
STATUTORY INSTRUMENTS

2009 No. 814

The Amendments to Law (Resolution of
Dunfermline Building Society) Order 2009

PART 4

MISCELLANEOUS

Modification of the FSA’s rule-making power

9.—(1) Subsections (1) and (1A) of section 138 of FSMA⁽¹⁾ (general rule-making power) have effect as if modified by inserting after “protecting the interests of consumers”—

“or for the purposes of, to facilitate or in consequence of the Dunfermline Building Society Property Transfer Instrument 2009”.

(2) Section 148(2) of FSMA (modification or waiver of rules) is modified so it applies in relation to a relevant person—

- (a) in the absence of an application by the relevant person, and
- (b) without any requirement for consent by the relevant person.

(3) Section 148(4)⁽²⁾ of FSMA is to have effect such that it does not prevent the FSA from modifying or waiving rules in relation to a relevant person under section 148 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, to facilitate or in consequence of the Property Transfer Instrument.

(5) In this article, relevant persons are Dunfermline Building Society and the Dunfermline Bridge Bank.

Modification to the FSA’s duty to consult on rule changes

10.—(1) Section 155(7) of FSMA (consultation) has effect as if modified by adding at the end—
“or if it is making rules for the purposes of, to facilitate or in consequence of the Dunfermline Building Society Property Transfer Instrument 2009.”

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

“(3A) Section 155(7) applies to proposed guidance with the modification made by article 10(1) of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009.”

(1) Subsections (1A) to (1C) were inserted by [S.I. 2006/2975](#).

(2) Subsection (2) was substituted, and subsection (4) was amended, by [S.I. 2007/1973](#).

(3) Amended by [S.I. 2006/2975](#) and [2007/1973](#).

Liabilities to Treasury: treatment in insolvency proceedings

11.—(1) This article makes provision in relation to the treatment in insolvency proceedings of the first and second liabilities assumed by Dunfermline by virtue of paragraph 11 of the Property Transfer Instrument.

(2) In insolvency proceedings—

(a) the first liability ranks *pari passu* with the claims of unsecured and unsubordinated creditors of Dunfermline;

(b) the second liability ranks *pari passu* with the claims that shareholding members of Dunfermline would have had in respect of the value of their shares but for their transfer.

(3) The reference in paragraph (2)(b) to shareholding members does not include the holders of deferred shares within the meaning of section 119(1) of the Building Societies Act.

(4) In this article—

(a) the reference to insolvency proceedings is a reference to—

(i) liquidation;

(ii) administration;

(iii) building society special administration (within the meaning of Part 3 of the Banking Act 2009 as applied by section 90C of the Building Societies Act);

(b) “shareholding member” and the reference to the value of shares are to be construed in accordance with section 119 of the Building Societies Act.