
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Scottish and Northern Ireland Banknote Regulations 2009

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Scottish and Northern Ireland Banknote Regulations 2009 and shall come into force on 23rd November 2009.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Banking Act 2009;

“backing assets” means assets of a kind specified by regulation 6(2);

“Bank of England banknotes” means banknotes issued by the Bank of England;

“excluded banknote” has the meaning given by regulation 7(3);

“location” includes a vehicle;

“rules” means rules made by the Bank of England under these Regulations.

(2) For the purposes of these Regulations—

(a) a banknote is in circulation from the time that it is issued by an authorised bank until the time that it is returned to the bank;

(b) a banknote has the potential to enter circulation if the banknote is not—

(i) in circulation; or

(ii) an excluded banknote;

(c) a reference to the value of a banknote is a reference to the face value of the banknote.

PART 2

Bank of England

Rules

3.—(1) The Bank of England may, subject to the provisions of these Regulations, make rules about any aspect of the treatment, holding or issuing of banknotes by authorised banks.

(2) The Bank of England must make rules in respect of the matters referred to in regulations 6(2) (a), 7(1), 8(4)(b) and 11(1).

(3) The Bank of England must consult an authorised bank which is or may be affected by—

- (a) a proposed rule; or
 - (b) the proposed amendment or revocation of a rule.
- (4) Rules (including any rule amending or revoking a rule) may only be made with the approval of the Treasury.
- (5) Rules must be published by the Bank of England.

Bank of England approval

- 4.—(1) Where these Regulations confer a power of approval on the Bank of England, the Bank of England may grant approval subject to conditions.
- (2) The Bank of England may amend or revoke a condition to which an approval is subject.
 - (3) The Bank of England must consult an authorised bank which is or may be affected by—
 - (a) a proposed condition to which an approval may be subject;
 - (b) the proposed withdrawal of an approval; or
 - (c) the proposed amendment or revocation of a condition to which an approval is subject.
 - (4) An authorised bank must comply with any conditions to which an approval is subject.

Consultation before commencement of Regulations

5. Where the Bank of England is required by regulation 3(3), 4(3) or 7(5) to consult an authorised bank, the Bank of England may rely on consultation with the bank carried out before the coming into force of these Regulations.

PART 3

Requirements as to backing assets

Backing assets

- 6.—(1) An authorised bank must have backing assets in accordance with these Regulations and the rules.
- (2) The following kinds of assets are specified as backing assets—
 - (a) Bank of England banknotes of such denominations and series as are specified in the rules;
 - (b) current coins of the United Kingdom; and
 - (c) funds placed on deposit in sterling in an account held by the Bank of England and designated by the Bank of England for the purposes of this regulation.
 - (3) Backing assets in the form of Bank of England banknotes must be held either—
 - (a) by the Bank of England; or
 - (b) at one or more locations for the time being approved by the Bank of England for this purpose.
 - (4) Backing assets in the form of coins must be held at one or more locations for the time being approved by the Bank of England for this purpose.
 - (5) At least 60% of a bank's backing assets which are held by a bank in respect of its banknotes in circulation must consist of assets of the kinds specified in paragraph (2)(a) and (b).
 - (6) The rules may prohibit an authorised bank from maintaining more than a specified proportion of its backing assets—

- (a) in locations approved under paragraph (3)(b) or (4); or
 - (b) in the form of current coins of the United Kingdom.
- (7) The rules may specify requirements with which an authorised bank must comply where it—
- (a) places funds on deposit in an account designated under paragraph (2)(c); or
 - (b) holds backing assets in a location approved under paragraph (3)(b) or (4).
- (8) Rules may specify the procedure by which authorised banks may acquire or dispose of Bank of England banknotes and coins held as backing assets.

Value of backing assets to be held by an authorised bank

7.—(1) The rules must make provision for determining the value of backing assets which must be held by an authorised bank.

(2) Excluded banknotes are not to be taken into account for the purposes of any such determination.

(3) An excluded banknote is a banknote of an authorised bank which satisfies—

- (a) such requirements as the Bank of England may specify in the rules; and
- (b) such conditions as may be specified for the purposes of this regulation by the Bank of England in relation to the banknotes of the bank.

(4) The Bank of England may amend or revoke any condition relating to an authorised bank's banknotes.

(5) The Bank of England must consult an authorised bank before specifying a condition in relation to its banknotes under paragraph (3)(b), or amending or revoking such a condition under paragraph (4).

Interest on a designated account

8.—(1) The Bank of England must pay interest to an authorised bank on the funds held by the bank in an account designated under regulation 6(2)(c).

(2) If the amount of funds held by the bank in a designated account exceeds the qualifying limit, the Bank of England shall only be required to pay interest on an amount equal to the qualifying limit.

(3) For the purposes of this regulation, the qualifying limit is an amount equal to the total of—

- (a) 40% of the value of an authorised bank's banknotes in circulation; and
- (b) the value of the bank's banknotes with the potential to enter circulation.

(4) Interest shall be—

- (a) calculated on a daily basis at the rate paid on commercial bank reserves at the Bank of England; and
- (b) credited to the account at the end of such periods as are specified in the rules.

Ownership of, and interests in, backing assets

9.—(1) A bank's backing assets are—

- (a) assets of the bank; and
- (b) held for the purpose of protecting holders of banknotes of the bank in accordance with these Regulations and the rules.

(2) No person may have any interest in or right over the backing assets, except as provided in these Regulations.

PART 4

Requirements as to banknotes

Unissued banknotes

10.—(1) An authorised bank may only arrange for a person to hold its banknotes on its behalf otherwise than as bearer where that person is for the time being approved by the Bank of England for this purpose.

(2) The rules may specify requirements with which an authorised bank must comply where it arranges for a person to hold its banknotes on its behalf otherwise than as bearer.

Cessation of note issue

- 11.**—(1) The rules must set out the procedure which an authorised bank must follow if it—
- (a) intends to stop issuing banknotes; or
 - (b) loses the right to rely on section 213 of the Act (saving for existing issuers) by virtue of—
 - (i) a determination by the Treasury under section 223(1)(b) of the Act (termination of right to issue); or
 - (ii) section 223(5) of the Act (bank ceasing to have permission to carry on the regulated activity of accepting deposits).
- (2) Where an authorised bank stops issuing banknotes—
- (a) these Regulations and the rules shall continue to apply to the bank for a period of two years from the date on which it stops issuing banknotes; and
 - (b) the Bank of England must, by the end of that period, return to the bank any of the bank's backing assets which it still holds.
- (3) Rules under paragraph (1) may, in particular, specify—
- (a) in a case where an authorised bank intends to stop issuing banknotes, the period of notice which the bank must give to the Bank of England before it stops issuing banknotes;
 - (b) the arrangements which an authorised bank must make for the purpose of bringing the following matters to the attention of the public—
 - (i) the proposed cessation or termination of note issue;
 - (ii) the effect of the Regulations and rules ceasing to apply after a period of two years; and
 - (iii) the arrangements which an authorised bank must make for the purpose of removing its banknotes from circulation.

Temporary continuation of note issuing after cessation

12.—(1) The Bank of England may, with the consent of the Treasury, permit an authorised bank to issue banknotes for a transitional period of no more than six months after the bank loses the right to rely on section 213 of the Act by virtue of section 223(4) or (5) of the Act.

(2) The Bank of England may grant such permission before or after the bank loses the right to rely on section 213.

(3) Where the Bank of England permits a bank to issue banknotes under paragraph (1), the total value at any time during the transitional period of the bank's banknotes in circulation and with the potential to enter circulation must not exceed the value of the bank's backing assets at that time.

(4) The Bank of England may grant permission under paragraph (1) subject to conditions.

- (5) The Bank of England may, by giving reasonable notice to the bank—
- (a) withdraw permission under paragraph (1);
 - (b) amend or revoke a condition to which the permission is subject.

PART 5

Information

Provision of information to the Bank of England

13.—(1) The rules may require authorised banks to provide the Bank of England with such information as it may reasonably require for the purpose of—

- (a) exercising its functions under these Regulations or the rules; or
- (b) verifying or monitoring a bank's compliance with a provision of these Regulations or the rules.

(2) The rules may specify the period within which, and the form in which, the information is to be provided.

(3) No person may be required by rules made under paragraph (1) to supply information that the person could not be compelled to supply in evidence in civil proceedings in the High Court or, in Scotland, in the Court of Session.

Reports as to banknotes and backing assets

14.—(1) The rules may require an authorised bank to provide reports to the Bank of England in respect of its banknotes which—

- (a) are in circulation;
- (b) have the potential to enter circulation;
- (c) are excluded banknotes;
- (d) have been ordered from a printer;
- (e) are in the course of being printed;
- (f) have been printed;
- (g) have been destroyed; or
- (h) are being held on behalf of the bank otherwise than as bearer.

(2) The rules may require an authorised bank to provide reports to the Bank of England in respect of its backing assets.

(3) The rules may make provision—

- (a) for the frequency with which such reports must be provided and the period to which they must relate; and
- (b) for the reports to include an estimate of the value of any description of banknotes or backing assets, and the method by which such an estimate is to be obtained.

Independent reports

15.—(1) The rules may require an authorised bank to provide the Bank of England with a report by an independent auditor on—

- (a) the accuracy of the information or reports provided in accordance with rules made under regulations 13 and 14; and
 - (b) the adequacy of the methods used by the bank to calculate or obtain the information or compile the reports.
- (2) The rules may require an authorised bank to provide the Bank of England with a report on any matter about which the Bank of England has required or may require the provision of information or a report under rules made under regulation 13 or 14.
- (3) A report under rules made under paragraph (2) must be made by a person who—
- (a) is nominated or approved by the Bank of England; and
 - (b) appears to the Bank of England to have the skills necessary to make a report on the matter concerned.
- (4) A report under rules made under paragraph (1) or (2) must—
- (a) relate to such period as may be specified either in the rules or by notice by the Bank of England to the authorised bank; and
 - (b) satisfy such other requirements as may be specified in the rules.

Publication or disclosure by Bank of England of enforcement action

- 16.—(1) The Bank of England may publish or disclose details of—
- (a) anything done in contravention of Part 6 of the Act (Banknotes: Scotland and Northern Ireland) or these Regulations or the rules;
 - (b) any action taken under—
 - (i) section 221 (offence: unlawful issue), 223 or 224 (application to court) of the Act, or
 - (ii) regulation 33 of, or Schedule 3 to, these Regulations,
 and may include details of the reason for the action and its result.
- (2) But the Bank of England must not publish details of any action taken under section 223 of the Act, regulation 33 or Schedule 3—
- (a) before the end of a period of 3 months beginning with the relevant date; or
 - (b) until any judicial review brought by the authorised bank in respect of that action has been determined.
- (3) For the purposes of paragraph (2)(a), the relevant date is—
- (a) in a case where action has been taken under regulation 33 or Schedule 3, the date when the Bank of England has completed the process set out in the statement of policy published by it in accordance with paragraph 5(a) of Schedule 3;
 - (b) in a case where the Treasury has determined for the purposes of section 223(1)(b) of the Act that an authorised bank should no longer be permitted to issue banknotes in reliance on section 213 of the Act, the date when the bank receives the notice referred to in section 223(4) of the Act.

Permitted publication or disclosure of information

- 17.—(1) Information provided to the Bank of England in accordance with the rules may be published or disclosed by—
- (a) the Bank of England, or any officer or servant of it; or
 - (b) any person obtaining the information directly or indirectly from the Bank of England,
- in any of the circumstances mentioned in paragraph (2).

- (2) The circumstances referred to in paragraph (1) are—
- (a) the authorised bank has given its consent to the publication or disclosure;
 - (b) the information has been made available to the public from another source;
 - (c) the information is in the form of a summary or collection of information so framed as not to enable information relating to a particular authorised bank to be ascertained from it;
 - (d) the publication or disclosure is made for the purpose of enabling or assisting the Bank of England to discharge its functions under these Regulations;
 - (e) the disclosure is made with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings;
 - (f) the disclosure is made with a view to the enforcement of any civil penalty imposed under regulation 33;
 - (g) the publication or disclosure is made in pursuance of any Community obligation;
 - (h) the disclosure is made to the Treasury or the Financial Services Authority, and the Bank of England considers that the disclosure would assist the Treasury or Financial Services Authority in the discharge of their functions under the Financial Services and Markets Act 2000(1) or, in the case of the Treasury, under the Act or these Regulations.
- (3) The Treasury or the Financial Services Authority may, for the purpose of assisting them in the discharge of their functions under the Financial Services and Markets Act 2000 or, in the case of the Treasury, under the Act or these Regulations, publish or disclose information obtained by them under paragraph (2)(h).

Annual report by Bank of England

- 18.**—(1) At least once a year the Bank of England must publish a report on the discharge of its functions under these Regulations.
- (2) The Bank of England must send a copy of each such report to the Treasury.

PART 6

Insolvency

Interpretation

- 19.**—(1) In this Part—
- “appointed insolvency practitioner” means an insolvency practitioner or similar office holder appointed in respect of an insolvent bank for the purposes of an insolvency process;
- “insolvency process” means—
- (a) liquidation;
 - (b) bank insolvency;
 - (c) the appointment of a provisional liquidator;
 - (d) the appointment of a provisional bank liquidator;
 - (e) administration;
 - (f) bank administration;
 - (g) the appointment of a provisional bank administrator;

(1) 2000 c.8.

- (h) receivership;
- (i) a composition between a bank and its creditors;
- (j) a scheme of arrangement of a bank's affairs; and
- (k) the processes specified in Part 1 of Schedule 2;

“insolvent bank” means an authorised bank which has entered an insolvency process;

“note exchange programme” means the arrangements made by the Bank of England for the purposes of regulation 21(1);

“noteholder” means a person holding banknotes of an insolvent bank;

“protected period” means the duration of the note exchange programme.

- (2) In this Part, a reference to a noteholder's claim is a reference to a claim which is—
- (a) by a noteholder against an insolvent bank; and
 - (b) for the payment of the total amount of money recorded as payable on the banknotes issued by that bank of which the noteholder is bearer.

Notification of insolvency

20. An authorised bank must notify the Bank of England without delay if it is, or is likely to be, unable to pay its debts as they fall due.

Note exchange programme

21.—(1) The Bank of England must make arrangements in relation to an insolvent bank to ensure that—

- (a) noteholders may exchange the banknotes giving rise to their claims for an equal value of banknotes, coins or funds of such other bank as the Bank of England may specify; and
 - (b) the insolvent bank's backing assets are applied for the purpose of satisfying noteholders' claims.
- (2) The reference to another bank in paragraph (1)(a) includes a reference to the Bank of England.
- (3) The Bank of England shall have the right, for the purpose of such arrangements, to—
- (a) take immediate control of the insolvent bank's backing assets;
 - (b) exchange backing assets for other assets, and require the insolvent bank to hold those other assets as backing assets;
 - (c) transfer the backing assets to noteholders in satisfaction of their claims;
 - (d) satisfy the claims of noteholders with banknotes, coins or other funds belonging to the Bank of England and obtain reimbursement from the backing assets.

Rights of noteholders

22.—(1) The noteholders in respect of an insolvent bank shall, during the protected period, have the right to have the bank's backing assets applied solely for the purpose of satisfying their claims.

(2) The right referred to in paragraph (1) may only be exercised by a noteholder by participating in a note exchange programme.

- (3) At the end of the protected period, the right referred to in paragraph (1) shall cease.

Backing assets

23.—(1) During the protected period, the Bank of England may issue directions in relation to the insolvent bank's backing assets, with which the bank must comply.

- (2) An insolvent bank's backing assets shall—
- (a) be excluded from any insolvency process; and
 - (b) during the protected period, be used solely for the purpose of satisfying noteholders' claims by means of the note exchange programme.
- (3) At the end of the protected period—
- (a) paragraph (2)(a) and regulation 9(1)(b) and (2) shall cease to apply to any remaining backing assets; and
 - (b) any remaining backing assets under the control of the Bank of England shall be returned to the insolvent bank or the appointed insolvency practitioner.

Note exchange programme: commencement and duration

24.—(1) The Bank of England must determine the date on which a note exchange programme commences, which must be after the authorised bank has entered an insolvency process.

(2) Subject to regulation 11(2)(a), a note exchange programme shall continue for a period of one year, or for such longer period as the Treasury may determine after consulting the Bank of England.

(3) The Bank of England must make such arrangements as it considers appropriate for ensuring that the commencement of a note exchange programme and any extension by the Treasury of its duration are brought to the attention of the noteholders, the insolvent bank and any appointed insolvency practitioner.

Unissued banknotes

25.—(1) During the protected period—

- (a) the Bank of England shall have the right to take immediate control of the banknotes of the insolvent bank which have not been issued;
- (b) the Bank of England may issue directions in relation to the insolvent bank's unissued banknotes, with which the bank must comply.

(2) All other claims to or interests in such banknotes shall be extinguished on the commencement of the protected period or, if the Bank of England has granted the bank permission under regulation 27(1) to issue notes for a transitional period, at the end of that transitional period.

Rules relating to a note exchange programme and destruction of banknotes

26.—(1) The rules may make provision for the implementation of a note exchange programme and for the collection and destruction of an authorised bank's banknotes.

(2) In particular, the rules may specify—

- (a) the procedure which noteholders must follow in order to make their claims;
- (b) requirements with which an authorised bank must comply;
- (c) assistance and information which an authorised bank must provide; and
- (d) permissions or consents which an authorised bank must grant to the Bank of England or a person acting on its behalf.

Temporary continuation of note issuing after insolvency

27.—(1) The Bank of England may, with the consent of the Treasury, permit an authorised bank to issue banknotes for a transitional period of no more than six months after the bank loses the right to rely on section 213 of the Act by virtue of section 220(5) of the Act.

(2) The Bank of England may grant such permission before or after the bank loses the right to rely on section 213.

(3) Where the Bank of England permits a bank to issue banknotes under paragraph (1), the total value at any time during the transitional period of the bank's banknotes in circulation and with the potential to enter circulation must not exceed the value of the bank's backing assets at that time.

(4) The Bank of England may grant permission under paragraph (1) subject to conditions.

(5) The Bank of England may, by giving reasonable notice to the insolvent bank—

(a) withdraw permission under paragraph (1);

(b) amend or revoke a condition to which the permission is subject.

Notes issued after loss of note issuing rights

28.—(1) This regulation applies where any banknotes are issued by an insolvent bank—

(a) after it loses the right to rely on section 213 of the Act by virtue of section 220(5) or 223(5) of the Act; and

(b) without the permission of the Bank of England under regulation 27(1).

(2) The holders of any such banknotes may participate in a note exchange programme despite the matters referred to in paragraph (1)(a) and (b).

Modification of law of insolvency

29. Schedule 1, which contains modifications to the law of insolvency as it applies in relation to an authorised bank, has effect.

Processes serving a similar purpose to insolvency

30. For the purposes of section 217(6)(h) of the Act (backing assets), the processes in the Republic of Ireland set out in Part 1 of Schedule 2 serve a similar purpose to the processes listed in section 217(6)(a) to (g).

Laws serving a similar purpose to Part 4 of the Financial Services and Markets Act 2000

31. For the purposes of section 223(6) of the Act, the provision of the law of the Republic of Ireland referred to in Part 2 of Schedule 2 serves a similar purpose to Part 4 of the Financial Services and Markets Act 2000 (permission to carry on regulated activities).

PART 7

Enforcement

Court orders

32. The Bank of England may apply to the High Court or the Court of Session for—

(a) relief in respect of failure to comply with these Regulations or with the rules; or

- (b) an order designed to ensure, or facilitate monitoring of, compliance with a provision of these Regulations or the rules.

Penalties

33.—(1) Where the Bank of England is satisfied that an authorised bank has failed to comply with any provision of these Regulations or of the rules, it may impose a penalty on the bank.

(2) Schedule 3 contains supplementary provisions in relation to the imposition of penalties under this regulation.

Date

Signature
Two of the Lords Commissioners of Her
Majesty's Treasury