

**2009 No. 317**

**BANKS AND BANKING**

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

*Approved by both Houses of Parliament*

*Made - - - - 19th February 2009*

*Laid before Parliament 20th February 2009*

*Coming into force - - 21st February 2009*

The Treasury, in exercise of the powers conferred by sections 135 and 168 of the Banking Act 2009(a), make the following Order.

The powers in sections 135 and 168 of the Banking Act 2009 are being exercised for the first time and the Treasury is satisfied, in accordance with section 259(4) of that Act, that it is necessary to exercise it without laying a draft for approval.

**PART 1**

**Introduction**

**Citation and commencement**

1. This Order may be cited as the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 and comes into force on 21st February 2009.

**Interpretation**

2. In this Order—  
“the 2009 Act” means the Banking Act 2009.

**PART 2**

**General Modifications to Legislation**

3.—(1) So far as the enactments set out in the Schedule (“the listed enactments”) apply in relation to liquidation and administration, they apply with the modifications set out in paragraphs (2) to (4).

(2) The modifications relating to bank insolvency under Part 2 of the 2009 Act are that references to—

- (a) “liquidator” include a reference to a bank liquidator under Part 2 of the 2009 Act;
- (b) “provisional liquidator” include a reference to a provisional bank liquidator under Part 2 of the 2009 Act;
- (c) “liquidation” or “insolvent liquidation” include a reference to bank insolvency under Part 2 of the 2009 Act;
- (d) “winding up” or “winding up by the court” include a reference to bank insolvency under Part 2 of the 2009 Act (and a reference to the “commencement of winding up” in this context is to the commencement of bank insolvency);
- (e) “winding up order” include a reference to a bank insolvency order under Part 2 of the 2009 Act;
- (f) “wound up” include a reference to a bank having been put into bank insolvency under Part 2 of the 2009 Act; and
- (g) “winding up petition” or “petition to wind up” include an application for bank insolvency under Part 2 of the 2009 Act.

(3) The modifications relating to bank administration under Part 3 of the 2009 Act are that references to—

- (a) “administrator” include a reference to a bank administrator under Part 3 of the 2009 Act;
- (b) “administration” or “insolvent administration” include a reference to a bank administration under Part 3 of the 2009 Act;
- (c) “administration order” include a reference to a bank administration order under Part 3 of the 2009 Act; and
- (d) “provisional liquidator” include a reference to a provisional bank administrator under Part 3 of the 2009 Act.

(4) The modifications relating to bank insolvency or bank administration under Parts 2 and 3 of the 2009 Act are that references to—

- (a) “insolvency legislation” or “the law of insolvency” include Parts 2 and 3 of the 2009 Act and the provisions of the Insolvency Act 1986(a) and the Insolvency (Northern Ireland) Order 1989(b) as applied by those Parts;
- (b) a person acting as an “insolvency practitioner” (as defined in section 388 of the Insolvency Act 1986) include a person acting as a bank liquidator or bank administrator under Parts 2 and 3 of the 2009 Act;
- (c) the provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, in the context of bank insolvency or bank administration, shall be read to include those provisions as applied and modified by sections 103 and 145 of the 2009 Act; and
- (d) the provisions of the Insolvency Rules 1986(c), the Insolvency Rules (Northern Ireland) 1991(d) and the Insolvency (Scotland) Rules 1986(e), in the context of bank insolvency or bank administration, shall be read to include those provisions as applied and modified by rules made under section 411(1A)(f) of the Insolvency Act 1986 in relation to bank insolvency, and under section 411(1B)(g) of the Insolvency Act 1986 in relation to bank administration.

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(a) 1986 c.45.

(b) S.I. 1989 No. 2405 (N.I. 19).

(c) S.I.1986/1925.

(d) S.R. 1991 No. 364.

(e) S.I. 1986/1915.

(f) Section 411(1A) of the Insolvency Act 1986 was inserted by section 125(2) of the 2009 Act.

(g) Section 411(1B) of the Insolvency Act 1986 was inserted by section 160(2) of the 2009 Act.

## 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(a) 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(b) 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)(c), 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(d) (Administrator’s duty to report to Authority), references to—

(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

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(a) 1992 c.48.

(b) 2000 c.8.

(c) 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).

(d) 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.

- (c) in subsections (4)(a) and (4A)(b), 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(c) 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
- (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(d) 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

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(a) 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).

(b) 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).

(c) 2006 c.46.

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

- (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(a) 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(b) 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(c) 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 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.”.

*Dave Watts*  
*Steve McCabe*

19th February 2009

Two of the Lords Commissioners of Her Majesty's Treasury

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(a) 2008 c. 31.

(b) S.I. 2005/590.

(c) S.R. 2005 No.126, as amended by S.R. 2008 No. 303.

## SCHEDULE

Article 3(1)

### Legislation subject to the general modifications in Part 2

#### **Primary Legislation**

Taxes Management Act 1970(**a**)

Prescription and Limitation (Scotland) Act 1973(**b**)

Companies Act 1985(**c**)

Companies (Northern Ireland) Order 1986(**d**)

Debtors (Scotland) Act 1987(**e**)

Income and Corporation Taxes Act 1988(**f**)

Companies Act 1989(**g**)

Companies (No. 2) (Northern Ireland) Order 1990(**h**)

Taxation of Chargeable Gains Act 1992(**i**)

Finance (No 2) Act 1992(**j**)

Pension Schemes Act 1993(**k**)

Pension Schemes (Northern Ireland) Act 1993(**l**)

Pensions Act 1995(**m**)

Pensions (Northern Ireland) Order 1995(**n**)

Proceeds of Crime (Scotland) Act 1995(**o**)

Finance Act 1996(**p**)

Employment Rights Act 1996(**q**)

Employment Rights (Northern Ireland) Order 1996(**r**)

Terrorism Act 2000(**s**)

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- (a) 1970 c. 9.
  - (b) 1973 c.52.
  - (c) 1985 c. 6.
  - (d) S.I. 1986 No. 1032 (N.I. 6).
  - (e) 1987 c.18.
  - (f) 1988 c.1.
  - (g) 1989 c.40.
  - (h) S.I. 1990/1504 (N.I. 10).
  - (i) 1992 c.12.
  - (j) 1992 c.48.
  - (k) 1993 c.48.
  - (l) 1993 c. 49.
  - (m) 1995 c.26.
  - (n) S.I. 1995/3213 (N.I. 22).
  - (o) 1995 c.43.
  - (p) 1996 c.8.
  - (q) 1996 c.18.
  - (r) S.I. 1996/1919 (N.I. 16).
  - (s) 2000 c.11.

Finance Act 2000**(a)**  
International Criminal Court Act 2001**(b)**  
International Criminal Court (Scotland) Act 2001**(c)**  
Finance Act 2002**(d)**  
Proceeds of Crime Act 2002**(e)**  
Debt Arrangement and Attachment (Scotland) Act 2002**(f)**  
Finance Act 2003**(g)**  
Pensions Act 2004**(h)**  
Pensions (Northern Ireland) Order 2005**(i)**  
Companies Act 2006**(j)**  
Bankruptcy and Diligence (Scotland) Act 2007**(k)**  
Finance Act 2008**(l)**  
Dormant Bank and Building Society Accounts Act 2008**(m)**

### **Secondary Legislation**

Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987**(n)**  
Financial Markets and Insolvency Regulations 1991**(o)**  
Financial Markets and Insolvency Regulations (Northern Ireland) 1991**(p)**  
Insolvency Regulations 1994**(q)**  
Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994**(r)**  
Insolvent Companies (Reports on Conduct of Directors) Rules 1996**(s)**  
Financial Markets and Insolvency Regulations 1996**(t)**  
Financial Markets and Insolvency Regulations (Northern Ireland) 1996**(u)**  
Individual Savings Account Regulations 1998**(v)**

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- (a)** 2000 c.17.
  - (b)** 2001 c.17.
  - (c)** 2001 asp 13.
  - (d)** 2002 c.23.
  - (e)** 2002 c.29.
  - (f)** 2002 asp 17.
  - (g)** 2003 c.14.
  - (h)** 2004 c.35.
  - (i)** S.I. 2005/255 (N.I. 1)
  - (j)** 2006 c.46.
  - (k)** 2007 asp 3.
  - (l)** 2008 c.9.
  - (m)** 2008 c.31.
  - (n)** S.I. 1987/2023.
  - (o)** S.I. 1991/880.
  - (p)** S.R. 1991 No. 443.
  - (q)** S.I. 1994/2507.
  - (r)** S.I. 1994/3200.
  - (s)** S.I. 1996/1909.
  - (t)** S.I. 1996/1469.
  - (u)** S.R. 1996 No. 252.
  - (v)** S.I. 1998/1870.

Corporation Tax (Simplified Arrangements for Group Relief) Regulations 1999**(a)**  
Financial Markets and Insolvency (Settlement Finality) Regulations 1999**(b)**  
Financial Collateral Arrangements (No 2) Regulations 2003**(c)**  
Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003**(d)**  
Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003**(e)**  
Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003**(f)**  
Land Registration Rules 2003**(g)**  
Credit Institutions (Reorganisation and Winding Up) Regulations 2004**(h)**  
Insolvency Practitioners Regulations 2005**(i)**  
Pension Protection Fund (Entry Rules) Regulations 2005**(j)**  
Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005**(k)**  
Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005**(l)**  
Gender Recognition (Disclosure of Information) (Scotland) Order 2005**(m)**  
Financial Assistance Scheme Regulations 2005**(n)**  
Insolvency Practitioners Regulations (Northern Ireland) 2006**(o)**  
Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006**(p)**  
Land Registration (Scotland) Rules 2006**(q)**  
Companies (Cross-Border Mergers) Regulations 2007**(r)**  
Regulated Covered Bonds Regulations 2008**(s)**

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- (a)** S.I. 1999/2975.  
**(b)** S.I. 1999/2979 (applied in Northern Ireland by SI 2006/50 and SI 2007/832).  
**(c)** S.I. 2003/3226.  
**(d)** S.I. 2003/3363.  
**(e)** S.R. 2003 No. 357.  
**(f)** S.R. 2003 No. 358.  
**(g)** S.I. 2003/1417.  
**(h)** S.I. 2004/1045.  
**(i)** S.I. 2005/524.  
**(j)** S.I. 2005/590.  
**(k)** S.R. 2005 No. 126.  
**(l)** S.I. 2005/916.  
**(m)** S.S.I. 2005/125  
**(n)** S.I. 2005/1986.  
**(o)** S.R. 2006 No. 33.  
**(p)** S.R. 2006 No. 53.  
**(q)** S.S.I. 2006/485.  
**(r)** S.I. 2007/2974.  
**(s)** S.I. 2008/346.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes modifications and amendments to certain Acts and Statutory Instruments as a consequence of Parts 2 (bank insolvency) and 3 (bank administration) of the Banking Act 2009 (c.1) (“the 2009 Act”).

Part 1 concerns citation, commencement and interpretation.

Part 2 sets out a number of general modifications, which apply to the primary and secondary legislation set out in the Schedule to this Order. It provides that so far as the enactments in the Schedule apply to liquidation or administration, they apply with the modifications in Part 2, in the case of a bank insolvency or administration under Parts 2 or 3 of the 2009 Act.

Part 3 sets out certain primary legislation that, in the context of a bank insolvency or a bank administration, are to be read with modifications. It also sets out a number of specific textual amendments to secondary legislation.

The Schedule lists the Acts and Statutory Instruments that are subject to the general modifications set out in Part 2.

An impact assessment of the effect of the 2009 Act is available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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STATUTORY INSTRUMENTS

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