



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 8

#### AMENDMENTS OF BANKING ACT 2009

##### *Special resolution regime and bank administration*

#### **96 Objectives and conditions**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 3 (interpretation: other expressions), after “this Part—” insert—

““client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with).”
- (3) In section 4 (special resolution objectives), after subsection (8) insert—

“(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets.”
- (4) In section 8(2) (Condition A: private sector purchaser and bridge bank)—
  - (a) in paragraph (b) for “the banking systems of the United Kingdom, or” substitute “ those systems, ”, and
  - (b) after paragraph (c) insert “, or
  - (d) the protection of any client assets that may be affected.”
- (5) In section 47 (restriction of partial transfers), for subsection (3) substitute—

“(3) Provision under subsection (2) may, in particular, refer to—

  - (a) particular classes of deposit;

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(b) particular classes of client assets.”

(6) In the Table in section 261 (index of defined terms), after the entry relating to “central counterparty clearing services”, insert—

“Client assets (Part 1)

3”.

**Commencement Information**

**II** S. 96(1)(2)(5)(6) in force at 1.1.2015 by S.I. 2014/3323, art. 2

**97 Private sector purchasers**

- (1) The Banking Act 2009 is amended as follows.
- (2) After section 26 insert—

**“26A Private sector purchaser: reverse share transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of securities issued by a bank to a person (“the original transferee”).
  - (2) The Bank of England may make one or more private sector reverse share transfer instruments in respect of securities issued by the bank and held by the original transferee.
  - (3) A private sector reverse share transfer instrument is a share transfer instrument which—
    - (a) provides for transfer to the transferor under the original instrument;
    - (b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).
  - (4) The Bank of England must not make a private sector reverse share transfer instrument without the written consent of the original transferee.
  - (5) Sections 7, 8 and 50 do not apply to a private sector reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
  - (6) Before making a private sector reverse share transfer instrument the Bank of England must consult—
    - (a) the PRA,
    - (b) the FCA, and
    - (c) the Treasury.
  - (7) Section 26 applies where the Bank of England has made a private sector reverse share transfer instrument.”
- (3) In section 29 (reverse share transfer)—

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- (a) in subsection (3) for the words from “securities”, in the second place, to the end substitute “ securities issued by the bank and held by a transferee under the onward share transfer order (“the onward transferee”). ”, and
- (b) after subsection (4) insert—

“(4A) The Treasury must not make a reverse share transfer order under subsection (3) unless—

- (a) the onward transferee is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the reverse share transfer order is made with the written consent of the onward transferee.”

- (4) In section 31 (bridge bank: reverse share transfer)—

- (a) in subsection (1) omit the words from “providing for” to the end,
- (b) in subsection (2) for “person within subsection (1)(a) to (c)” substitute “ transferee under the original instrument ”,
- (c) after subsection (3) insert—

“(3A) The Bank of England must not make a bridge bank reverse share transfer instrument unless—

- (a) the transferee under the original instrument is—
  - (i) a company wholly owned by the Bank of England,
  - (ii) a company wholly owned by the Treasury, or
  - (iii) a nominee of the Treasury, or
- (b) the bridge bank reverse share transfer instrument is made with the written consent of the transferee under the original instrument.”

- (5) After section 42 insert—

**“42A Private sector purchaser: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) (“the original instrument”) providing for the transfer of property, rights or liabilities of a bank to a person (“the original transferee”).
- (2) The Bank of England may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.
- (3) A private sector reverse property transfer instrument is a property transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

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- (4) The Bank of England must not make a private sector reverse property transfer instrument without the written consent of the original transferee.
- (5) Sections 7, 8 and 50 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (6) Before making a private sector reverse property transfer instrument the Bank of England must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument.”
- (6) In section 44 (reverse property transfer)—
- (a) in subsection (3) for “of a transferee” to the end substitute “ of a transferee under the onward property transfer instrument (“the onward transferee”). ”,
  - (b) after subsection (4) insert—
 

“(4A) The Bank of England must not make a reverse property transfer instrument unless—

    - (a) the onward transferee is—
      - (i) a company wholly owned by the Bank of England,
      - (ii) a company wholly owned by the Treasury, or
      - (iii) a company wholly owned by a nominee of the Treasury, or
    - (b) the reverse property transfer instrument is made with the written consent of the onward transferee.”
- (7) In section 46 (temporary public ownership: reverse property transfer)—
- (a) in subsection (1) omit from “providing for” to the end, and
  - (b) after subsection (3) insert—
 

“(3A) The Treasury must not make a reverse property transfer order unless—

    - (a) the transferee under the original order is—
      - (i) a company wholly owned by the Bank of England,
      - (ii) a company wholly owned by the Treasury, or
      - (iii) a nominee of the Treasury, or
    - (b) the reverse property transfer order is made with the written consent of the transferee under the original order.”
- (8) In section 48A (creation of liabilities), in subsection (1) after “42(3)(b),” insert “ 42A(3)(b), ”.
- (9) In section 53 (onward and reverse transfers: compensation), in subsection (1)—
- (a) before paragraph (a) insert—
 

“(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,” and

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- (b) after paragraph (d) insert—
- “(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A.”
- (10) In section 83 (supplemental), in subsection (2)(d)—
- (a) at the end of sub-paragraph (iii) insert “ and ”, and
- (b) for sub-paragraphs (iv) and (v) substitute—
- “(iv) is not subject to the restriction in section 29(3) that the securities issued by the bank were transferred under the original order (as defined in section 29(1)).”
- (11) In the Table in section 261 (index of defined terms), after the entry relating to “partial property transfer”, insert—

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“Private sector reverse property transfer instrument	42A
Private sector reverse share transfer instrument	26A”

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**Commencement Information**

**I2** [S. 97](#) in force at 1.4.2013 by [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

## 98 Property transfer instruments: property held on trust

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 34(7) (effect of property transfer instruments: provision in respect of property held on trust), in paragraph (a) omit “(which provision may remove or alter the terms of the trust)”.
- (3) At the end of section 34 insert—
- “(8) Provision under subsection (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank of England thinks it necessary or expedient for the purpose of transferring—
- (a) the legal or beneficial interest of the transferor in the property;
- (b) any powers, rights or obligations of the transferor in respect of the property.
- (9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument.”
- (4) In section 45 (temporary public ownership: property transfer orders) after subsection (5) insert—
- “(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”
- (5) In section 46 (temporary public ownership: reverse property transfer orders) after subsection (5) insert—

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“(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury.”

**Commencement Information**

**I3** S. 98 in force at 1.1.2015 by S.I. 2014/3323, art. 2

**99 Reports following exercise of a stabilisation power**

(1) After section 79 of the Banking Act 2009 insert—

**“79A Private sector purchaser: report**

- (1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2).”

(2) After section 81 of that Act insert—

**“81A Accounting information to be included in reports under sections 80 and 81**

- (1) A report under section 80(1) or 81 must include accounting information in respect of the bank or bridge bank that is the subject of the report.
  - (2) In this section “accounting information” means—
    - (a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or bridge bank as at the reporting date, and
    - (b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or bridge bank for the reporting period.
  - (3) In this section—
    - (a) “reporting period” means the period to which the report relates, and
    - (b) “reporting date” means the last day of the reporting period.”
- (3) In section 1(6) of that Act (table describing provisions of Part 1), in the entry relating to sections 76 to 81, for “81” substitute “ 81A ”.

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### Commencement Information

**I4** S. 99 in force at 1.1.2015 by S.I. 2014/3323, art. 2

## 100 Groups

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute—

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“Sections 81B to 83	Groups”.
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- (3) In section 20 (directors), after subsection (1) insert—
  - “(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.”
- (4) After section 36 insert—

### “36A Directors

- (1) A property transfer instrument may enable the Bank of England—
  - (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.”
- (5) For the italic heading before section 82 substitute “ *Groups* ”, and after that heading insert—

### “81B Sale to commercial purchaser and transfer to bridge bank

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—
  - (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of those systems,

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- (c) the protection of depositors, or
  - (d) the protection of any client assets that may be affected.
- (4) Condition 3 (which applies only in a financial assistance case) is that—
- (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.
- (5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult—
- (a) the Treasury,
  - (b) the PRA, and
  - (c) the FCA.
- (7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.
- (8) In this section “financial assistance case” means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

#### 81C Section 81B: supplemental

- (1) In the following provisions references to banks include references to banking group companies—
- (a) section 10(1), and
  - (b) section 75(5)(a).
- (2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

#### 81D Interpretation: “banking group company” &c.

- (1) In this Part “banking group company” means an undertaking—
- (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and
  - (b) in respect of which any conditions specified in an order made by the Treasury are met.



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- (2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.
  - (3) An order—
    - (a) is to be made by statutory instrument, and
    - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
  - (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
    - (a) the order may be made, and
    - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
  - (5) The lapse of an order under subsection (4)(b)—
    - (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
    - (b) does not prevent the making of a new order (in new terms).
  - (6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.
  - (7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act.”
- (6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert—

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“81D	Meaning of “banking group company”	Draft affirmative resolution (except for urgent cases)”
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- (7) In the Table in section 261 (index of defined terms), after the entry relating to “bank insolvency order” insert—

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“Banking group company	81D”.
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#### Commencement Information

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| <b>I5</b> | S. 100(1)(6)(7) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, art. 2(a)(c)       |
| <b>I6</b> | S. 100(1)(5)-(7) in force at 1.8.2014 in so far as not already in force by S.I. 2014/1847, art. 2 |
| <b>I7</b> | S. 100(2)-(4) in force at 1.8.2014 by S.I. 2014/1847, art. 2                                      |
| <b>I8</b> | S. 100(5) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, art. 2(b)                |

## 101 Application to investment firms

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert—

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“Section 89A Investment firms”.

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- (3) In section 2 (interpretation: “bank”), at the end insert—
- “(8) Section 89A applies this Part to investment firms with modifications.”
- (4) In section 75(5) (power to change law: application to other institutions), omit the “or” following paragraph (c) and after that paragraph insert—
- “(ca) to investment firms.”
- (5) After section 89 (and in Part 1) insert—

*“Investment firms*

**89A Application to investment firms**

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).
- (2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5).”
- (6) After section 159 insert—

**“159A Application to investment firms**

This Part applies to investment firms as it applies to banks.”

- (7) After section 258 insert—

**“258A Investment firm”**

- (1) In this Act “investment firm” means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive [2006/49/EC](#) on the capital adequacy of investment firms and credit institutions.
- (2) But “investment firm” does not include—
- (a) an institution which is also—
    - (i) a bank (within the meaning of Part 1),
    - (ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
    - (iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (b) an institution which is of a class or description specified in an order made by the Treasury.
- (3) An order—
- (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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- (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—
- (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
- (5) The lapse of an order under subsection (4)(b)—
- (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
  - (b) does not prevent the making of a new order (in new terms).
- (6) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.”
- (8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert—

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“258A	Meaning of “investment firm”	Draft affirmative resolution (except for urgent cases)”
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- (9) In the Table in section 261 (index of defined terms), after the entry relating to “inter-bank payment system”, insert—

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“Investment firm	258A”.
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- (10) In section 214B(1)(a) of FSMA 2000 (contribution to costs of special resolution regime) for “or credit union” substitute “, credit union or investment firm ”.

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**Commencement Information**

- I9** S. 101(1)(7)-(9) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(d)(f)**
- I10** S. 101(1)(5)(7)-(9) in force at 1.8.2014 in so far as not already in force by S.I. 2014/1847, **art. 2**
- I11** S. 101(2)-(4)(6)(10) in force at 1.8.2014 by S.I. 2014/1847, **art. 2**
- I12** S. 101(5) in force at 5.6.2014 for specified purposes by S.I. 2014/1447, **art. 2(e)**

**F1102 Application to UK clearing houses**

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**Textual Amendments**

- F1** S. 102 omitted (31.12.2023) by virtue of [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 11 para. 163\(5\)](#); S.I. 2023/1382, reg. 8(b)

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## F<sup>2</sup>103 State aid

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### Textual Amendments

- F2** S. 103 omitted (31.12.2020) by virtue of [The State Aid \(Revocations and Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1470\)](#), reg. 1(2), [Sch. 2 para. 2](#) (with Sch. 3)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)