
STATUTORY INSTRUMENTS

2009 No. 317

**The Banking Act 2009 (Parts 2 and 3
Consequential Amendments) Order 2009**

PART 3

Specific Modifications and Amendments to Legislation

Finance (No 2) Act 1992

4.—(1) The following provision of the Finance (No 2) Act 1992⁽¹⁾ applies with the modification set out in this article.

(2) Paragraph 2 of Schedule 12 (Banks etc. in Compulsory Liquidation) is to be read as if it included the following—

“(3A) Where the company is a bank (as defined in section 91 of the Banking Act 2009), bank insolvency proceedings shall be taken to have commenced against the bank when the application for a bank insolvency order is made to the court under section 95 of the Banking Act 2009.”.

Financial Services and Markets Act 2000

5.—(1) The following provisions of the Financial Services and Markets Act 2000⁽²⁾ apply with the modifications set out in this article.

(2) In section 215 (Rights of the scheme in relevant person’s insolvency)—

(a) in subsection (3)⁽³⁾, the reference to making an administration application is to be read as including making an application for a bank administration order under section 142 of the 2009 Act, and

(b) subsection (4) is to be read as if it read the following—

“(4) In the case of a bank insolvency (as defined in Part 2 of the Banking Act 2009), if the scheme manager decides, pursuant to section 100(6)(d) of that Act, not to remain on the liquidation committee, the scheme manager shall retain the rights it usually enjoys in respect of the winding up of a relevant person under section 371(3) and (4).”.

(3) In section 355 (Interpretation of Part 24), the definition of “court” is to be read as if “, unless otherwise provided,” were inserted after the word “means”.

(4) In section 361⁽⁴⁾ (Administrator’s duty to report to Authority), references to—

(1) 1992 c.48.

(2) 2000 c.8.

(3) Subsection (3) was amended by the Enterprise Act 2002 (2002 c.40), section 248 and Schedule 17, paragraphs 53, 54(1) and (2); and the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56, 57(1) and (2).

(4) Section 361 was amended by the Enterprise Act 2002 (2002 c.40), section 248(3) and Schedule 17, paragraphs 53 and 56. Section 361(1) was amended by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 59.

- (a) “administration” are to be read as including a reference to bank administration under Part 3 of the 2009 Act; and
 - (b) “the administrator” are to be read as including the bank administrator under Part 3 of the 2009 Act.
- (5) In section 362 (Authority’s powers to participate in proceedings)—
- (a) references to “court”—
 - (i) in the context of a bank administration under Part 3 of the 2009 Act in England, Wales or Northern Ireland, are to be read as meaning the High Court, and
 - (ii) in the context of a bank administration under Part 3 of the 2009 Act in Scotland, are to be read as meaning the Court of Session,
 - (b) in subsection (1), the reference to making an administration application is to be read as including making an application for a bank administration order under section 142 of the 2009 Act, and
 - (c) in subsections (4)(5) and (4A)(6), references to paragraph 74 of Schedule B1 to the Insolvency Act 1986 and paragraph 75 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 are to be read as including references to those provisions as applied and modified by section 145 of the 2009 Act.
- (6) In section 370 (Liquidator’s duty to report to Authority), references to “liquidator” are to be read as including a reference to a bank liquidator under Part 2 of the 2009 Act.
- (7) In section 375 (Authority’s right to apply for an order), references to the provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including references to those provisions as applied and modified by section 103 and section 134 of the 2009 Act.

Companies Act 2006

- 6.—(1)** The following provisions of the Companies Act 2006(7) apply with the modifications set out in this article.
- (2) In section 461 (permitted disclosure of information obtained under compulsory powers)—
- (a) subsection (4)(c) is to be read so as to include the 2009 Act in the list of enactments in that subsection;
 - (b) in subsection (4)(g) is to be read so as to include the 2009 Act in the list of enactments in that subsection.
- (3) Any references in Part 35 (the registrar of companies) to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including a reference to Parts 2 and 3 of the 2009 Act.
- (4) Where an application is made to the court for—
- (a) a bank insolvency order under Part 2 of the 2009 Act,
 - (b) the appointment of a provisional bank liquidator under section 135 of the Insolvency Act 1986 or article 115 of the Insolvency (Northern Ireland) Order 1989, as applied by section 103 of the 2009 Act,
 - (c) a bank administration order under Part 3 of the 2009 Act, or

(5) Subsection 4 was amended by the Enterprise Act 2002 (2002 c.40), section 248(3) and Schedule 17, paragraphs 53 and 57(d); and the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 60(1) and (5).

(6) Subsection 4A was amended by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 60(1) and (6).

(7) 2006 c.46.

- (d) the appointment of a provisional bank administrator under section 135 of the Insolvency Act 1986 or article 115 of the Insolvency (Northern Ireland) Order 1989, as applied by section 145 of the 2009 Act,

sections 1139 and 1140 (service of documents on company, directors, secretaries and others) have effect subject to the provisions for service set out in Parts 2 or 3 of the 2009 Act and in rules made under section 411 of the Insolvency Act 1986 in respect of those Parts.

- (5) In Part 2 of Schedule 2 (Specified Descriptions of Disclosures)—
 - (a) paragraph 25 is to be read so as to include the 2009 Act in the list of enactments in that paragraph, and
 - (b) paragraph 46 is to be read so as to include the 2009 Act in the list of enactments in that paragraph.
- (6) In Part 2(8) of Schedule 11A (Specified Descriptions of Disclosures)—
 - (a) paragraph 30 is to be read so as to include the 2009 Act in the list of enactments in that paragraph, and
 - (b) paragraph 52 is to be read so as to include the 2009 Act in the list of enactments in that paragraph.

Dormant Bank and Building Society Accounts Act 2008

7.—(1) This article applies to a reclaim fund established under the Dormant Bank and Building Society Accounts Act 2008(9) if, under sections 1 or 2 of that Act, the balance of a customer's dormant account is transferred into that reclaim fund from a bank which is a bank within the meaning of section 91 of the 2009 Act.

(2) Where that reclaim fund is unable, or likely to be unable, to satisfy a claim against it, the fact that it ceases to be authorised does not prevent the operation of the Financial Services Compensation Scheme under section 213 of the Financial Services and Markets Act 2000 in respect of it; and for that purpose, the reclaim fund is a relevant person within the meaning of section 213(9), despite the lapse of authorisation.

Pension Protection Fund (Entry Rules) Regulations 2005

8.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(10) are amended as follows.

(2) In regulation 6 (Circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), after paragraph (1)(a)(v) insert—

- “(vi) where the company is a bank (as defined in section 91 of the Banking Act 2009), the bank insolvency procedure is stayed under section 130 of the Insolvency Act 1986 (as applied by section 103 of the Banking Act 2009), or the bank insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009.”.

Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

9.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(11) are amended as follows.

(8) Part 2 of Schedule 11A was inserted by [S.I. 2007/3494](#), regulation 8(2) and Schedule.

(9) [2008 c. 31](#).

(10) [S.I. 2005/590](#).

(11) [S.R. 2005 No.126](#), as amended by [S.R. 2008 No. 303](#).

(2) In regulation 6 (Circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), after paragraph (1)(a)(v) insert—

“(vi) where the company is a bank (as defined in section 91 of the Banking Act 2009), the bank insolvency procedure is stayed under article 110 of the Insolvency (Northern Ireland) Order 1989 (as applied by section 103 of the Banking Act 2009), or the bank insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009.”.