
STATUTORY INSTRUMENTS

2009 No. 322

**The Banking Act 2009 (Restriction of
Partial Property Transfers) Order 2009**

PART 2

Restrictions on partial property transfers

Set-off and netting

3.—(1) A partial property transfer to which this Order applies may not provide for the transfer of some, but not all, of the protected rights and liabilities between a particular person (“P”) and a banking institution under a particular set-off arrangement⁽¹⁾, netting arrangement⁽²⁾ or title transfer financial collateral arrangement.

(2) A partial property transfer to which this Order applies may not include provision under the continuity powers which terminates or modifies the protected rights or liabilities between P and a banking institution.

(3) For the purposes of paragraphs (1) and (2), rights and liabilities between P and a banking institution are protected if they are rights and liabilities which either P or the banking institution is entitled to set-off or net under a set-off arrangement, netting arrangement or title transfer financial collateral arrangement which P has entered into with the banking institution so long as they are not excluded rights or excluded liabilities.

(4) For the purposes of paragraph (1), a property transfer instrument or order which purports to transfer all of the protected rights and liabilities between P and a banking institution under a particular set-off arrangement, netting arrangement or title transfer financial collateral arrangement shall be treated as having done so effectively (and so not give rise to a contravention of paragraph (1)), notwithstanding the possibility that any of the protected rights or liabilities are foreign property and may not have been effectively transferred by the property transfer instrument or order or by virtue of steps taken under section 39 of the Act.

(5) For the purposes of paragraph (3), it is immaterial whether—

- (a) the arrangement which permits P or the banking institution to set-off or net rights and liabilities also permits P or the banking institution to set-off or net rights and liabilities with another person; or
- (b) the right of P or the banking institution to set-off or net is exercisable only on the occurrence of a particular event.

(6) In this article, “excluded rights” and “excluded liabilities” have the meanings given in article 1 except that the reference to subordinated debt shall be treated as if it were a reference to subordinated debt issued by P or by the banking institution.

(1) “Set-off arrangements” is defined in section 48(1) of the Act.

(2) “Netting arrangements” is defined in section 48(1) of the Act.

