

# **BANKING (SPECIAL PROVISIONS) ACT 2008**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON CLAUSES AND SCHEDULES**

#### *Transfer of securities*

#### *Section 5: Compensation for securities transferred*

21. Subsection (1) requires the Treasury to make a scheme for determining either#
  - the amount of any compensation payable by the Treasury to those who held securities immediately before they were transferred to the public sector by an order under section 3, or
  - the amount of any consideration payable by the transferee to those who held securities transferred to the private sector under section 3, or
  - in relation to an order under section 3 that transfers securities to both the public and private sector, the amount of any compensation payable by the Treasury and the private sector transferee respectively.
22. Subsection (2) requires the Treasury to make provision, by order, for determining the amount of any compensation to be payable to those whose rights are extinguished under an order under section 4 (rights to subscribe to, or otherwise acquire, those securities of the deposit-taker or its subsidiaries). Compensation is payable by the Treasury in a transfer to the public sector and by the transferee in a transfer to the private sector. The order must make provision for determining the amount of any compensation payable by the Treasury or the private sector transferee where the relevant section 3 order transfers securities to both of them.
23. The Treasury may also provide for compensation of any other persons whose rights are affected by virtue of any provision made under section 3 or 4 (subsection (3)).
24. Subsection (4) sets out certain assumptions for determining the amount of any compensation payable by the Treasury. The assumptions are that all financial assistance provided by the Bank of England or the Treasury has been withdrawn; and that no further public financial assistance would be provided to the deposit-taker (apart from ordinary market assistance from the Bank on its usual terms). Any announcement by the Treasury that they would, if necessary, put guarantee arrangements in place would also be disregarded. These assumptions ensure that any value that is dependent on the public support provided to the deposit-taker is disregarded when compensation is determined. (Section 9(2) enables the order to provide for further assumptions to be made in connection with the assessment of compensation).
25. An order must be made under section 5 within three months of the transfer to which it relates, although a second or subsequent order may be made after the end of that period (subsections (8) and (9)).