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STATUTORY INSTRUMENTS

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**2009 No. 3226**

**The Northern Rock plc Transfer Order 2009**

**PART 3**

**MISCELLANEOUS AND TRANSITIONAL PROVISIONS**

**Third party rights, &c.: general**

6.—(1) Save as otherwise provided by this Order, no interest or right of any third party<sup>(1)</sup> arises or becomes exercisable in respect of any property, right or liability of ACo (whether or not transferred by this Order) by virtue of or in connection with—

- (a) the making of this Order,
- (b) anything done by, under, by virtue of or in consequence of this Order, or
- (c) anything omitted to be done by virtue of or in consequence of this Order.

(2) Save as otherwise provided by this Order, no liability or obligation arises or is incurred by any third party in respect of any property, right or liability of ACo (whether or not transferred by this Order) by virtue of or in connection with—

- (a) the making of this Order,
- (b) anything done by, under, by virtue of or in consequence of this Order, or
- (c) anything omitted to be done by virtue of or in consequence of this Order.

**Third party rights, &c.: relevant arrangements**

7.—(1) The interests, rights, obligations and liabilities of relevant third parties are modified such that no default event consequence occurs (directly or indirectly) in respect of any relevant arrangement by virtue of or in connection with—

- (a) the making of this Order,
- (b) anything done by, under, by virtue of or in consequence of this Order, or
- (c) anything omitted to be done by virtue of or in consequence of this Order.

(2) A relevant third party is a third party who enjoys any right or interest or is subject to any obligation or liability in respect of a relevant arrangement.

(3) In this Order, “default event consequence”, in respect of an arrangement, means any of the following consequences (however described)—

- (a) the termination or extinguishment of the arrangement;
- (b) the termination or extinguishment of any right or obligation under the arrangement;
- (c) the accrual of any right to terminate or extinguish the arrangement;
- (d) the accrual of any right to terminate or extinguish any right or obligation under the arrangement;

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(1) The meaning of “third party” is given in the 2008 Act, Schedule 2, paragraph 2(3).

- (e) any amount becoming payable, being capable of being declared payable or ceasing to be payable;
  - (f) the accrual of any right to withhold any payment;
  - (g) the accrual of any right not to advance any amount;
  - (h) any other change in the amount or timing of any payment under or in connection with the arrangement;
  - (i) the accrual of any right to net or set off;
  - (j) any obligation arising to provide or transfer any deposit or collateral;
  - (k) the accrual of any right to give or withhold any consent or approval;
  - (l) any event of default or breach of any right arising;
  - (m) any right or obligation not arising;
  - (n) the imposition of any condition on the arrangement;
  - (o) the imposition of any condition on any right or obligation under the arrangement;
  - (p) the creation of any constructive or resulting trust or other equitable interest or equity;
  - (q) the accrual of any right to trace any property or to claim an equitable interest in or equity in respect of any property or to claim any breach of trust;
  - (r) any other right or remedy (whether or not similar in kind to those referred to in subparagraphs (a) to (q)) arising or becoming exercisable.
- (4) This article does not limit article 6.

## **2004 Regulations**

8. The 2004 Regulations have effect as if modified by the provisions set out in Schedule 2.

### **Authorisation: permission to carry on regulated activities**

9.—(1) During the deemed authorisation period BCo is to be treated as having a Part IV permission to carry on the regulated activities specified in the first column of the table in Schedule 3 but subject to the limitations specified in the other columns of that table.

(2) But paragraph (1) only applies once payment in respect of the provisional allotment of 1,399,950,000 ordinary shares of £1 each in BCo to the Treasury Solicitor has been made by the Treasury to BCo.

(3) The FSA may vary or revoke the Part IV permission BCo is treated as having by virtue of paragraph (1) in the same circumstances in which, and in accordance with the same procedure by which, it may vary or revoke a Part IV permission granted under section 42(2) of FSMA 2000 (giving permission).

(4) In this article, “the deemed authorisation period” means the period beginning with the time at which this article comes into force and ending with the earlier of the following—

- (a) the time at which the FSA grants permission under section 42 of FSMA 2000 for BCo to carry on all of the regulated activities BCo is treated as having permission to carry on by virtue of paragraph (1);
- (b) the end of 31st January 2010.

### **Authorisation: controlled functions**

**10.**—(1) During the deemed approval period, the requirements imposed on BCo by section 59 of FSMA 2000 (approval for particular arrangements) in respect of any individual performing a controlled function for or in relation to BCo are to be treated as satisfied.

(2) But paragraph (1) only has effect if, and for so long as, the FSA is satisfied that at least two individuals who effectively direct the business of BCo are of sufficiently good repute and have sufficient experience to perform controlled functions in that respect.

(3) Paragraph (1) ceases to have effect in relation to an individual when the FSA determines under section 61 of FSMA 2000 an application for approval in relation to that individual (irrespective of whether the application is granted or refused).

(4) In this article—

“controlled function” is to be construed in accordance with section 59(3) of FSMA 2000;

“the deemed approval period” means the period beginning with the time at which this article comes into force and ending with the end of 31st January 2010.

### **Construction of documents**

**11.** As from the transfer time, and save as otherwise provided in this Order—

(a) agreements made or other things done by or in relation to ACo shall be treated, so far as may be necessary for the purposes of, in connection with or in consequence of the transfer, but not otherwise, as made or done by or in relation to BCo (as the case may be), and

(b) references to ACo, or to any officer or employee of ACo, in instruments or documents relating to the property, rights and liabilities transferred by article 3 shall have effect as if they were references to BCo, or to any officer or employee of BCo (as the case may be).

### **Employees**

**12.**—(1) The 2006 Regulations and sections 257 and 258 of the Pensions Act 2004<sup>(2)</sup> apply on the transfer as if relevant individuals are assigned to the organised grouping of resources or employees that is subject to the relevant transfer.

(2) Paragraph (1) applies whether or not the transfer would otherwise be regarded for the purposes of the 2006 Regulations as giving rise to a relevant transfer.

(3) In this article—

“organised grouping of resources or employees” is to be construed in accordance with the 2006 Regulations;

“relevant individuals” means all individuals employed by ACo other than the individuals employed to work in the Irish branch;

“relevant transfer” is to be construed in accordance with Regulation 2 of the 2006 Regulations.

### **Modifications to relevant arrangements relating to certain regulatory permissions, &c.**

**13.**—(1) The provisions of relevant arrangements specified in paragraph (2) have no effect.

(2) The provisions are—

(a) any provision requiring ACo to hold, or represent or warrant that it holds, a relevant regulatory permission, or

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(2) 2004 c. 35.

- (b) any provision which provides for any default event consequence, should ACo cease to hold a relevant regulatory permission or should any relevant regulatory permission of ACo be varied.

(3) A “relevant regulatory permission” means a regulatory permission to carry out a regulated activity specified in Schedule 4.

**Transitional provision: third party services or facilities**

14.—(1) In this article—

“a Class A service” means any service in respect of which the following conditions are met—

- (a) Condition 1 is that the service is performed or provided by any person under any relevant arrangement;
- (b) Condition 2 is that the service is performed for or provided to BCo as from, or at any time after, the transfer time;
- (c) Condition 3 is that BCo requires the service to perform a service for or provide a service to ACo, or any group undertaking of ACo, under any arrangement;

“a Class A facility” means any facility in respect of which the following conditions are met—

- (a) Condition 1 is that the facility is provided by any person under any relevant arrangement;
- (b) Condition 2 is that the facility is provided to BCo as from, or at any time after, the transfer time;
- (c) Condition 3 is that BCo requires the facility to provide a service or facility to, or to perform a service for, ACo, or any group undertaking of ACo, under any arrangement;

“a Class B service” means any service in respect of which the following conditions are met—

- (a) Condition 1 is that the service is performed or provided by any person under any relevant arrangement;
- (b) Condition 2 is that the service is performed for or provided to ACo as from, or at any time after, the transfer time;
- (c) Condition 3 is that ACo requires the service to perform a service for or provide a service to BCo under any arrangement;

“a Class B facility” means any facility in respect of which the following conditions are met—

- (a) Condition 1 is that the facility is provided by any person under any relevant arrangement;
- (b) Condition 2 is that the facility is provided to ACo as from, or at any time after, the transfer time;
- (c) Condition 3 is that ACo requires the facility to provide a service or facility to, or to perform a service for, BCo under any arrangement.

(2) In this Order, “the relevant transitional period” means the period starting with the transfer time and ending with the end of 31st December 2010.

(3) Paragraphs (4) to (9) apply during the relevant transitional period.

(4) BCo may—

- (a) use any Class A service or Class A facility for the benefit (in whole or in part) of ACo or any group undertaking of ACo, or
- (b) provide for ACo, or any group undertaking, of ACo to enjoy the benefit (in whole or in part) of any Class A service or Class A facility.

(5) Any person performing or providing a Class A service, on notice in writing by BCo, must perform the service for or provide the service to ACo, or any group undertaking of ACo, directly to the extent specified in the notice.

(6) Any person providing a Class A facility, on notice in writing by BCo, must provide the facility to ACo, or any group undertaking of ACo, directly to the extent specified in the notice.

(7) ACo may—

- (a) use any Class B service or Class B facility for the benefit (in whole or in part) of BCo, or
- (b) provide for BCo to enjoy the benefit (in whole or in part) of any Class B service or Class B facility.

(8) Any person performing or providing a Class B service, on notice in writing by ACo, must perform the service for or provide the service to BCo directly to the extent specified in the notice.

(9) Any person providing a Class B facility, on notice in writing by ACo, must provide the facility to BCo directly to the extent specified in the notice.

**Transitional provision: ACo services or facilities**

15.—(1) During the relevant transitional period, ACo may procure that—

- (a) any ACo service is performed or provided by BCo, or
- (b) any ACo facility is provided by BCo.

(2) In paragraph (1)—

“ACo facility” means any facility which ACo is required to provide under any ACo arrangement to any person;

“ACo service” means any service which ACo is required to perform or provide under any ACo arrangement to any person.

**Transitional provision: Bacs schemes**

16.—(1) During the relevant transitional period, each provision of any Bacs arrangement specified in paragraph (2) has no effect.

(2) The provisions are—

- (a) any provision requiring BCo to hold any credit rating, or
- (b) any provision which provides, should BCo cease to hold any credit rating, for any default event consequence.

(3) Paragraph (1) ceases to have effect in relation to a provision specified by paragraph (2) when BCo obtains the credit rating required by the provision.

(4) In paragraph (1), “Bacs arrangement” means any ACo arrangement in respect of the Bacs schemes.

**Transitional provision: receipt of certain payments by BCo**

17.—(1) During the relevant transitional period, any payment received by BCo for the account of ACo is to be treated as received for the account of BCo.

(2) This article does not limit article 11.

**Shadow directorship, &c.**

18.—(1) Paragraphs (2) and (3) apply while BCo is wholly owned by the Treasury.

- (2) A relevant person is not to be treated as—
- (a) a shadow director of BCo or any group undertaking of BCo for the purposes of the provisions listed in Schedule 5;
  - (b) a person discharging managerial responsibilities in respect of BCo or any group undertaking of BCo for the purposes of the provisions listed in Schedule 5 (unless that person has been appointed as a director).
- (3) Nor is a relevant person to be treated as a director of BCo or a group undertaking of BCo by virtue of paragraph (b) of the definition of director in section 417(1) of FSMA 2000 (certain persons in accordance with whose directions or instructions the directors of the body corporate are accustomed to act).
- (4) In this article, a “relevant person” is any of—
- (a) a Minister of the Crown;
  - (b) the Treasury;
  - (c) the Treasury Solicitor;
  - (d) the Bank of England;
  - (e) UK Financial Investments Limited;
  - (f) a person—
    - (i) employed by or under, or
    - (ii) acting on behalf of,
 any of the persons specified in sub-paragraphs (a) to (e).

### **Freedom of information**

- 19.**—(1) Paragraphs (2) and (3) apply while BCo is wholly owned by the Treasury.
- (2) BCo is not to be treated as—
- (a) a publicly-owned company for the purposes of section 3(1)(b) of the Freedom of Information Act 2000(3);
  - (b) holding information on behalf of—
    - (i) a Minister of the Crown,
    - (ii) the Treasury,
    - (iii) the Treasury Solicitor,
    - (iv) the Bank of England, or
    - (v) UK Financial Investments Limited,
 for the purposes of section 3(2)(b) of that Act.
- (3) Paragraph (2) applies to any group undertaking of BCo as it applies to BCo.

### **Modification to FSA’s rule-making power**

- 20.**—(1) Subsections (1) and (1A) of section 138 of FSMA 2000 (general rule-making power) have effect as if modified by inserting after “protecting the interests of consumers”—
- “or for the purposes of, or to facilitate, or in consequence of, a transfer under section 8 of the Banking (Special Provisions) Act 2008”.

(2) Section 148(2) of FSMA 2000 (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 FSA, and
- (b) without any requirement for the consent of such a person.

(3) Section 148(4) of FSMA 2000 is to have effect such that it does not prevent the FSA from modifying or waiving rules in relation to a relevant undertaking under section 148 of that Act where the following condition is satisfied.

(4) The condition is that the FSA is satisfied that the modification or waiver is necessary for the purposes of, or to facilitate, or in consequence of the transfer.

#### **Modification to FSA’s duty to consult on rule changes**

**21.**—(1) Section 155(7) of FSMA 2000 (consultation) has effect as if modified by inserting at the end—

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

(2) Section 157 of FSMA 2000 (guidance) has effect as if modified by inserting after subsection (3)—

“(3A) Section 155(7) applies to proposed guidance as it applies to proposed rules with the modification made by article 21 of the Northern Rock plc Transfer Order 2009.”.

#### **Modification instruments**

**22.**—(1) ACo and BCo may agree to make a modification instrument.

(2) A modification instrument may modify any provision of this Order, so long as this Order could originally have been made with that modification in accordance with the relevant provisions of the 2008 Act.

(3) A modification instrument may only be made with the consent of the Treasury.

(4) A modification instrument must be in writing.

(5) As soon as practicable after making a modification instrument—

- (a) ACo must send the modification instrument to the Treasury;
- (b) ACo must arrange for the modification instrument to be published in two newspapers, chosen by ACo to maximise the likelihood of the instrument coming to the attention of any person likely to be affected;
- (c) ACo and BCo must publish the modification instrument on their internet websites.