
STATUTORY INSTRUMENTS

2008 No. 2644

**The Heritable Bank plc Transfer of
Certain Rights and Liabilities Order 2008**

PART 4

THE ADMINISTRATOR AND TRANSITIONAL PROVISIONS

Application of this Part

- 18.** This Part applies if after the effective time —
- (a) Heritable is placed into administration; or
 - (b) an interim order is made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act.

The administration

19. The relevant provisions of the 1986 Act, the Insolvency Rules 1986(1) and the Insolvency (Scotland) Rules 1986(2) shall apply to Heritable subject to the provisions of this Part.

Objectives etc. of the administrator

- 20.**—(1) This article only applies during the transitional period.
- (2) The administrator must perform his or her functions with the objectives (“the overriding objectives”) of—
- (a) ensuring that Heritable provides, and managing the affairs, business and property of Heritable to enable it to provide, the services and facilities reasonably required by Deposits Management (Heritable) to carry on its functions in relation to the transferred rights and liabilities; and
 - (b) ensuring that Heritable performs the other obligations imposed on it by or under this Order.
- (3) The administrator shall only perform his or her functions with the objective determined in accordance with paragraph 3 of Schedule B1 to the 1986 Act to the extent that such objective is not inconsistent with and does not interfere with the achievement of the overriding objectives.
- (4) Paragraph 3(2) of Schedule B1 to the 1986 Act only applies to the performance of the functions of the administrator to the extent that it is not inconsistent with and does not interfere with the achievement of the overriding objectives.
- (5) The Treasury may, by notice in writing, give a direction to the administrator specifying that an act (or omission) is required for the overriding objectives.

(1) [SI 1986/1925](#).

(2) [SI 1986/1915 \(S.139\)](#).

(6) The Treasury may also, by notice in writing, give a direction to the administrator requiring him or her to act (or not act) if the Treasury consider that it is necessary to give such a direction for the purposes of –

- (a) protecting or enhancing the stability of the financial systems of the United Kingdom;
- (b) protecting or enhancing public confidence in the stability of the banking system of the United Kingdom; or
- (c) protecting depositors.

(7) The administrator must comply with any directions given under paragraph (5) or (6).

(8) The services and facilities to which paragraph (2)(a) applies include (but are not limited to) the services and facilities specified in Schedule 1.

(9) The administrator shall not be required to include any proposals for achieving the overriding objectives in any statement he or she makes under paragraph 49 (administrator’s proposals) or paragraph 54 (revision of administrator’s proposals) of Schedule B1 to the 1986 Act or to obtain approval of such proposals at any creditors’ meeting or from the court.

(10) The administrator shall not enter into a transaction or a series of transactions (whether related or not) to sell, lease, transfer or otherwise dispose of any property or right of Heritable having a value of more than £50 million at any time unless—

- (a) the court orders otherwise;
- (b) the Treasury gives its consent to the transaction; or
- (c) the sale, lease, transfer or disposal has been specifically approved at a meeting of creditors summoned under paragraph 51(1), 54(2) or 62 of Schedule B1 to the 1986 Act or by a creditors’ committee constituted in accordance with rule 2.50 of the Insolvency Rules 1986 or any analogous provision of the Insolvency (Scotland) Rules 1986.

(11) In this article, “court” means—

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

Insolvency rules etc.

21. Nothing in the 1986 Act, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986(3) or any other enactment or rule of law shall operate to invalidate or prejudice any act or omission done under or pursuant to this Order or give rise to a claim against or impose any liability on Heritable or the administrator for any act or omission so done.

Use of the Heritable brand

22. Heritable shall grant to Deposits Management (Heritable) a licence to use the Heritable brand during the transitional period for the purposes of Deposits Management (Heritable) carrying on its business in relation to the transferred rights and liabilities.

Compensation payable to Heritable

23.—(1) The Treasury shall reimburse Heritable for the costs and expenses (including fees) properly incurred by the administrator during the transitional period in fulfilling his or her obligations under article 20(1).

(2) Paragraph (1) does not apply to any cost or expense which would have been incurred even if this Order had not been made.

Continuity

24.—(1) During the transitional period, any person wishing to terminate or modify (or treat as terminated or modified) any contract or agreement with Heritable for services and facilities or any right or obligation under such a contract or agreement must give not less than 14 days prior written notice to the administrator and to Deposits Management (Heritable).

(2) 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 with Heritable for services and facilities, or any right or obligation under such a contract or agreement, where the contract or agreement or right or obligation relates to services or facilities which are reasonably required by—

(aa) Heritable to perform its duties under or pursuant to this Order;

(bb) the administrator to perform his or her duties under or pursuant to this Order;
or

(cc) Deposits Management (Heritable) to carry on its functions in relation to the transferred rights and liabilities, or

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

by virtue of or in connection with the transfer, the commencement of the administration in relation to Heritable or the making of an interim order in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act; and

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

(3) The services and facilities to which paragraphs (1) and (2) apply include (but are not limited to) the services and facilities specified in Schedule 1.

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

(5) Paragraph (2) does not apply where—

(a) Heritable, Deposits Management (Heritable) or the administrator, 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 14 days of that person becoming aware of the non-performance; or

(b) Heritable, Deposits Management (Heritable) or the administrator, as the case may be, fails to notify the counterparty to the relevant contract or agreement within 14 days of its becoming aware of the request for consent to such termination, modification or non-performance of an obligation, that such consent has been withheld.

(6) Without prejudice to the generality of paragraph (2), the transfer shall not have the effect of terminating or otherwise changing the terms of Heritable's membership (if any) of any payment system, including, in particular, BACS, CHAPS and the LINK payments systems.

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Financial Ombudsman Scheme

25. For the purposes of section 227(2) (voluntary jurisdiction) of the 2000 Act, Deposits Management (Heritable) is deemed to be carrying on an activity to which the voluntary jurisdiction rules apply and is deemed to be participating in the ombudsman scheme.