraph (a) less the amount estimated by the Authority in accordance with sub-paragraph (b) and less £612 000 000.

(5) From time to time—

- (a) the FSCS may revise the estimate of its liability under paragraph (1)(a); and
- (b) Bradford & Bingley may revise the estimate of the aggregate amount of the liabilities transferred to Abbey under article 16(1)(a),

and the FSCS, the Treasury and Abbey shall make such corresponding payments to each other as are necessary to ensure that the FSCS and the Treasury have each paid to Abbey the amount required to meet their liability under paragraph (1) (and no more than such amount).

(6) The liability referred to in paragraph (1)(a) shall be assessed by the FSCS and, in doing so, the FSCS may calculate, by any methodology or approach it considers appropriate, the total amounts of compensation that would have been paid to all qualifying claimants, if (and to the extent that) it considers that the costs of ascertaining the entitlement to and amount of compensation by reference to each qualifying claimant would exceed or be disproportionate to the benefit of doing so.

Payment to Abbey to constitute payment of compensation for the purposes of the Financial Services Compensation Scheme

29. For the purposes of Part 15 (the financial services compensation scheme) of the 2000 Act, the COMP Sourcebook and the FEES 6 Chapter (including, without limitation, the power of the FSCS to impose levies)—

- (a) all payments by the FSCS to Abbey under article 28 shall constitute the payment of compensation to each qualifying claimant under the Financial Services Compensation Scheme in accordance with their respective entitlements in respect of claims against Bradford & Bingley for protected deposits;
- (b) each qualifying claimant—
 - (i) is deemed to have made an application for compensation for the purposes of rule 3.2.1(1) of the COMP Sourcebook; and

- (ii) is deemed to have accepted an offer of compensation made by the FSCS and to have received payment of such compensation for the purposes of rule 11.2.1 of the COMP Sourcebook,

and, accordingly, a qualifying claimant has no right to claim, and the FSCS has no obligation to pay, for a protected deposit any further compensation under the Financial Services Compensation Scheme in respect of the default of Bradford & Bingley determined by the Authority under section 6.3 of the COMP Sourcebook.

Liability of Bradford & Bingley to the FSCS and the Treasury

30.—(1) Bradford & Bingley is liable to the FSCS in respect of an amount equal to the aggregate of—

- (a) the amount which the FSCS is liable to pay under article 28(1)(a); and
- (b) the amount which the Treasury are liable to pay under article 28(1)(b).

(2) Bradford & Bingley, the FSCS and the Treasury shall agree terms on which, subject to paragraph (6), the amount of Bradford & Bingley’s liability to the FSCS under paragraph (1) is to be reduced out of excess cash flow and other proceeds.

(3) The FSCS shall determine the proportion of any amount which it receives or recovers from Bradford & Bingley which is properly attributable to each type of liability described below and shall promptly on receipt account to the Treasury as follows—

- (a) in full, where the liability is a liability which has been transferred under article 16(1)(a) and the person to whom such transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the first transfer time; and
- (b) up to the amount of the excess, where the liability is a liability owed by Bradford & Bingley to a qualifying claimant and the amount of such liability exceeds the maximum compensation that the qualifying claimant would have been entitled to claim from the FSCS immediately before the first transfer time,

and, where the liability is a liability owed by Bradford and Bingley to a qualifying claimant and the amount of such liability is equal to or less than the maximum compensation that the qualifying claimant would have been entitled to claim from the FSCS immediately before the first transfer time, that amount shall be for the account of the FSCS.

(4) Once all the assets of Bradford & Bingley have been realised and distributed, if the claim of the FSCS against Bradford & Bingley has not been satisfied in full, Bradford & Bingley’s liability for the shortfall shall be extinguished, without prejudice to any claim the FSCS may have against any other party.

(5) The FSCS shall not take or join in any corporate action or other steps or legal proceedings for the winding-up, dissolution or re-organisation or for the appointment of an administrator, liquidator or similar appointment in respect of Bradford & Bingley, or any analogous step or proceeding in any other jurisdiction.

(6) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made and Bradford and Bingley had gone into liquidation following the declaration of default by the Authority in relation to Bradford and Bingley for the purposes of section 6.3 of the COMP Sourcebook.

Co-operation with the FSCS

31.—(1) Bradford & Bingley and Abbey must each—

- (a) comply with any request of the FSCS for the provision of information; and

(b) provide the FSCS with any other information which Bradford & Bingley or Abbey, as the case may be, considers may be useful for the purpose of co-operating in the fulfilment of the FSCS's functions under the COMP Sourcebook and the FEES 6 Chapter.

(2) Nothing in this article affects the power of the FSCS to require information under section 219 of the 2000 Act (scheme manager's power to require information).

Statutory immunity

32. For the purposes of section 222 (statutory immunity) of the 2000 Act the scheme manager's functions shall include any acts or omissions carried out by the FSCS pursuant to or in connection with this Order.

PART 7

TRANSITIONAL PROVISIONS

Services and facilities

33. The agreement dated 29th September 2009 between the Treasury and Abbey relating to the provision of transitional services by Bradford & Bingley and Abbey to one another shall bind Bradford & Bingley as if it were a party.

Use of the Bradford & Bingley brand by Abbey

34. Bradford & Bingley shall grant to Abbey a non-exclusive royalty-free licence for a period of three years to use the Bradford & Bingley brand for the purposes of carrying on the business transferred to Abbey by the second transfer.

Termination etc. of interest or right

35.—(1) Except with the consent of the Treasury or the permission of the court, during the transitional period—

(a) no person is entitled—

(i) to terminate or modify any contract or agreement, or any right or obligation under any contract or agreement where such contract or agreement is for the services and facilities reasonably required by—

(aa) Bradford & Bingley to carry on the business retained by it after the second transfer; or

(bb) Abbey to carry on the retail deposit business, or

(ii) to treat such a contract, agreement, right, obligation or interest as terminated or modified,

by virtue of or in connection with the first or second transfer; and

(b) any counterparty to such contract or agreement must perform their obligations in accordance with that contract or agreement.

(2) Any purported termination or modification of any contract, agreement, right, obligation or interest in contravention of paragraph (1), and any action taken in consequence of any such purported termination or modification, shall have no effect.

(3) Paragraph (1) does not apply where—

- (a) Bradford & Bingley or Abbey, as the case may be, has failed to perform its payment obligations under the relevant contract or agreement and such non-payment is not remedied within 7 days of Bradford & Bingley becoming aware of the non-performance; or
- (b) Bradford & Bingley or Abbey, as the case may be, fails to notify the counterparty to the relevant contract or agreement within 14 days of his becoming aware of the request for consent to such termination, modification or non-performance of an obligation, that such consent has been withheld.

(4) Without prejudice to the generality of paragraph (1), neither the first nor second transfer shall have the effect of terminating or otherwise changing the terms of Bradford & Bingley's membership of any payment system, including, in particular, BACS, CHAPS and the LINK payments systems.

(5) This article is subject to any requirement of Community law.

Provision of information

36. Bradford & Bingley shall provide Abbey with such information as is reasonably requested by Abbey in relation to anything transferred by or under article 16.

PART 8

SUPPLEMENTARY

Modification to Authority's rule-making power

37.—(1) Subsections (1) and (1A)(9) of section 138 of the 2000 Act (general rule-making power) have effect as if modified by inserting after “protecting the interests of consumers”—

“or for the purposes of, to facilitate or in consequence of, a transfer under section 3 or 8 of the Banking (Special Provisions) Act 2008”.

(2) Section 148(2)(10) of the 2000 Act (modification or waiver of rules) shall also apply in relation to a relevant undertaking—

- (a) in the absence of an application by a person subject to rules made by the Authority; and
- (b) without any requirement for the consent of such a person.

(3) Section 148(4)(11) of the 2000 Act shall not prevent the Authority from modifying or waiving rules in relation to a relevant undertaking under section 148 of that Act provided that the Authority is satisfied that the modification or waiver is necessary for the purposes of, to facilitate or in consequence of the first or second transfer.

Modification to Authority's duty to consult on rule changes

38.—(1) Section 155(7) of the 2000 Act (consultation) has effect as if modified by adding at the end—

“or if it is making rules for the purposes of, or to facilitate or in consequence of, a transfer under section 3 or 8 of the Banking (Special Provisions) Act 2008.”

(2) Section 157 of the 2000 Act (guidance) has effect as if modified by adding after subsection (3)

(9) Subsections (1A) to (1C) were inserted by [S.I. 2006/2975](#).

(10) Subsection (2) was substituted by [S.I. 2007/1973](#).

(11) Subsection (4)(a) was amended by [S.I. 2007/1973](#).

“(3A) Section 155(7) applies to proposed guidance as it applies to proposed rules with the modification made by article 39(1) of the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008.”.

Modification of provision on liability in relation to operator’s functions

39.—(1) Section 291 of the 2000 Act (liability in relation to recognised body’s regulatory functions) shall have effect for the purposes of this Order as if the following modifications are made.

(2) In subsection (1)—

(a) after “its officers and staff” add “and an operator and its officers and staff”;

(b) after “recognised body’s” add “or the operator’s”.

(3) In subsection (3) at the end add—

“and the functions of the operator so far as relating to, or matters arising out of, the obligations to which the operator is subject under the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008.

(4) In this section, “operator” has the meaning given in the Uncertificated Securities Regulations 2001.”.

Enterprise Act 2002

40. Part 3 of the Enterprise Act 2002 (mergers)(**12**) shall not apply to the first or second transfer save insofar as it gives effect to an obligation under Community law.

Freedom of information

41. For the purposes of section 3 of the Freedom of Information Act 2000 (public authorities)(**13**), while Bradford & Bingley is wholly owned by the Treasury, a relevant undertaking shall be deemed—

(a) not to be a publicly-owned company for the purposes of subsection (1)(b);

(b) not to hold information on behalf of the Treasury for the purposes of subsection (2)(b).

Notification requirement

42.—(1) The Treasury must notify the Authority of the making of this Order.

(2) A notification under paragraph (1)—

(a) may be given by such means as the Treasury consider appropriate;

(b) must be given to the Authority as soon as reasonably practicable after the first transfer time.

29th September 2008

Gordon Brown
Alistair Darling
Two of the Lords Commissioners of Her
Majesty’s Treasury

(12) 2002 c.40.

(13) 2000 c.36.