



# Banking Act 2009

## 2009 CHAPTER 1

An Act to make provision about banking.

[12th February 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### SPECIAL RESOLUTION REGIME

##### Modifications etc. (not altering text)

- C1 Pt. 1 restricted (7.1.2010) by [Banking Act 2009 \(Exclusion of Insurers\) Order 2010 \(S.I. 2010/35\)](#), arts. 1, 2
- C2 Pt. 1: power to amend conferred (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), ss. 17(3)(f), 148(5); S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2

### [<sup>F1</sup>CHAPTER 1

#### INTRODUCTION]

##### Textual Amendments

- F1 Pt. 1 Ch. 1 formed from ss. 1-3 (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 3

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## 1 Overview

- (1) The purpose of the special resolution regime for banks is to address the situation where all or part of the business of a bank has encountered, or is likely to encounter, financial difficulties.
- (2) The special resolution regime consists of—
  - (a) the [<sup>F2</sup>five] stabilisation options,
  - (b) the bank insolvency procedure (provided by Part 2), and
  - (c) the bank administration procedure (provided by Part 3).
- [<sup>F3</sup>(3) The [<sup>F4</sup>five] “stabilisation options” are—
  - (a) transfer to a private sector purchaser (section 11),
  - (b) transfer to a bridge bank (section 12),
  - [<sup>F5</sup>(ba) transfer to an asset management vehicle (section 12ZA),]
  - (c) the bail-in option (section 12A), and
  - (d) transfer to temporary public ownership (section 13).]
- (4) Each of the [<sup>F6</sup>five] stabilisation options is achieved through the exercise of one or more of the “stabilisation powers”, which are—
  - [<sup>F7</sup>(za) the resolution instrument powers (sections 12A(2) and 48U to 48W),]
  - (a) the share transfer powers (sections 15, 16, 26 to 31 and 85), and
  - (b) the property transfer powers (sections 33[<sup>F8</sup>, 41A] and 42 to 46).
  - [<sup>F9</sup>(c) the third country instrument powers (sections 89H to 89J).]
- (5) Each of the following has a role in the operation of the special resolution regime—
  - (a) the Bank of England,
  - (b) the Treasury,
  - [<sup>F10</sup>(c) the Prudential Regulation Authority, and
  - (d) the Financial Conduct Authority.]
- (6) The Table describes the provisions of this Part.

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<b>Sections</b>	<b>Topic</b>
Sections 1 to 3	Introduction
[ <sup>F11</sup> Sections 3A and 3B]	[ <sup>F11</sup> Pre-resolution powers]
Sections 4 to 6	Objectives and code
[ <sup>F11</sup> Sections 6A to 6D]	[ <sup>F11</sup> Mandatory write-down, conversion etc of capital instruments]
[ <sup>F11</sup> Section 6E]	[ <sup>F11</sup> Valuation before mandatory write-down or stabilisation action]
Sections 7 to 10	Exercise of powers: general
Sections 11 to 13	The stabilisation options
Sections 14 to 32	Transfer of securities
Sections 33 to [ <sup>F12</sup> 48A]	Transfer of property
[ <sup>F11</sup> Sections 48B to 48W]	[ <sup>F11</sup> Bail-in option]

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[ <sup>F11</sup> Sections 48X and 48Y]	[ <sup>F11</sup> Replacement of provisional valuation]
[ <sup>F11</sup> Section 48Z]	[ <sup>F11</sup> Termination rights etc]
Sections 49 to 62	Compensation
[ <sup>F11</sup> Section 62A]	[ <sup>F11</sup> Independent valuer]
[ <sup>F11</sup> Sections 62B to 62E]	[ <sup>F11</sup> Resolution administrator]
Sections 63 to 75	Incidental functions
Sections 76 to [ <sup>F13</sup> 81A]	Treasury
[ <sup>F14</sup> Sections 81B to 83]	[ <sup>F14</sup> Groups]
[ <sup>F11</sup> Sections 83ZA to 83Z2]	[ <sup>F11</sup> Information and enforcement]
[ <sup>F15</sup> Section 83A]	[ <sup>F15</sup> Banks not regulated by the PRA]
Sections 84 to 89	Building societies, &c.
[ <sup>F16</sup> Section 89A]	[ <sup>F16</sup> Investment firms]
[ <sup>F17</sup> Sections 89B to 89G]	[ <sup>F18</sup> Recognised central counterparties]
[ <sup>F11</sup> Sections 89H to 89J]	[ <sup>F11</sup> Third-country resolution actions]

#### Textual Amendments

- F2** Word in s. 1(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(2)**
- F3** S. 1(3) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 12\(3\)](#); S.I. 2014/3160, art. 2(1)(b)
- F4** Word in s. 1(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(3)(a)**
- F5** S. 1(3)(ba) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(3)(b)**
- F6** Word in s. 1(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(4)(a)**
- F7** S. 1(4)(za) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 12\(4\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F8** Word in s. 1(4)(b) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 12\(4\)\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F9** S. 1(4)(c) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(4)(b)**
- F10** S. 1(5)(c)(d) substituted for s. 1(5)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 2\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F11** Words in s. 1(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **4(5)**
- F12** Word in s. 1(6) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), s. 26(1)(l), [Sch. 2 para. 40](#)
- F13** Word in s. 1(6) substituted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 99\(3\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/3323, art. 2
- F14** Words in s 1(6) substituted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 100\(2\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/1847, art. 2
- F15** Words in s. 1(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 2\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

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- F16** Words in s 1(6) inserted (1.8.2014) by Financial Services Act 2012 (c. 21), **ss. 101(2), 122(3)** (with Sch. 20); S.I. 2014/1847, art. 2
- F17** Words in s 1(6) inserted (1.8.2014) by Financial Services Act 2012 (c. 21), **ss. 102(2), 122(3)** (with Sch. 20); S.I. 2014/1847, art. 2
- F18** Words in Act substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **25(2)** (with regs. 52-58)

#### Commencement Information

- II** S. 1 in force at 21.2.2009 by S.I. 2009/296, art. 3, **Sch. para. 1**

## 2 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under [<sup>F19</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include—
- (a) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979 [<sup>F20</sup>or a credit union within the meaning of Article 2(2) of the Credit Unions (Northern Ireland) Order 1985], or
  - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) Where a stabilisation power is exercised in respect of a bank, it does not cease to be a bank for the purposes of this Part if it later loses the permission referred to in subsection (1).
- (5) An order under subsection (2)(c)—
- (a) shall 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.
- (6) Section 84 applies this Part to building societies with modifications.
- (7) Section 89 allows the application of this Part to credit unions.
- [<sup>F21</sup>(8) Section 89A applies this Part to investment firms with modifications.]
- [<sup>F22</sup>(9) Section 89B applies this Part to [<sup>F18</sup>recognised central counterparties] with modifications.]

#### Textual Amendments

- F18** Words in Act substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **25(2)** (with regs. 52-58)
- F19** Words in s. 2 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 3** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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- F20** Words in s. 2(2)(b) inserted (31.3.2012) by [The Financial Services and Markets Act 2000 \(Permissions, Transitional Provisions and Consequential Amendments\) \(Northern Ireland Credit Unions\) Order 2011 \(S.I. 2011/2832\)](#), arts. 2(c), **12(2)**
- F21** S. 2(8) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 101(3)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2
- F22** S. 2(9) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 102(3)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2

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#### Commencement Information

- I2** S. 2 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**
- I3** S. 2 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

### 3 Interpretation: other expressions

[<sup>F23</sup>(1)] In this Part—

[<sup>F24</sup>“Additional Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 52(1) of the capital requirements regulation (or which qualify as Additional Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),]

[<sup>F24</sup>“the capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms,]

[<sup>F25</sup>“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),]

[<sup>F24</sup>“Common Equity Tier 1 instruments” means capital instruments that meet the conditions laid down in Article 28(1) to (4), 29(1) to (5) or 31(1) of the capital requirements regulation (or which qualify as Common Equity Tier 1 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),]

[<sup>F24</sup>“critical functions”, subject to subsection (2), means activities, services or operations the discontinuance of which is likely in one or more EEA states—

- (a) to lead to the disruption of services that are essential to the economy, or
- (b) to disrupt financial stability,

due to the size, market share, external and internal connectedness, complexity or cross-border activities of a bank or a group which includes a bank (with particular regard to the substitutability of those activities, services or operations),;]

[<sup>F24</sup>“eligible liabilities”, of an undertaking, means liabilities and capital instruments that—

- (a) do not qualify as Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments, of the bank, and
- (b) are not excluded liabilities listed in section 48B(8),]

[<sup>F24</sup>“extraordinary public financial support” has the meaning given in Article 2.1(28) of the recovery and resolution directive;]

[<sup>F26</sup>“the PRA” means the Prudential Regulation Authority,

“the FCA” means the Financial Conduct Authority, and]

“financial assistance” has the meaning given by section 257.

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[<sup>F24</sup>“own funds” means own funds as defined in Article 4.1(118) of the capital requirements regulation (read with Title I of Part Ten of that regulation),]

[<sup>F24</sup>“own funds requirements” means the requirements laid down in Articles 92 to 98 of the capital requirements regulation (read with Title I of Part Ten of that regulation),]

[<sup>F24</sup>“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms,]

[<sup>F24</sup>“relevant capital instruments” means Additional Tier 1 instruments and Tier 2 instruments,]

[<sup>F24</sup>“Tier 2 instruments” means capital instruments or subordinated loans that meet the conditions laid down in Article 63 of the capital requirements regulation (or which qualify as Tier 2 instruments by virtue of Chapter 2 of Title I of Part Ten of that regulation),]

[<sup>F27</sup>(2) For the purposes of the definition of “critical functions” in subsection (1)—

- (a) a delegated act adopted by virtue of Article 2(2) of the recovery and resolution directive applies as it applies for the purposes of the definition of “critical functions” in Article 2(2) of that directive, and
- (b) “group” means a parent undertaking within the meaning given by Article 4.1(15)(a) of the capital requirements regulation and its subsidiaries within the meaning given by Article 4.1(16) of that regulation.]

#### Textual Amendments

- F23** S. 3(1): s. 3 renumbered as s. 3(1) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 5(2)
- F24** Words in s. 3(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 5(2)
- F25** Words in s. 3 inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), ss. 96(2), 122(3) (with Sch. 20); [S.I. 2014/3323](#), art. 2
- F26** Words in s. 3 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 4](#) (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- F27** S. 3(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 5(3)

#### Commencement Information

- I4** S. 3 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## [<sup>F28</sup>CHAPTER 2

### PRE-RESOLUTION POWERS OF THE BANK OF ENGLAND

#### Textual Amendments

- F28** Pt. 1 Ch. 2 inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 6

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### 3A. Removal of impediments to the exercise of stabilisation powers etc

- (1) In this section “relevant person” means—
- (a) an institution authorised for the purpose of the Financial Services and Markets Act 2000 by the PRA or FCA,
  - (b) a parent of such an institution which—
    - (i) is a financial holding company or a mixed financial holding company; and
    - (ii) is established in, or formed under the law of any part of, the United Kingdom, or
  - (c) a subsidiary of such an institution or of such a parent which—
    - (i) is a financial institution authorised by the PRA or FCA, and
    - (ii) is established in, or formed under the law of any part of, the United Kingdom.
- (2) The Bank of England may give directions to a relevant person requiring that person to take measures which, in the opinion of the Bank of England, are required to address impediments to—
- (a) the effective exercise of the stabilisation powers, or
  - (b) the winding up of that person (whether by use of the bank insolvency procedure provided for under Part 2 of this Act or otherwise).
- (3) The power conferred by subsection (2) includes a power to direct a relevant person—
- (a) to amend a group financial support agreement;
  - (b) where there is no such agreement, to review the need to enter into one;
  - (c) to enter into an agreement for the provision of services relating to the provision of critical functions;
  - (d) to limit that person’s maximum individual and aggregate exposures (with “exposure” for this purpose having the meaning given in the capital requirements regulation);
  - (e) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank of England;
  - (f) to dispose of specified assets;
  - (g) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
  - (h) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
  - (i) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions—
    - (i) to change its legal or operational structure, or
    - (ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
  - (j) to establish a financial holding company which is not a subsidiary of an institution, another financial holding company or a mixed financial holding company.
- (4) The Bank of England may give directions to a relevant person requiring that person—

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- (a) to maintain a minimum requirement for own funds and eligible liabilities expressed as a percentage of the total own funds and liabilities of the relevant person, and
  - (b) for the purposes of paragraph (a), to—
    - (i) maintain particular kinds of eligible liabilities, or
    - (ii) issue particular kinds of eligible liabilities or take other specified steps.
- (5) Under subsection (4), the Bank may, in particular, direct a relevant person to endeavour to re-negotiate any eligible liability or relevant capital instruments issued by that person, for the purpose of ensuring that any decision by the Bank to write down or convert the liability or instrument concerned would have effect under the law which governs that liability or instrument.
- (6) The Bank may give directions to a relevant MAHC requiring it to establish a separate financial holding company as a parent of an institution for the purpose of—
- (a) facilitating the exercise of the stabilisation powers, or
  - (b) ensuring that the exercise of a stabilisation power does not have an adverse effect on the non-financial part of the group of the relevant MAHC.
- (7) Directions under this section—
- (a) must be in writing, and
  - (b) may be given with general effect or with respect to a particular relevant person or class of relevant persons.
- (8) In this section—
- “financial holding company” has the meaning given by Article 4.1(20) of the capital requirements regulation;
  - “financial institution” has the meaning given by Article 4.1(26) of the capital requirements regulation;
  - “group” has the meaning given in section 3(2)(b);
  - “group financial support agreement” has the meaning given by section 192JB(4) of the Financial Services and Markets Act 2000;
  - “institution” (except in the phrase “financial institution”) means a bank or investment firm;
  - “mixed financial holding company” has the meaning given by Article 4.1(21) of the capital requirements regulation;
  - “parent” means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006;
  - “relevant MAHC” means a mixed activity holding company (within the meaning given by Article 4.1(22) of the capital requirements regulation) which has at least one subsidiary which—
    - (a) is an institution, and
    - (b) is not a subsidiary of a financial holding company which is also a subsidiary of the mixed activity holding company; and
  - “subsidiary” means a subsidiary undertaking within the meaning given by section 1162 of the Companies Act 2006.



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### **3B. Safeguards relating to directions under section 3A**

- (1) A direction given to a relevant person under section 3A must be accompanied by a notice which—
  - (a) states when the direction takes effect (see subsections (2) and (3)),
  - (b) gives the Bank of England’s reasons for giving the direction, and,
  - (c) specifies a reasonable period within which the relevant person may make representations to the Bank about the direction.
- (2) The direction may, if the Bank of England reasonably considers it necessary, take effect—
  - (a) immediately it is given to the relevant person, or
  - (b) on a later date specified in the direction.
- (3) In any other case the direction takes effect when—
  - (a) it has been confirmed by a notice under subsection (5), and
  - (b) the period during which the direction may be referred to the Upper Tribunal (under subsection (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal’s determination, has been finally disposed of.
- (4) Where representations are made by the relevant person within the period specified under subsection (1)(c), the Bank must, within a reasonable period, consider those representations and decide—
  - (a) whether to confirm or revoke the direction, and
  - (b) if the direction is revoked, whether to give a different direction.
- (5) The Bank must—
  - (a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and
  - (b) if representations are made, give the relevant person written notice of its decision under subsection (4).
- (6) If the relevant person is aggrieved by the confirmation of the direction, that person may refer the matter to the Upper Tribunal.
- (7) A notice under subsection (5)(a) or (b) confirming the direction must—
  - (a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and
  - (b) indicate the procedure on such a reference.
- (8) A notice given under subsection (5)(b) of a decision by the Bank to give a different direction must comply with subsection (1).
- (9) The Bank must prepare one or more statements of its policy with respect to the giving of directions under section 3A.
- (10) No power conferred by section 3A may be exercised before the statement of policy in relation to the exercise of that power has been published.]

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## [<sup>F29</sup>CHAPTER 3

### SPECIAL RESOLUTION ACTION]

#### Textual Amendments

**F29** Pt. 1 Ch. 3 formed from ss. 4-83 (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 7

#### *Objectives and code*

#### 4 Special resolution objectives

- (1) This section sets out the special resolution objectives.
- (2) The relevant authorities shall have regard to the special resolution objectives in using, or considering the use of—
  - (a) the stabilisation powers,
  - (b) the bank insolvency procedure, or
  - (c) the bank administration procedure.
- (3) For the purpose of this section the relevant authorities are—
  - (a) the Treasury,
  - [<sup>F30</sup>(b) the PRA,
  - (ba) the FCA, and]
  - (c) the Bank of England.
- [<sup>F31</sup>(3A) Objective 1 is to ensure the continuity of banking services in the United Kingdom and of critical functions.
- (4) Objective 2 is to protect and enhance the stability of the financial system of the United Kingdom, including in particular by—
  - (a) preventing contagion (including contagion to market infrastructures such as investment exchanges, clearing houses and central counterparties authorised in accordance with Article 14, or recognised in accordance with Article 25, of Regulation (EU) 648/2012 of the European Parliament and the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories), and
  - (b) maintaining market discipline.
- (5) Objective 3 is to protect and enhance public confidence in the stability of the financial system of the United Kingdom.
- (6) Objective 4 is to protect public funds, including by minimising reliance on extraordinary public financial support.
- (7) Objective 5 is to protect—
  - (a) investors to the extent that they have investments covered by an investor compensation scheme under [Directive 97/9/EC](#) of the European Parliament and of the Council, and
  - (b) depositors to the extent that they have deposits covered by the Financial Services Compensation Scheme or a deposit guarantee scheme under

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[Directive 94/19/EC](#) or Directive 2014/49/EU of the European Parliament and of the Council.

- (8) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.
- (9) Objective 7 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).]
- (10) The order in which the objectives are listed in this section is not significant; they are to be balanced as appropriate in each case.

#### Textual Amendments

- F30** S. 4(3)(b)(ba) substituted for s. 4(3)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 5](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F31** S. 4(3A)-(9) substituted for s. 4(4)-(9) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 8\(2\)](#)

#### Commencement Information

- I5** S. 4 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

## 5 Code of practice

- [<sup>F32</sup>(1) The Treasury shall issue a code of practice about—
- (a) the discharge of the duty imposed by section 6B (mandatory write-down, conversion etc of capital instruments), and
  - (b) the use of—
    - (i) the stabilisation powers,
    - (ii) the bank insolvency procedure, and
    - (iii) the bank administration procedure.]
- (2) The code may, in particular, provide guidance on—
- (a) how the special resolution objectives are to be understood and achieved,
  - (b) the choice between different options,
  - (c) the information to be provided in the course of a consultation under this Part,
  - (d) the giving of advice by one relevant authority to another about whether, when and how the stabilisation powers are to be used,
  - (e) how to determine whether Condition 2 in section 7 is met,
  - (f) how to determine whether [<sup>F33</sup>tests for the use of the stabilisation powers in sections 8 and 8ZA are] satisfied,
  - (g) sections 63 and 66, and
  - (h) compensation.
- (3) Sections 12[<sup>F34</sup>, 12ZA] and 13 require the inclusion in the code of certain matters about bridge banks[<sup>F35</sup>, asset management vehicles] and temporary public ownership.
- (4) The relevant authorities shall have regard to the code.
- (5) For the purpose of this section the relevant authorities are—
- (a) the Treasury,
  - [<sup>F36</sup>(b) the PRA,

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- (ba) the FCA, and]
- (c) the Bank of England.

#### Textual Amendments

- F32** S. 5(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **9(2)**
- F33** Words in s. 5(2)(f) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **9(3)**
- F34** Words in s. 5(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **9(4)(a)**
- F35** Words in s. 5(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **9(4)(b)**
- F36** S. 5(5)(b)(ba) substituted for s. 5(5)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 6** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Commencement Information

- I6** S. 5 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I7** S. 5 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 6 Code of practice: procedure

<sup>F37</sup>(1) .....

<sup>F38</sup>(2) .....

(3) The Treasury may revise and re-issue the code of practice.

[<sup>F39</sup>(4) Before re-issuing the code of practice the Treasury must consult—

- (a) the PRA,
- (b) the FCA,
- (c) the Bank of England, and
- (d) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).

(5) As soon as is reasonably practicable after re-issuing the code of practice the Treasury shall lay a copy before Parliament.]

#### Textual Amendments

- F37** S. 6(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 7(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F38** S. 6(2) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 7(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F39** S. 6(4)(5) substituted for s. 6(4) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 7(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Commencement Information

- I8** S. 6 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I9** S. 6 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

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*F<sup>40</sup>* Mandatory write-down, conversion etc of capital instruments

**Textual Amendments**

**F40** Ss. 6A-6D and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **10**

**6A. Cases where mandatory write-down, conversion, etc applies**

- (1) Section 6B applies in relation to a bank in the cases set out in subsections (2) to (6).
- (2) Case 1 is where—
  - (a) the conditions imposed by sections 7 to 9 on the exercise of a stabilisation power in respect of the bank are met,
  - (b) the Bank of England or the Treasury (as the case may be) has decided to exercise the power, and
  - (c) section 12AA (mandatory write-down etc in bail-in cases) does not apply.
- (3) Case 2 is where—
  - (a) the PRA is satisfied that Condition 1 in section 7 is met in respect of the bank, and
  - (b) the Bank of England is satisfied that—
    - (i) (ignoring section 6B) Condition 2 in section 7 is met, and
    - (ii) that Condition will continue to be met unless the action required by section 6B is taken in respect of the bank.
- (4) Case 3 is where—
  - (a) the bank is viable,
  - (b) it is a subsidiary,
  - (c) relevant capital instruments issued by it are recognised for the purpose of meeting own funds requirements on an individual basis and on a consolidated basis, and
  - (d) the appropriate authority of the EEA state in which the consolidating supervisor is situated and the Bank of England make a joint determination in accordance with Article 59.3(c) of the recovery and resolution directive that the group of which the bank is a member will not be viable unless the action required by section 6B is taken in relation to those instruments.
- (5) Case 4 is where—
  - (a) the bank is a parent undertaking,
  - (b) relevant capital instruments issued by the bank are recognised for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking or on a consolidated basis, and
  - (c) the Bank of England makes a determination that the group will not be viable unless the action required by section 6B is taken in relation to those instruments.
- (6) Case 5 is where—
  - (a) extraordinary public financial support is required by the bank other than in circumstances where subsection (5E) of section 7 applies by virtue of paragraph (c) of that subsection, and

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- (b) the Bank of England is satisfied, on the basis of the valuation carried out in accordance with section 6E, that, in order for the bank to fulfil its own funds requirements, relevant capital instruments of the bank need to be written down or converted into Common Equity Tier 1 instruments (or both).
- (7) For the purposes of Case 3, the bank is viable unless—
- (a) the PRA is satisfied that the bank is failing or likely to fail (within the meaning of section 7(5C)), and
  - (b) having regard to timing and other relevant circumstances, the Bank of England is satisfied that it is not reasonably likely that (ignoring section 6B and the stabilisation powers) action will be taken by or in respect of the bank that will result in the bank no longer being a bank which is failing or likely to fail.
- (8) For the purposes of Cases 3 and 4 a group is not viable if (and only if)—
- (a) the consolidating supervisor is satisfied that a requirement under the capital requirements regulation that applies, on a consolidated basis, to a bank which is a member of the group is infringed (or will in the near future be infringed) in a way that justifies action by the consolidating supervisor, and
  - (b) having regard to timing and other relevant circumstances (but ignoring section 6B and the stabilisation powers), it is not reasonably likely that action will be taken by or in respect of the bank that will prevent the requirement being infringed.
- (9) In this section—
- “appropriate authority” means the authority authorised, under the law of the EEA state mentioned in paragraph (d) of subsection (4), to enter into the joint determination mentioned in that paragraph,
  - “consolidated basis” has the meaning given by Article 2.1(7) of the recovery and resolution directive,
  - “consolidating supervisor” means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation,
  - “group” has the meaning given in section 3(2)(b),
  - “parent undertaking” has the meaning given by Article 4.1(15)(a) of the capital requirements regulation, and
  - “subsidiary” has the meaning given by Article 4.1(16) of the capital requirements regulation.

## **6B. Mandatory write-down, conversion, etc of capital instruments**

- (1) In a case where this section applies, the Bank of England must without delay make—
- (a) an instrument in relation to the bank containing the mandatory reduction provision, or
  - (b) two or more instruments which (taken together) contain that provision.

An instrument made under this subsection is a “mandatory reduction instrument”.

- (2) “The mandatory reduction provision” is provision which produces the following results—
- (a) existing Common Equity Tier 1 instruments of the bank are cancelled, transferred or diluted in accordance with the principle that losses should be borne first by the holders of such instruments,

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- (b) the principal amount of Additional Tier 1 instruments of the bank is reduced or such instruments are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—
    - (i) to the extent required to achieve the special resolution objectives set out in section 4, or
    - (ii) to the extent of the capacity of the relevant capital instruments, whichever is lower; and
  - (c) the principal amount of Tier 2 instruments is reduced or Tier 2 instruments are converted (directly or indirectly) into Common Equity Tier 1 instruments (or both)—
    - (i) to the extent required to achieve the special resolution objectives set out in section 4 (so far as not achieved under paragraph (b)), or
    - (ii) to the extent of the capacity of the relevant capital instruments, whichever is lower.
- (3) For the purposes of subsection (2), a mandatory reduction instrument may contain—
- (a) provision cancelling existing Common Equity Tier 1 instruments of the bank,
  - (b) provision transferring (directly or indirectly), to holders of Additional Tier 1 instruments or Tier 2 instruments of the bank, Common Equity Tier 1 instruments of the bank,
  - (c) provision converting relevant capital instruments of the bank (directly or indirectly) into Common Equity Tier 1 instruments of the bank or a parent undertaking of the bank,
  - (d) provision cancelling a liability owed by the bank,
  - (e) provision modifying, or changing the form of, a liability owed by the bank,
  - (f) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.
- (4) The following rules apply to the interpretation of subsection (3)—
- A. The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.
  - B. The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.
  - C. The reference to changing the form of a liability owed by the bank includes, for example—
    - (i) converting an instrument under which the bank owed a liability from one form or class to another,
    - (ii) replacing such an instrument with another instrument of a different form or class, or
    - (iii) creating a new security (of any form or class) in connection with the modification of such an instrument.
- (5) Provision made by virtue of subsection (3) may include—
- (a) provision for securities issued by a specified bank to be transferred to a resolution administrator (see section 62B) or another person;
  - (b) where a previous mandatory reduction instrument (“the original instrument”) has contained provision under paragraph (a), provision for the transfer of—
    - (i) securities which were transferred by the original instrument, or

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- (ii) securities which were issued by the bank after the original instrument was made.
- (6) Provision made in accordance with subsection (5) may relate to—
  - (a) specified securities, or
  - (b) securities of a specified description.
- (7) Where the Bank of England has exercised the power in subsection (5)(a) to transfer securities to a resolution administrator, the Bank must exercise its functions under this Part with a view to ensuring that any securities held by that person in the capacity of resolution administrator are so held only for so long as is, in the Bank of England's opinion, appropriate having regard to the special resolution objectives.
- (8) Where Case 1 in section 6A applies, the Bank must comply with subsection (1) before or at the same time as exercising the stabilisation power.
- (9) Where Case 3 in section 6A applies, the principal amount of a relevant capital instrument issued by the bank must not be reduced under this section to a greater extent, or converted on worse terms, than equally ranked capital instruments at the level of any parent undertaking of the bank which are reduced, or converted, pursuant to Article 59 of the recovery and resolution directive or in the course of applying the bail-in tool provided for by that directive.
- (10) In this section “parent undertaking” has the meaning given by Article 4.1(15)(a) of the capital requirements regulation.

**6C. Mandatory reduction instruments: implementation of requirements of section 6B**

- (1) Where the principal amount of a relevant capital instrument is reduced under section 6B—
  - (a) the reduction must be permanent, subject to any provision made by virtue of section 48Y(1)(a);
  - (b) no liability to the holder of the relevant capital instrument remains under, or in connection with, so much of the amount of the instrument as constitutes the reduction, except for—
    - (i) any liability already accrued in a case where the principal amount of the instrument is not reduced or converted (or both) to the full extent of its capacity, and
    - (ii) any liability for damages that may arise as a result of any challenge to the legality of the exercise of the power of reduction;
  - (c) no compensation is to be paid to any holder of the relevant capital instrument other than in accordance with subsection (4).
- (2) Nothing in subsection (1)(b) prevents the provision of Common Equity Tier 1 instruments to a holder of relevant capital instruments in accordance with subsection (4).
- (3) In order to effect a conversion of relevant capital instruments under section 6B, the Bank of England may require the bank, or a UK parent undertaking, to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments.
- (4) The relevant capital instruments may only be so converted if—



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- (a) the Common Equity Tier 1 instruments are issued by the bank, or by a parent undertaking of the bank with the agreement of the resolution authority in respect of that parent undertaking,
  - (b) the Common Equity Tier 1 instruments are issued prior to the issue of any shares by the bank, or by a parent undertaking of the bank, for the purposes of provision of own funds by the State or a government entity,
  - (c) the Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power, and
  - (d) the conversion rate that determines the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with—
    - (i) the principles set out in Article 50 of the recovery and resolution directive, and
    - (ii) any guidelines issued by the European Banking Authority under Article 50(4) of the resolution and recovery directive, other than any guidelines which the Bank of England has notified the Authority it does not intend to comply with.
- (5) For the purposes of the provision of Common Equity Tier 1 instruments in accordance with subsections (2), (3) and (4), the Bank of England may require the bank or a UK parent undertaking of the bank to maintain at all times the necessary prior authorisation to issue the relevant number of Common Equity Tier 1 instruments.
- (6) Before making a mandatory reduction instrument, the Bank must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) In this section—
- “parent undertaking” has the meaning given by Article 4.1(15)(a) of the capital requirements regulation,
  - “resolution authority” has the meaning given by Article 2.1(18) of the recovery and resolution directive,
  - “UK parent undertaking” means a parent undertaking that is incorporated in, or formed under the law of, any part of the United Kingdom.

#### **6D. Mandatory reduction instruments: supplementary matters**

- (1) The following provisions apply in relation to a mandatory reduction instrument as they apply to a resolution instrument—
- (a) section 48L(3) and (5) (powers relating to securities issued by the bank),
  - (b) section 48O (power to direct directors of the bank),
  - (c) section 48Q (continuity),
  - (d) section 48R (execution and registration of instruments etc),
  - (e) section 48S (general matters), and
  - (f) section 48T (procedure).
- (2) Where the Bank of England makes one or more mandatory reduction instruments in respect of a bank, the Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—
- (a) the exercise of the power to make a mandatory reduction instrument,

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- (b) the activities of the bank, and
  - (c) any other matters in relation to the bank that the Treasury may specify.
- (3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.]

*<sup>F41</sup>Valuation before mandatory write-down of capital or stabilisation action*

#### Textual Amendments

**F41** S. 6E and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **11**

#### **6E. Pre-resolution valuation**

- (1) Before the Bank of England makes a mandatory reduction instrument or exercises any stabilisation power in respect of a bank, it must ensure that the assets and liabilities of the bank are valued.
- (2) Unless subsection (3) applies, the Bank of England must arrange for the appointment of an independent valuer in accordance with section 62A to carry out a valuation for the purposes of subsection (1).
- (3) Where the Bank of England considers that the urgency of the case makes it appropriate to make a mandatory reduction instrument, or exercise a stabilisation power, before a valuation can be carried out by a person appointed in accordance with subsection (2), the Bank may carry out a provisional valuation of the assets and liabilities of the bank for the purposes of subsection (1).
- (4) The purpose of a valuation carried out pursuant to subsection (1) is to—
  - (a) inform the decision as to—
    - (i) whether the conditions for the making of a mandatory reduction instrument or the exercise of a stabilisation power is satisfied,
    - (ii) which stabilisation option should be employed,
    - (iii) the extent to which any shares, capital instruments or eligible liabilities should be cancelled, diluted, transferred, written down or converted through the use of a mandatory reduction instrument or a resolution instrument,
    - (iv) what assets, liabilities or securities (if any) are to be transferred by a property transfer instrument or a share transfer instrument, and
    - (v) the value of any consideration to be paid to the bank or the owners of the securities for any assets, liabilities or securities so transferred, and
  - (b) ensure that the full extent of any losses on the assets of that bank is appreciated at the time the Bank of England makes a mandatory reduction instrument or exercises a stabilisation power.
- (5) In carrying out a valuation required under subsection (1), the person carrying out the valuation must—

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- (a) make prudent assumptions as to possible rates of default and the severity of losses suffered by the bank,
  - (b) disregard potential financial assistance which may be provided by the Bank of England or the Treasury after the Bank has made any mandatory reduction instrument or exercised any stabilisation power (except for ordinary market assistance offered by the Bank on its usual terms),
  - (c) take account of the fact that—
    - (i) the Bank of England and the Treasury may recover expenses incurred in connection with the exercise of a stabilisation power under section 58(2)(b),
    - (ii) the Bank of England and the Treasury may charge interest or fees in respect of any loans or guarantees provided to the bank after the Bank has made any mandatory reduction instrument or exercised any stabilisation power in respect of it.
- (6) The valuation carried out under this section must follow the methodology specified in regulatory technical standards adopted by the European Commission under article 36.16 of the recovery and resolution directive.
- (7) A valuation under subsection (1) must be accompanied by—
- (a) a balance sheet of the bank as at the date of the valuation,
  - (b) a report on the financial position of the bank,
  - (c) an analysis and an estimate of the accounting value of the assets of the bank,
  - (d) a list of the outstanding liabilities of the bank (including any off-balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would receive in insolvency proceedings, and
  - (e) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the bank went into insolvent liquidation.
- (8) Where appropriate, the information in subsection (7)(c) may be supplemented by an analysis and estimate of the value of the assets and liabilities of the bank on a market value basis in order to inform the decision referred to in paragraph (a)(iv) or (v) of subsection (4).
- (9) Where a provisional valuation is carried out under subsection (3), the Bank need only comply with subsection (7) as far as it is reasonable to do so in the circumstances.
- (10) A provisional valuation carried out under subsection (1) must make provision in respect of additional losses by the bank in accordance with regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive.]

#### *Exercise of powers: general*

### **7 General conditions**

- [<sup>F42</sup>(1) A stabilisation power may be exercised in respect of a bank only if—
- (a) the PRA is satisfied that Condition 1 is met, and
  - (b) the Bank of England is satisfied that Conditions 2, 3 and 4 are met.
- (2) Condition 1 is that the bank is failing or likely to fail.

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- (3) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will result in Condition 1 ceasing to be met.
- (4) Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.
- (5) Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the bank (whether under Part 2 or otherwise).
- (5A) The PRA must treat Condition 1 as met if satisfied that it would be met but for financial assistance provided by—
- (a) the Treasury, or
  - (b) the Bank of England,
- disregarding ordinary market assistance offered by the Bank on its usual terms.
- (5B) The Bank of England must treat Condition 2 as met if satisfied that it would be met but for financial assistance of the kind mentioned in subsection (5A).
- (5C) For the purposes of Condition 1, a bank is failing or likely to fail if—
- (a) it is failing, or is likely to fail, to satisfy the threshold conditions in circumstances where that failure would justify the variation or cancellation by the PRA under section 55J of the Financial Services and Markets Act 2000 of the bank's permission under Part 4A of that Act to carry on one or more regulated activities,
  - (b) the value of the assets of the bank determined in accordance with the valuation carried out for the purposes of section 6E(1) is less than the amount of its liabilities as so determined,
  - (c) the bank is unable to pay its debts or other liabilities as they fall due,
  - (d) one or more of paragraphs (a) to (c) will, in the near future, apply to the bank, or
  - (e) extraordinary public financial support is required in respect of the bank and subsection (5E) does not apply to that support.
- (5D) “The threshold conditions” means the threshold conditions, as defined by subsection (1) of section 55B of the Financial Services and Markets Act 2000, for which the PRA is treated as responsible under subsection (2) of that section.
- (5E) This subsection applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary public financial support takes any of the following forms—
- (a) a State guarantee to back liquidity facilities provided by central banks,
  - (b) a State guarantee of newly issued liabilities,
  - (c) an injection of own funds, or purchase of capital instruments, at prices and on terms that do not confer an advantage upon the bank, where none of the circumstances referred to in subsection (5C)(a), (b), (c) or (d) are present at the time the public support is granted and none of Cases 1 to 4 in section 6A apply.
- (5F) Before determining that Condition 1 is met, the PRA must consult the Bank of England.

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- (5G) Before determining whether or not Condition 2 is met, the Bank of England must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (5H) Before determining that Conditions 3 and 4 are met, the Bank must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.]
- (6) The special resolution objectives are not relevant to Conditions 1 and 2.
- (7) The conditions for applying for and making a bank insolvency order are set out in sections 96 and 97.
- (8) The conditions for applying for and making a bank administration order are set out in sections 143 and 144.

#### Textual Amendments

**F42** S. 7(1)-(5H) substituted for s. 7(1)-(5) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **12**

#### Commencement Information

**I10** S. 7 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

### [<sup>F43</sup>7A. Effect on other group members, financial stability in EUetc

- (1) Where the Bank of England is considering the imposition of a requirement under section 3A(2), (4)(b)(ii), (5) or (6), the Bank must consult the PRA and the FCA, and have regard to the potential impact of the requirement on—
- (a) the institution in question,
  - (b) the market for financial services within the EEA, and
  - (c) the financial stability of the European Union or of the EEA states.
- (2) Where the Bank of England is considering the exercise of a stabilisation power in respect of a bank which is a member of a group, the Bank must have regard to—
- (a) the need to minimise the effect of the exercise of the power on other undertakings in the same group,
  - (b) the need to minimise any adverse effects on the financial stability of the European Union or of the EEA states (particularly those EEA states in which any member of that group is operating), and
  - (c) the potential effect of the exercise of the power on the financial stability of third countries (particularly those third countries in which any member of that group is operating).
- (3) In this section “group” has the meaning given by section 474 of the Companies Act 2006.]

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#### Textual Amendments

**F43** S. 7A inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **13**

### [<sup>F44</sup>8 **Specific Condition: private sector purchaser, bridge bank or asset management vehicle**

- (1) In a financial assistance case, the Bank may exercise a stabilisation power in respect of the bank concerned in accordance with section 11(2), 12(2) or 12ZA(3) only with the approval of the Treasury.
- (2) “Financial assistance case” means a case where the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.
- (3) The condition in this section is in addition to the conditions in sections 7 and 8ZA.]

#### Textual Amendments

**F44** S. 8 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **14**

### [<sup>F45</sup>8ZA. **Specific conditions: asset management vehicle**

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 12ZA(3) only if satisfied that Conditions A and B are met.
- (2) Condition A is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the bank, or a company which is a banking group company in relation to the bank, otherwise than for the purposes of the third stabilisation option.
- (3) Condition B is that the Bank of England is satisfied that—
  - (a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,
  - (b) the transfer is necessary to ensure the proper functioning of the bank or bridge bank from which the transfer is to be made, or
  - (c) the transfer is necessary to maximise the proceeds available for distribution.
- (4) Before determining whether Conditions A and B are met, and if so how to react, the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.

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- (5) “Normal insolvency proceedings” has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure).
- (6) The conditions in this section are in addition to the conditions in sections 7 and 8.]

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**Textual Amendments**

**F45** S. 8ZA inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **15**

**F46** **8A** **Specific condition: bail-in**

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**Textual Amendments**

**F46** S. 8A omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **16**

**9** **Specific conditions: temporary public ownership**

- (1) The Treasury may exercise a stabilisation power in respect of a bank in accordance with section 13(2) only if satisfied that one of the following conditions is met.
- (2) Condition A is that the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial systems of the United Kingdom.
- (3) Condition B is that exercise of the power is necessary to protect the public interest, where the Treasury have provided financial assistance in respect of the bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom [<sup>F47</sup>or the Bank of England has provided extraordinary public financial support in respect of the bank].
- (4) Before determining whether a condition is met the Treasury must consult—
  - [<sup>F48</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (5) The conditions in this section are in addition to the conditions in section 7.

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**Textual Amendments**

**F47** Words in s. 9(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **17**

**F48** S. 9(4)(a)(aa) substituted for s. 9(4)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 10](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

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**Commencement Information**

**I11** S. 9 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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## 10 Banking Liaison Panel

- (1) The Treasury shall make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—
  - (a) banks,
  - (b) persons with whom banks do business, and
  - (c) the financial markets.
- (2) In particular, the panel may advise the Treasury about—
  - (a) the exercise of powers to make statutory instruments under or by virtue of this Part, Part 2 or Part 3 (excluding the stabilisation powers, compensation scheme orders, resolution fund orders, third party compensation orders and orders under section 75(2)(b) and (c)),
  - (b) the code of practice under section 5, and
  - (c) anything else referred to the panel by the Treasury.
- (3) The Treasury shall ensure that the panel includes—
  - (a) a member appointed by the Treasury,
  - (b) a member appointed by the Bank of England,
  - [<sup>F49</sup>(c) a member appointed by the PRA,
  - (ca) a member appointed by the FCA,]
  - (d) a member appointed by the scheme manager of the Financial Services Compensation Scheme,
  - (e) one or more persons who in the Treasury's opinion represent the interests of banks,
  - (f) one or more persons who in the Treasury's opinion have expertise in law relating to the financial systems of the United Kingdom, and
  - (g) one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

### Textual Amendments

- F49** S. 10(3)(c)(ca) substituted for s. 10(3)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 11](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### Commencement Information

- I12** S. 10 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I13** S. 10 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## *The stabilisation options*

## 11 Private sector purchaser

- (1) The first stabilisation option is to sell all or part of the business of the bank to a commercial purchaser.
- (2) For that purpose the Bank of England may make—
  - (a) one or more share transfer instruments;
  - (b) one or more property transfer instruments.



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### Commencement Information

**I14** S. 11 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

## 12 Bridge bank

(1) The second stabilisation option is to transfer all or part of the business of the bank to a company which [<sup>F50</sup>meets the requirements of subsection (1A)] (a “bridge bank”).

[<sup>F51</sup>(1A) Those requirements are that the company—

- (a) is wholly or partially owned by the Bank of England,
- (b) is controlled by the Bank, and
- (c) is created for the purposes of receiving a transfer by virtue of this section with a view to maintaining access to critical functions and (in due course) selling the bank or its business.

(2) For the purpose of subsection (1) the Bank of England may make—

- (a) one or more share transfer instruments;
- (b) one or more property transfer instruments.]

(3) The code of practice under section 5 must include provision about the management and control of bridge banks including, in particular, provision about—

- (a) setting objectives,
- (b) the content of the articles of association,
- (c) the content of reports under section 80(1),
- (d) different arrangements for management and control at different stages, and
- (e) eventual disposal.

[<sup>F52</sup>(3A) Where—

- (a) all or substantially all of the bridge bank’s assets, rights and liabilities have been transferred to a third party, or
- (b) following a transfer to the bridge bank under this section, no further transfer to the bridge bank is made under this section during the relevant post-transfer period,

the Bank of England must, without delay, take all necessary steps to wind up the bridge bank.

(3B) But subsection (3A)(b) does not apply if the bridge bank—

- (a) has merged with another entity,
- (b) has ceased to meet the requirements of subsection (1A)(a) or (b), or
- (c) has already been wound up.

(3C) “The relevant post-transfer period” means the period of two years beginning with the day of the transfer mentioned in subsection (3A)(a), subject to any extension under subsection (3D).

(3D) The Bank of England may extend (or further extend) the relevant post-transfer period by one year if it is satisfied that the extension—

- (a) would support one or more of the outcomes mentioned in subsection (3A)(a) or (3B)(a), (b) or (c), or
- (b) is necessary to ensure the continuity of essential banking or financial services.]

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- (4) Where property, rights or liabilities are first transferred by property transfer instrument to a bridge bank and later transferred (whether or not by the exercise of a power under this Part) to another company which [<sup>F53</sup>meets the requirements of subsection (1A)], that other company is an “onward bridge bank”.
- (5) An onward bridge bank—
- (a) is a bridge bank for the purposes of—
    - [<sup>F54</sup>(i) subsections (3) to (3B),
    - (ia) section 8ZA(3)(b),
    - (ib) section 12ZA(1)(b) and (2)(c),]
    - (ii) section 77,
    - (iii) section 79, and
    - (iv) section 80(5), but
  - (b) is not a bridge bank for the purposes of—
    - (i) section 30(1),
    - (ii) section 43(1), or
    - (iii) section 80(1).

#### Textual Amendments

- F50** Words in s. 12(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **18(2)**
- F51** S. 12(1A)(2) substituted for s. 12(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **18(3)**
- F52** S. 12(3A)-(3D) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **18(4)**
- F53** Words in s. 12(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **18(5)**
- F54** S. 12(5)(a)(i)-(ib) substituted for s. 12(5)(a)(i) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **18(6)**

#### Commencement Information

- I15** S. 12 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I16** S. 12 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

### [<sup>F55</sup>12ZAAsset management vehicle

- (1) The third stabilisation option is to transfer all or part of the business of—
- (a) the bank, or
  - (b) a bridge bank to which shares or property, rights or liabilities of the bank have been transferred under section 12,
- to an asset management vehicle.
- (2) An “asset management vehicle” is an undertaking which—
- (a) is wholly or partially owned (directly or indirectly) by the Bank of England or the Treasury,
  - (b) is controlled by the Bank of England, and
  - (c) is created for the purpose of receiving some or all of the assets, rights and liabilities of one or more banks or of one or more bridge banks (or both).

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- (3) For the purpose of subsection (1) the Bank of England may make one or more property transfer instruments.
- (4) An asset management vehicle must manage the assets transferred to it with a view to maximising their value through eventual sale or orderly wind down.
- (5) The code of practice under section 5 must include provision about the management and control of asset management vehicles including, in particular, provision about—
  - (a) setting objectives,
  - (b) the content of the articles of association,
  - (c) the content of reports under section 80(1),
  - (d) different arrangements for management and control at different stages, and
  - (e) eventual disposal.
- (6) Where property, rights or liabilities are transferred to an asset management vehicle pursuant to the third stabilisation option, the Bank of England may make one or more supplemental property transfer instruments transferring any of that property, or those rights or liabilities, to one or more other asset management vehicles.]

#### Textual Amendments

**F55** S. 12ZA inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 19

#### [<sup>F56</sup>12A Bail-in option

- (1) The [<sup>F57</sup>fourth] stabilisation option is exercised by the use of the power in subsection (2).
- [<sup>F58</sup>(2) The Bank of England may make one or more resolution instruments.
- (2A) A resolution instrument may contain provision or proposals of any kind mentioned in subsections (3) to (6).
- (2B) The power in subsection (2) must be exercised in accordance with section 12AA.
- (2C) When the Bank of England exercise that power, at least one resolution instrument must include provision under section 48H(1) (business reorganisation plan).]
- (3) A resolution instrument may—
  - (a) make special bail-in provision with respect to a specified bank;
  - (b) make other provision for the purposes of, or in connection with, any special bail-in provision made by that or another instrument.
- (4) A resolution instrument may—
  - (a) provide for securities issued by a specified bank to be transferred to a [<sup>F59</sup>resolution administrator (see section 62B)] or another person;
  - (b) make other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another resolution instrument or otherwise).

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- (5) A resolution instrument may set out proposals with regard to the future ownership of a specified bank or of the business of a specified bank, and any other proposals (for example, proposals about making special bail-in provision) that the Bank of England may think appropriate.
- (6) A resolution instrument may make any other provision the Bank of England may think it appropriate to make in exercise of specific powers under this Part.
- (7) Provision made in accordance with subsection (4) may relate to—
  - (a) specified securities, or
  - (b) securities of a specified description.
- (8) Where the Bank of England has exercised the power in subsection (4) to transfer securities to a [<sup>F60</sup>resolution administrator], the Bank of England must exercise its functions under this Part (see, in particular, section 48V) with a view to ensuring that any securities held by a person in the capacity of a [<sup>F60</sup>resolution administrator] are so held only for so long as is, in the Bank of England's opinion, appropriate having regard to the special resolution objectives.
- (9) References in this Part to “special bail-in provision” are to provision made in reliance on section 48B.]

#### Textual Amendments

- F56** Ss. 12A, 12B inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 2](#); [S.I. 2014/3160](#), art. 2(1)(b)
- F57** Word in s. 12A(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [20\(2\)](#)
- F58** Ss. 12A(2)-(2C) substituted for s. 12A(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [20\(3\)](#)
- F59** Words in s. 12A(4)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [20\(4\)](#)
- F60** Words in s. 12A(8) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [20\(5\)](#)

#### [<sup>F61</sup>12AA] **Bail-in: sequence of write-down and conversion of capital instruments and liabilities**

- (1) When the Bank of England exercises the fourth stabilisation option, it must use the powers conferred by sections 12A, 48B to 48W and 48Z and this section in a way which ensures that—
  - (a) existing Common Equity Tier 1 instruments of the bank are cancelled, transferred or diluted in accordance with the principle that losses should be borne first by the holders of such instruments,
  - (b) the principal amount of Additional Tier 1 instruments is reduced or converted (directly or indirectly) into Common Equity Tier 1 instruments (or both), to the extent of the capacity of the Additional Tier 1 instruments,
  - (c) the principal amount of Tier 2 instruments is reduced or converted (directly or indirectly) into Common Equity Tier 1 instruments (or both), to the extent of the capacity of the Tier 2 instruments,

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- (d) where the total of any reduction or conversion pursuant to paragraphs (b) and (c) is less than the shortfall amount, the principal amount of subordinated debt that is not within either of those paragraphs is—
    - (i) reduced or converted (directly or indirectly) into shares or other securities, or both reduced and so converted, in accordance with the hierarchy of claims in normal insolvency proceedings, by the difference or to the extent of the capacity of those instruments, whichever is lower, and
    - (ii) losses are born by the holders of shares of the bank that are not within paragraph (a), (b) or (c) in accordance with the hierarchy of claims in normal insolvency proceedings,
  - (e) where the total of any reduction or conversion pursuant to paragraphs (b), (c) and (d), and any reduction or conversion pursuant to subsection (6), is less than the shortfall amount, the principal amount of, or outstanding amount payable in respect of, the remaining eligible liabilities is reduced or converted (directly or indirectly) into shares or other securities, or both reduced and so converted, in accordance with the hierarchy of claims in normal insolvency proceedings, by the difference or to the extent of their capacity, whichever is lower.
- (2) In this section—
- “normal insolvency proceedings” has the meaning given by Article 2.1(47) of the resolution and recovery directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure),
  - “the shortfall amount” means the sum of the amounts referred to in Article 47.3(b) and (c) of the resolution and recovery directive.
- (3) Subsections (1) to (4) of section 6C apply for the purpose of this section as if references in those subsections to section 6B were references to subsection (1)(a) to (c) of this section.
- (4) When complying with subsection (1)(d) and (e), the Bank of England must allocate the losses represented by the shortfall amount equally between eligible liabilities of the same rank by reducing the principal amount of, or outstanding amount payable in respect of, those eligible liabilities to the same extent in proportion to their value, except where a different allocation of losses amongst liabilities of the same rank is allowed by virtue of section 48B(10) and (11).
- (5) Subsection (4) does not prevent excluded liabilities (as defined by section 48B(7A)) from receiving more favourable treatment than eligible liabilities which are of the same rank in normal insolvency proceedings.
- (6) The Bank may take the action required by subsection (1)(e) only if it converts or reduces the principal amount of any instruments referred to in subsection (1)(d) which contain—
- (a) terms that provide for the principal amount of the instrument to be reduced on the occurrence of any event that refers to the financial situation, solvency or levels of own funds of the bank, or
  - (b) terms that provide for the conversion of the instruments to shares on the occurrence of any such event,
- in accordance with those terms.
- (7) Where the principal amount of an instrument has been reduced, but not to zero, in accordance with terms of the kind referred to in subsection (6)(a) before the application

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of the bail-in option, the Bank must take the action required by subsection (1) in relation to the residual amount of that principal.

- (8) When taking the action required by subsection (1), the Bank must not convert or reduce one class of liabilities while a class of liabilities that is subordinated to that class remains substantially unconverted or the principal amount of those liabilities is not reduced to nil.
- (9) For the purpose of subsection (8), excluded liabilities within the meaning of section 48B(7A) are to be ignored.
- (10) For the purposes of this section “existing” Common Equity Tier 1 instruments includes Common Equity Tier 1 instruments issued or conferred in the following circumstances—
- (a) pursuant to conversion of debt instruments to Common Equity Tier 1 instruments in accordance with contractual terms of the original debt instruments on the occurrence of an event that preceded, or occurred at the same time as, the assessment by the Bank of England that the bank met the conditions in section 7;
  - (b) pursuant to any previous conversion of relevant capital instruments to Common Equity Tier 1 instruments in accordance with section 6B.]

#### Textual Amendments

**F61** S. 12AA inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **21**

### <sup>F62</sup>12B Bail-in administrators

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#### Textual Amendments

**F62** S. 12B omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **22**

### 13 Temporary public ownership

- (1) The [<sup>F63</sup>fifth] stabilisation option is to take the bank into temporary public ownership.
- (2) For that purpose the Treasury may make one or more share transfer orders in which the transferee is—
  - (a) a nominee of the Treasury, or
  - (b) a company wholly owned by the Treasury.
- (3) The code of practice under section 5 must include provision about the management of banks taken into temporary public ownership under this section.

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#### Textual Amendments

**F63** Word in s. 13(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **23**

#### Commencement Information

**I17** S. 13 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I18** S. 13 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

### *Transfer of securities*

#### 14 Interpretation: “securities”

- (1) In this Part “securities” includes anything falling within any of the following classes.
- (2) Class 1: shares and stock.
- (3) Class 2: debentures, including—
  - (a) debenture stock,
  - (b) loan stock,
  - (c) bonds,
  - (d) certificates of deposit, and
  - (e) any other instrument creating or acknowledging a debt.
- (4) Class 3: warrants or other instruments that entitle the holder to acquire anything in Class 1 or 2.
- (5) Class 4: rights which—
  - (a) are granted by a deposit-taker, and
  - (b) form part of the deposit-taker's own funds for the purposes of [<sup>F64</sup>Title 1 of Part 2 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council.]

#### Textual Amendments

**F64** Words in s. 14(5)(b) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 45(2)**

#### Commencement Information

**I19** S. 14 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

#### 15 Share transfer instrument

- (1) A share transfer instrument is an instrument which—
  - (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

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- (2) A share transfer instrument may relate to—
- (a) specified securities, or
  - (b) securities of a specified description.

**Commencement Information**

**I20** S. 15 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

**16 Share transfer order**

- (1) A share transfer order is an order which—
- (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that order, by another share transfer order or otherwise).
- (2) A share transfer order may relate to—
- (a) specified securities, or
  - (b) securities of a specified description.

**Commencement Information**

**I21** S. 16 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

**I22** S. 16 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

**17 Effect**

- (1) In this section “transfer” means a transfer provided for by a share transfer instrument or order<sup>F65</sup>, by a mandatory reduction instrument<sup>F66</sup> or by a resolution instrument].
- (2) A transfer takes effect by virtue of the instrument or order (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A share transfer instrument or order<sup>F67</sup>, a mandatory reduction instrument<sup>F68</sup> or a resolution instrument] may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).
- (6) A share transfer instrument or order<sup>F69</sup>, a mandatory reduction instrument<sup>F70</sup> or a resolution instrument] may extinguish rights to acquire securities falling within Class 1 or 2 in section 14.



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### Textual Amendments

- F65** Words in s. 17(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **24(2)**
- F66** Words in s. 17(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 14(a)**; S.I. 2014/3160, art. 2(1)(b)
- F67** Words in s. 17(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **24(3)**
- F68** Words in s. 17(5) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 14(b)**; S.I. 2014/3160, art. 2(1)(b)
- F69** Words in s. 17(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **24(4)**
- F70** Words in s. 17(6) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 14(c)**; S.I. 2014/3160, art. 2(1)(b)

### Commencement Information

- I23** S. 17 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I24** S. 17 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 18 Continuity

- (1) A share transfer instrument or order may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
  - (2) A share transfer instrument or order may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
  - (3) A share transfer instrument or order may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
  - (4) A share transfer instrument or order may modify references (express or implied) in an instrument or document to a transferor.
  - (5) A share transfer instrument or order may require or permit—
    - (a) a transferor to provide a transferee with information and assistance;
    - (b) a transferee to provide a transferor with information and assistance.
- [<sup>F71</sup>(5A) This section applies to a mandatory reduction instrument as it applies to a share transfer instrument; and in relation to a mandatory reduction instrument references in this section to a “transfer” are to a transfer of securities (whether made by that or another mandatory reduction instrument) and “transferor” and “transferee” are to be read accordingly.]
- [<sup>F72</sup>(6) This section applies to a resolution instrument as it applies to a share transfer instrument; and in relation to a resolution instrument references in this section to a “transfer” are to a transfer of securities (whether made by that or another resolution instrument) and “transferor” and “transferee” are to be read accordingly.]

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#### Textual Amendments

- F71** S. 18(5A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **25**
- F72** S. 18(6) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 15**; [S.I. 2014/3160](#), art. 2(1)(b)

#### Commencement Information

- I25** S. 18 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I26** S. 18 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 19 Conversion and delisting

- (1) A share transfer instrument or order may provide for securities to be converted from one form or class to another.
- (2) A share transfer instrument or order may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000, to be discontinued [<sup>F73</sup>or suspended].
- [<sup>F74</sup>(3) Where the listing of securities is suspended in accordance with a share transfer instrument or order, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000 as still being listed.]

#### Textual Amendments

- F73** Words in s. 19(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **26(2)**
- F74** S. 19(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **26(3)**

#### Commencement Information

- I27** S. 19 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I28** S. 19 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 20 Directors [<sup>F75</sup>and senior managers]

- (1) A share transfer instrument may enable the Bank of England—
- (a) to remove a director [<sup>F76</sup>or senior manager] of a specified bank;
  - (b) to vary the service contract of a director [<sup>F76</sup>or senior manager] of a specified bank;
  - (c) to terminate the service contract of a director [<sup>F76</sup>or senior manager] of a specified bank;
  - (d) to appoint a director [<sup>F76</sup>or senior manager] of a specified bank.
- [<sup>F77</sup>(1A) Subsection (1) also applies to a director [<sup>F78</sup>or senior manager] of any undertaking which is a banking group company in respect of a specified bank.]
- (2) A share transfer order may enable the Treasury—
- (a) to remove a director [<sup>F79</sup>or senior manager] of a specified bank;

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- (b) to vary the service contract of a director [<sup>F79</sup>or senior manager] of a specified bank;
  - (c) to terminate the service contract of a director [<sup>F79</sup>or senior manager] of a specified bank;
  - (d) to appoint a director [<sup>F79</sup>or senior manager] of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.
- (4) Appointments under subsection (2)(d) are to be on terms and conditions agreed with the Treasury.
- [<sup>F80</sup>(5) In this section “senior manager” means a person who—
- (a) exercises executive functions within a specified bank or banking group company, and
  - (b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.]

#### Textual Amendments

- F75** Words in s. 20 heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 27(4)
- F76** Words in s. 20(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 27(2)
- F77** S. 20(1A) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), ss. 100(3), 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2
- F78** Words in s. 20(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 27(2)
- F79** Words in s. 20(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 27(2)
- F80** S. 20(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 27(3)

#### Commencement Information

- I29** S. 20 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I30** S. 20 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 21 Ancillary instruments: production, registration, &c.

- (1) A share transfer instrument or order may permit or require the execution, issue or delivery of an instrument.
- (2) A share transfer instrument or order may provide for a transfer to have effect irrespective of—
  - (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
  - (b) registration.
- (3) A share transfer instrument or order may provide for the effect of an instrument executed, issued or delivered in accordance with the instrument or order.
- (4) A share transfer instrument or order may modify or annul the effect of an instrument.

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- (5) A share transfer instrument or order may—
- (a) entitle a transferee to be registered in respect of transferred securities;
  - (b) require a person to effect registration.

#### Commencement Information

**I31** S. 21 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I32** S. 21 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### <sup>F81</sup>22 Termination rights, &c.

.....

#### Textual Amendments

**F81** S. 22 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [28](#)

### 23 Incidental provision

- (1) A share transfer instrument or order may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) a share transfer instrument or order—
- (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

#### Commencement Information

**I33** S. 23 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I34** S. 23 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### 24 Procedure: instruments

- (1) As soon as is reasonably practicable after making a share transfer instrument in respect of a bank the Bank of England shall send a copy to—
- (a) the bank,
  - (b) the Treasury,
  - <sup>F82</sup>(c) the PRA,
  - (ca) the FCA, and]
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a share transfer instrument the Bank of England shall publish a copy—
- (a) on the Bank's internet website, <sup>F83</sup>...

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- (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected<sup>F84</sup>, and
  - (c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),
- and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.]
- (3) Where the Treasury receive a copy of a share transfer instrument under subsection (1) they shall lay a copy before Parliament.

#### Textual Amendments

- F82** S. 24(1)(c)(ca) substituted for s. 24(1)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 12](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F83** Word in s. 24(2) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 29](#)
- F84** Words in s. 24(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 29](#)

#### Commencement Information

- I35** S. 24 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I36** S. 24 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

## 25 Procedure: orders

- (1) A share transfer order—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) As soon as is reasonably practicable after making a share transfer order in respect of a bank the Treasury shall send a copy to—
- (a) the bank,
  - (b) the Bank of England,
  - <sup>F85</sup>(c) the PRA,
  - (ca) the FCA, and]
  - (d) any other person specified in the code of practice under section 5.
- (3) As soon as is reasonably practicable after making a share transfer order the Treasury shall publish a copy—
- (a) on the Treasury's internet website, <sup>F86</sup>...
  - (b) in two newspapers, chosen by the Treasury to maximise the likelihood of the instrument coming to the attention of persons likely to be affected<sup>F87</sup>, and
  - (c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

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and arrange for the publication of a copy on the internet website of the bank in respect of which the order was made.]

#### Textual Amendments

- F85** S. 25(2)(c)(ca) substituted for s. 25(2)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 13](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F86** Word in s. 25(3) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 30](#)
- F87** Words in s. 25(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 30](#)

#### Commencement Information

- I37** S. 25 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I38** S. 25 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

## 26 Supplemental instruments

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) [<sup>F88</sup>or 12(2)] (“the original instrument”).
- (2) The Bank of England may make one or more supplemental share transfer instruments.
- (3) A supplemental share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of securities which were issued by the bank before the original instrument and have not been transferred by the original instrument or another supplemental share transfer instrument;
  - (a) makes provision of a kind that a share transfer instrument may make under section 15(1)(b) (whether or not in connection with a transfer under the original instrument).
- (4) Sections 7 and 8 do not apply to a supplemental 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).
- (5) Before making a supplemental share transfer instrument the Bank of England must consult—
  - <sup>F89</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (6) The possibility of making a supplemental share transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 11(2) [<sup>F90</sup>or 12(2)] (and not in reliance on subsection (2) above).

#### Textual Amendments

- F88** Words in s. 26(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 31\(2\)](#)
- F89** S. 26(5)(a)(aa) substituted for s. 26(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 14](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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**F90** Words in s. 26(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **31(3)**

**Commencement Information**

**I39** S. 26 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

**[<sup>F91</sup>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.]

**Textual Amendments**

**F91** S. 26A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. **97(2)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**27 Supplemental orders**

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more supplemental share transfer orders.
- (3) A supplemental share transfer order is a share transfer order which—



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- (a) provides for the transfer of securities which were issued by the bank before the original order and have not been transferred by the original order or another supplemental share transfer order;
  - (b) makes provision of a kind that a share transfer order may make under section 16(1)(b), whether in connection with a transfer under the original order or in connection with a transfer under that or another supplemental order.
- (4) Sections 7 and 9 do not apply to a supplemental share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part).
- (5) Before making a supplemental share transfer order the Treasury must consult—
- [<sup>F92</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (6) The possibility of making a supplemental share transfer order in reliance on subsection (2) is without prejudice to the possibility of making of a new order in accordance with section 13(2) (and not in reliance on subsection (2) above).

#### Textual Amendments

**F92** S. 27(5)(a)(aa) substituted for s. 27(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 15](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I40** S. 27 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

**I41** S. 27 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

## 28 Onward transfer

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
- (2) The Treasury may make one or more onward share transfer orders.
- (3) An onward share transfer order is a share transfer order which—
- (a) provides for the transfer of—
    - (i) securities which were issued by the bank before the original order and have been transferred by the original order or a supplemental share transfer order, or
    - (ii) securities which were issued by the bank after the original order;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that order, by another share transfer order or otherwise).
- (4) An onward share transfer order may not transfer securities to the transferor under the original order.
- (5) Sections 7 and 9 do not apply to an onward share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part).



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- (6) Before making an onward share transfer order the Treasury must consult—
- <sup>F93</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made an onward share transfer order.

#### Textual Amendments

**F93** S. 28(6)(a)(aa) substituted for s. 28(6)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 16](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I42** S. 28 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

**I43** S. 28 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

## 29 Reverse share transfer

- (1) This section applies where the Treasury have made a share transfer order in accordance with section 13(2) (“the original order”) providing for the transfer of securities issued by a bank to a person (“the original transferee”).
- (2) The Treasury may make one or more reverse share transfer orders in respect of securities issued by the bank and held by the original transferee (whether or not they were transferred by the original order).
- (3) If the Treasury makes an onward share transfer order in respect of securities transferred by the original order, the Treasury may make one or more reverse share transfer orders in respect of <sup>F94</sup>securities issued by the bank and held by a transferee under the onward share transfer order (“the onward transferee”).]
- (4) A reverse share transfer order is a share transfer order which—
- (a) provides for transfer to the transferor under the original order (where subsection (2) applies);
  - (b) provides for transfer to the original transferee (where subsection (3) applies);
  - (c) 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) or (b).
- <sup>F95</sup>(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.]
- (5) Sections 7, 9 and 51 do not apply to a reverse share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes including for the purposes of the application of a power under this Part).

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- (6) Before making a reverse share transfer order the Treasury must consult—
- [<sup>F96</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made a reverse share transfer order.

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**Textual Amendments**

- F94** Words in s. 29(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 97\(3\)\(a\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F95** S. 29(4A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 97\(3\)\(b\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F96** S. 29(6)(a)(aa) substituted for s. 29(6)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 17](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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**Commencement Information**

- I44** S. 29 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I45** S. 29 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

**[<sup>F97</sup>29A. Interpretation: “resolution company”**

In this Act “resolution company” means a bridge bank or an asset management vehicle.]

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**Textual Amendments**

- F97** S. 29A inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 32](#)

**30 [<sup>F98</sup>Resolution company:] share transfers**

- [<sup>F99</sup>(1) This section applies where the Bank of England has made—
- (a) a property transfer instrument in respect of a resolution company in accordance with section 12(2) or 12ZA(3), or
  - (b) a share transfer instrument in respect of a resolution company in accordance with section 12(2).]
- (2) The Bank of England may make one or more [<sup>F100</sup>resolution company] share transfer instruments.
- (3) A [<sup>F100</sup>resolution company] share transfer instrument is a share transfer instrument which—
- (a) provides for securities issued by the [<sup>F100</sup>resolution company] to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the [<sup>F100</sup>resolution company] (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

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- (4) Sections 7 and 8 do not apply to a [F100resolution company] 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).
- (5) Before making a [F100resolution company] share transfer instrument the Bank of England must consult—
  - [F101(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a [F100resolution company] share transfer instrument.

#### Textual Amendments

- F98** Words in s. 30 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **33(4)**
- F99** S. 30(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **33(2)**
- F100** Words in s. 30(2)-(6) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **33(3)**
- F101** S. 30(5)(a)(aa) substituted for s. 30(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 18](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- I46** S. 30 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

### 31 [F102Resolution company:] reverse share transfer

- (1) This section applies where the Bank of England has made a [F103resolution company] share transfer instrument in accordance with section 30(2) (“the original instrument”)  
F104 ...
  - (2) The Bank of England may make one or more [F103resolution company] reverse share transfer instruments in respect of securities issued by the [F103resolution company] and held by a [F105transferee under the original instrument].
  - (3) A [F103resolution company] 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).
- [F106(3A) The Bank of England must not make a [F103resolution company] 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

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- (b) the [F103resolution company] reverse share transfer instrument is made with the written consent of the transferee under the original instrument.]
- (4) Sections 7, 8 and 51 do not apply to a [F103resolution company] 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).
- (5) Before making a [F103resolution company] reverse share transfer instrument the Bank of England must consult—
- [F107(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a [F103resolution company] reverse share transfer instrument.

#### Textual Amendments

- F102** Words in s. 31 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **34(3)**
- F103** Words in s. 31 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **34(2)**
- F104** Words in s. 31(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(4)(a)**, 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F105** Words in s. 31(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(4)(b)**, 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F106** S. 31(3A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(4)(c)**, 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F107** S. 31(5)(a)(aa) substituted for s. 31(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 19](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- I47** S. 31 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 32 Interpretation: general

In this group of sections—

“service contract” has the meaning given by section 227 of the Companies Act 2006, and

“transfer date” means the date or time on or at which a share transfer instrument or order (or the relevant part of it) takes effect.

#### Commencement Information

- I48** S. 32 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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## Transfer of property

### 33 Property transfer instrument

- (1) A property transfer instrument is an instrument which—
- (a) provides for property, rights or liabilities of a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (2) A property transfer instrument may relate to—
- (a) all property, rights and liabilities of the specified bank,
  - (b) all its property, rights and liabilities subject to specified exceptions,
  - (c) specified property, rights or liabilities, or
  - (d) property, rights or liabilities of a specified description.

[<sup>F108</sup>(3) In this section references to a bank include a resolution company (whether or not it is a bank).]

#### Textual Amendments

**F108** S. 33(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 35

#### Commencement Information

**I49** S. 33 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

### 34 Effect

- (1) In this section “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation—
- (a) occurring or arising, or
  - (b) not occurring or arising.
- (6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subsection (5); and the consequences may include—

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- (a) automatic vesting in the original transferor;
  - (b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
  - (c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about—
- (a) the terms on which the property is to be held after the instrument takes effect<sup>F109</sup> ..., and
  - (b) how any powers, provisions and liabilities in respect of the property are to be exercisable or have effect after the instrument takes effect.
- [<sup>F110</sup>(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.]

#### Textual Amendments

**F109** Words in s. 34(7)(a) omitted (1.1.2015) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(2), 122(3)** (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2

**F110** S. 34(8)(9) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(3), 122(3)** (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2

#### Commencement Information

**I50** S. 34 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 35 Transferable property

- (1) A property transfer instrument may transfer any property, rights or liabilities including, in particular—
- (a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
  - (b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
  - (c) property outside the United Kingdom,
  - (d) rights and liabilities under the law of a country or territory outside the United Kingdom, and
  - (e) rights and liabilities under an enactment (including legislation of the European Union).
- (2) Section 32 applies for the interpretation of this section (with the necessary modification).

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#### Commencement Information

**I51** S. 35 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

### 36 Continuity

- (1) A property transfer instrument may provide—
  - (a) for a transfer to be, or to be treated as, a succession;
  - (b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.
- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.
- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification—
  - (a) must achieve a result that could have been achieved by the instrument, and
  - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (8) A property transfer instrument may require or permit—
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance.
- (9) Section 32 applies for the interpretation of this section (with the necessary modification).

#### Commencement Information

**I52** S. 36 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

### [<sup>F111</sup>36A Directors [<sup>F112</sup>and senior managers]

- (1) A property transfer instrument may enable the Bank of England—
  - (a) to remove a director [<sup>F113</sup>or senior manager] of a specified bank;
  - (b) to vary the service contract of a director [<sup>F113</sup>or senior manager] of a specified bank;



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- (c) to terminate the service contract of a director [<sup>F113</sup>or senior manager] of a specified bank;
  - (d) to appoint a director [<sup>F113</sup>or senior manager] of a specified bank.
- (2) Subsection (1) also applies to a director [<sup>F114</sup>or senior manager] 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.
- [ In this section “senior manager” means a person who—
- <sup>F115</sup>(4) (a) exercises executive functions within a specified bank or banking group company, and
- (b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.
- (5) In this section references to a bank include a resolution company (whether or not it is a bank).]]

#### Textual Amendments

- F111** S. 36A inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\), ss. 100\(4\), 122\(3\)](#) (with Sch. 20); S.I. 2014/1847, art. 2
- F112** Words in s. 36A heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **36(4)**
- F113** Words in s. 36A(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **36(2)**
- F114** Words in s. 36A(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **36(2)**
- F115** S. 36A(4)(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **36(3)**

## 37 Licences

- (1) A licence in respect of anything transferred by property transfer instrument shall continue to have effect despite the transfer.
- (2) A property transfer instrument may disapply subsection (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.
- (4) In this section “licence” includes permission and approval and any other permissive document in respect of anything transferred.

#### Commencement Information

- I53** S. 37 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## <sup>F116</sup>38 Termination rights, &c.

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### Textual Amendments

**F116** S. 38 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [37](#)

## 39 Foreign property

- (1) This section applies where a property transfer instrument transfers foreign property.
- (2) In subsection (1) “foreign property” means—
  - (a) property outside the United Kingdom, and
  - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).
- (4) Until the transfer is effective as a matter of foreign law, the transferor must—
  - (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
  - (b) discharge the liability on behalf of the transferee.
- <sup>F117</sup>(4A) If the Bank of England determines that, in spite of any action taken by the transferee or the transferor, it is not possible for the transfer of certain property to be effective under the law of the jurisdiction where the property is located or (where the property consists of rights or liabilities) the law under which it arises—
  - (a) subsection (4) ceases to apply, and
  - (b) the provisions of the property transfer instrument relating to that property are void.
- (4B) The Bank must give notice of any determination under subsection (4A) to the transferor and the transferee.]
- <sup>F118</sup>(5) The transferor must meet any expenses of the transferee in complying with this section.]
- (6) An obligation imposed by this section is enforceable as if created by contract between the transferor and transferee.
- (7) The transferor must comply with any directions of the Bank of England in respect of the obligations under subsections (3) and (4); and—
  - (a) a direction may disapply subsections (3) and (4) to a specified extent, and
  - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank of England.
- (8) In this section “foreign law” means the law of a country or territory outside the United Kingdom.

### Textual Amendments

**F117** S. 39(4A)(4B) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [38\(a\)](#)

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**F118** S. 39(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **38(b)**

#### Commencement Information

**I54** S. 39 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

### [<sup>F119</sup>39A Banks which are [<sup>F120</sup>recognised central counterparties]

Sections 89C to 89E ([<sup>F120</sup>recognised central counterparty] rules, membership and recognition) apply in relation to a bank which would be a [<sup>F18</sup>recognised central counterparty] but for section 89G(2) (exclusion of banks etc from definition of [<sup>F18</sup>recognised central counterparty]) as they apply in relation to a [<sup>F18</sup>recognised central counterparty].]

#### Textual Amendments

**F18** Words in Act substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **25(2)** (with regs. 52-58)

**F119** S. 39A inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), ss. **102(4)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2

**F120** Words in s. 39A substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(3) (with regs. 52-58)

### [<sup>F121</sup>39B. Property transfer instrument: delisting

- (1) A property transfer instrument may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000, to be discontinued or suspended.
- (2) Where the listing of securities is suspended in accordance with a property transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000 as still being listed.]

#### Textual Amendments

**F121** S. 39B inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **39**

## 40 Incidental provision

- (1) A property transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) an instrument—
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

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#### Commencement Information

**I55** S. 40 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 41 Procedure

- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a bank the Bank of England shall send a copy to—
  - (a) the bank,
  - (b) the Treasury,
  - <sup>[F122]</sup>(c) the PRA,
  - (ca) the FCA, and]
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a property transfer instrument the Bank of England shall publish a copy—
  - (a) on the Bank's internet website, <sup>F123</sup>...
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected<sup>[F124]</sup>, and
  - (c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),  
and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.]
- (3) Where the Treasury receive a copy of a property transfer instrument under subsection (1) they shall lay a copy before Parliament.
- <sup>[F125]</sup>(4) In this section references to a “bank” include a resolution company even if it is not a bank.]

#### Textual Amendments

- F122** S. 41(1)(c)(ca) substituted for s. 41(1)(c) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 20](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F123** Word in s. 41(2) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [40\(2\)](#)
- F124** Words in s. 41(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [40\(2\)](#)
- F125** S. 41(4) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [40\(3\)](#)

#### Commencement Information

- I56** S. 41 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
- I57** S. 41 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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## <sup>F126</sup>41A Transfer of property subsequent to resolution instrument

- (1) This section applies where the Bank of England has made a resolution instrument.
- (2) The Bank of England may make one or more property transfer instruments in respect of property, rights or liabilities of the bank.
- (3) [<sup>F127</sup>Section 7 does] not apply to a property transfer instrument under subsection (2).
- (4) Before making a property transfer instrument under subsection (2) the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.]

### Textual Amendments

**F126** S. 41A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(1\)](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)

**F127** Words in s. 41A(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [41](#)

## 42 Supplemental instruments

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) or [<sup>F128</sup>12(2)][<sup>F129</sup>, 12ZA(3)] or 41A(2)] (“the original instrument”).
- (2) The Bank of England may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument which—
  - (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);
  - (b) makes other provision of a kind that an original property transfer instrument may make under section 33(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Sections 7<sup>F130</sup>, 8 and [<sup>F131</sup>8ZA]] do not apply to a supplemental 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).
- (5) Before making a supplemental property transfer instrument the Bank of England must consult—
  - <sup>F132</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (6) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in

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accordance with section 11(2)<sup>F133</sup>, 12(2)<sup>F134</sup>, 12ZA(3)] or 41A(2)] (and not in reliance on subsection (2) above).

#### Textual Amendments

- F128** Words in s. 42(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(2\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F129** Words in s. 42(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [42\(2\)](#)
- F130** Words in s. 42(4) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(2\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F131** Word in s. 42(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [42\(3\)](#)
- F132** S. 42(5)(a)(aa) substituted for s. 42(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 21](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F133** Words in s. 42(6) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(2\)\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F134** Words in s. 42(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [42\(4\)](#)

#### Commencement Information

- I58** S. 42 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

### <sup>F135</sup>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).
- (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

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(c) the Treasury.

(7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument.]

#### Textual Amendments

**F135** S. 42A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(5), 122(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

### 43 Onward transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a [<sup>F136</sup>resolution company] in accordance with section 12(2) [<sup>F137</sup>or 12ZA(3)] (“the original instrument”).
- (2) The Bank of England may make one or more onward property transfer instruments.
- (3) An onward property transfer instrument is a property transfer instrument which—
  - (a) provides for property, rights or liabilities of the [<sup>F138</sup>resolution company] to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the [<sup>F138</sup>resolution company] (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the [<sup>F139</sup>resolution company] whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.
- (6) Sections 7, 8[<sup>F140</sup>, 8ZA] and 52 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Part).
- (7) Before making an onward property transfer instrument the Bank of England must consult—
  - [<sup>F141</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (8) Section 42 applies where the Bank of England has made an onward property transfer instrument.

#### Textual Amendments

**F136** Words in s. 43(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **43(2)(a)**

**F137** Words in s. 43(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **43(2)(b)**

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- F138** Words in s. 43(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **43(3)**
- F139** Words in s. 43(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **43(4)**
- F140** Word in s. 43(6) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **43(5)**
- F141** S. 43(7)(a)(aa) substituted for s. 43(7)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 22](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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**Commencement Information**

- I59** S. 43 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

**44** [<sup>F142</sup>[<sup>F143</sup>**Resolution company**]: reverse] **property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 12(2) [<sup>F144</sup>or 12ZA(3)] (“the original instrument”) providing for the transfer of property, rights or liabilities to a [<sup>F145</sup>resolution company].
- (2) The Bank of England may make one or more [<sup>F145</sup>resolution company] reverse property transfer instruments in respect of property, rights or liabilities of the [<sup>F145</sup>resolution company].
- (3) If the Bank of England makes an onward property transfer instrument under section 43 the Bank may make one or more [<sup>F145</sup>resolution company] reverse property transfer instruments in respect of property, rights or liabilities [<sup>F146</sup>of a transferee under the onward property transfer instrument (“the onward transferee”).]
- (4) [<sup>F147</sup>A [<sup>F145</sup>resolution company] reverse] property transfer instrument is a property transfer instrument which—
- provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  - provides for transfer to the [<sup>F145</sup>resolution company] (where subsection (3) applies);
  - 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) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).
- [<sup>F148</sup>(4A) The Bank of England must not make a [<sup>F145</sup>resolution company] reverse property transfer instrument unless—
- the onward transferee is—
    - a company wholly owned by the Bank of England,
    - a company wholly owned by the Treasury, or
    - a company wholly owned by a nominee of the Treasury, or
  - [<sup>F149</sup>the [<sup>F145</sup>resolution company] reverse] property transfer instrument is made with the written consent of the onward transferee.]
- (5) Sections 7, 8 [<sup>F150</sup>, 8ZA] and 52 do not apply to [<sup>F151</sup>a [<sup>F145</sup>resolution company] 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).



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- (6) Before making [<sup>F152</sup>a [<sup>F145</sup>resolution company] reverse] property transfer instrument the Bank of England must consult—
- [<sup>F153</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Treasury.
- (7) Section 42 applies where the Bank of England has made [<sup>F154</sup>a [<sup>F145</sup>resolution company] reverse] property transfer instrument.

#### Textual Amendments

- F142** Words in s. 44 heading substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(h)**; S.I. 2014/3160, art. 2(1)(b)
- F143** Words in s. 44 heading substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **44(5)**
- F144** Words in s. 44(1) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **44(3)**
- F145** Words in s. 44 substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **44(2)**
- F146** Words in s. 44(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 97(6)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F147** Words in s. 44(4) substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(c)**; S.I. 2014/3160, art. 2(1)(b)
- F148** S. 44(4A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 97(6)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F149** Words in s. 44(4A)(b) substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(d)(ii)**; S.I. 2014/3160, art. 2(1)(b)
- F150** Words in s. 44(5) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **44(4)**
- F151** Words in s. 44(5) substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(e)**; S.I. 2014/3160, art. 2(1)(b)
- F152** Words in s. 44(6) substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(f)**; S.I. 2014/3160, art. 2(1)(b)
- F153** S. 44(6)(a)(aa) substituted for s. 44(6)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 23** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F154** Words in s. 44(7) substituted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 16(g)**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I60** S. 44 in force at 21.2.2009 by S.I. 2009/296, art. 3, **Sch. para. 1**

#### [<sup>F155</sup>44A Bail in: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 41A(2) (“the original instrument”).
- (2) The Bank of England may make one or more bail-in reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A bail-in reverse property transfer instrument is a property transfer instrument which—



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- (a) provides for a 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 which are, or 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).
- (4) The Bank of England may make a bail-in reverse property transfer instrument only with the written consent of the transferee under the original instrument.
- (5) <sup>F156</sup>Section 7 does] not apply to a bail-in 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 bail-in reverse property transfer instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 42 (supplemental instruments) applies where the Bank of England has made a bail-in reverse property transfer instrument.

#### Textual Amendments

**F155** Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 5\(3\)](#); S.I. 2014/3160, art. 2(1)(b)

**F156** Words in s. 44A(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 45

#### 44B Property transfer instruments: special bail-in provision

- (1) A property transfer instrument under section <sup>F157</sup>11(2), 12(2), 12ZA(3)] or 41A(2), or an associated supplemental property transfer instrument, may make special bail-in provision with respect to the bank (see section 48B).
- (2) The reference in subsection (1) to an “associated” supplemental property transfer instrument is to a supplemental property transfer instrument in relation to which the original instrument (as defined in section 42(1)) is a property transfer instrument under section <sup>F158</sup>11(2), 12(2), 12ZA(3)] or 41A(2).
- (3) In the case of a property transfer instrument under section 12(2), <sup>F159</sup>or 12ZA(3),] or a supplemental property transfer instrument in relation to which the original instrument is a property transfer instrument under section 12(2), <sup>F159</sup>or 12ZA(3),] the power under subsection (1) to make the provision described in section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes power to make provision replacing a liability (of any form) of the bank mentioned in subsection (1) with a security (of any form or class) <sup>F160</sup>of the bank or] of the bridge bank mentioned in section 12(1) <sup>F161</sup>or the asset management vehicle mentioned in section 12ZA(1) (as the case may be)].
- (4) Where securities of the bridge bank (“B”) are, as a result of subsection (3), held by a person other than the Bank of England, that does not prevent B from being regarded for the purposes of this Part (see particularly section <sup>F162</sup>12(1A) and 12ZA(2)] as being wholly owned by the Bank of England, as long as the Bank of England <sup>F163</sup>is entitled

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to exercise, or control the exercise of, voting rights in respect of] all the ordinary shares issued by B.

#### Textual Amendments

- F155** Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(3\)](#); S.I. 2014/3160, art. 2(1)(b)
- F157** Words in s. 44B(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(2\)](#)
- F158** Words in s. 44B(2) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(3\)](#)
- F159** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(4\)\(a\)](#)
- F160** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(4\)\(b\)](#)
- F161** Words in s. 44B(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(4\)\(c\)](#)
- F162** Words in s. 44B(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(5\)\(a\)](#)
- F163** Words in s. 44B(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [46\(5\)\(b\)](#)

#### 44C Report on special bail-in provision

- (1) This section applies where the Bank of England makes a property transfer instrument containing provision made in reliance on section 44B.
- (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision was made in the case of the liabilities concerned.
- (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
- (4) The insolvency treatment principles are that where an instrument includes special bail-in provision—
  - (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
  - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
- (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
- (6) A report must be made as soon as reasonably practicable after the making of the property transfer instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.]

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### Textual Amendments

**F155** Ss. 44A-44C inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(3\)](#); S.I. 2014/3160, art. 2(1)(b)

## 45 Temporary public ownership: property transfer

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 13(2) (“the original order”).
  - (2) The Treasury may make one or more property transfer orders.
  - (3) A property transfer order is an order which—
    - (a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original order);
    - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the order or otherwise).
  - (4) Sections 7, 8 and 9 do not apply to a property transfer order.
  - (5) A property transfer order is to be treated—
    - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
    - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of powers under this Part).
- [<sup>F164</sup>(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.]
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
  - (7) Section 42 applies where the Treasury has made a property transfer order.
  - (8) Before making a property transfer order the Treasury must consult—
    - [<sup>F165</sup>(a) the PRA,
    - (aa) the FCA, and]
    - (b) the Bank of England.

### Textual Amendments

**F164** S. 45(5A) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 98\(4\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/3323, art. 2

**F165** S. 45(8)(a)(aa) substituted for s. 45(8)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 24](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

### Commencement Information

**I61** S. 45 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

**I62** S. 45 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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#### 46 Temporary public ownership: reverse property transfer

- (1) This section applies where the Treasury have made a property transfer order in accordance with section 45(2) (“the original order”) <sup>F166</sup>....
- (2) The Treasury may make one or more reverse property transfer orders in respect of property, rights or liabilities of the transferee under the original order.
- (3) A reverse property transfer order is a property transfer order which—
  - (a) provides for transfer to the transferor under the original order;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
- <sup>F167</sup>(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.]
- (4) Sections 7, 8 and 9 do not apply to a reverse property transfer order.
- (5) A reverse property transfer order is to be treated—
  - (a) in the same way as a share transfer order for the procedural purposes of section 25, but
  - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of a power under this Part).
- <sup>F168</sup>(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.]
- (6) In the application of section 39 by virtue of subsection (5)(b) above, the power to give directions under section 39(7) vests in the Treasury (instead of the Bank of England).
- (7) Before making a reverse property transfer order the Treasury must consult—
  - <sup>F169</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (8) Section 42 applies where the Treasury have made a reverse property transfer order.

#### Textual Amendments

- F166** Words in s. 46(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(7)(a)**, [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F167** S. 46(3A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 97(7)(b)**, [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F168** S. 46(5A) inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 98(5)**, [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2
- F169** S. 46(7)(a)(aa) substituted for s. 46(7)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. [122\(3\)](#), [Sch. 17 para. 25](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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#### Commencement Information

- I63** S. 46 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1  
**I64** S. 46 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### 47 Restriction of partial transfers

(1) In this Part “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all, of the property, rights and liabilities of a bank.

[<sup>F170</sup>(1A) In subsection (1) the reference to a “bank” includes a resolution company (even if it is not a bank).]

(2) The Treasury may by order—

- (a) restrict the making of partial property transfers;
- (b) impose conditions on the making of partial property transfers;
- (c) require partial property transfers to include specified provision or provision to a specified effect;
- (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).

[<sup>F171</sup>(3) Provision under subsection (2) may, in particular, refer to—

- (a) particular classes of deposit;
- (b) particular classes of client assets.]

(4) An order may apply to transfers generally or only to transfers—

- (a) of a specified kind, or
- (b) made or applying in specified circumstances.

(5) An order—

- (a) shall 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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#### Textual Amendments

- F170** S. 47(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [47](#)  
**F171** S. 47(3) substituted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 96\(5\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/3323](#), art. 2

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#### Commencement Information

- I65** S. 47 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1  
**I66** S. 47 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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## **48 Power to protect certain interests**

(1) In this section—

- (a) “security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,
- (b) “title transfer collateral arrangements” are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,
- (c) “set-off” arrangements are arrangements under which two or more debts, claims or obligations can be set off against each other,
- (d) “netting arrangements” are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, “close-out” netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt, and
- (e) “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.

(2) The Treasury may by order—

- (a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
- (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;
- (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
- (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section).

(3) An order may apply to protected arrangements generally or only to arrangements—

- (a) of a specified kind, or
- (b) made or applying in specified circumstances.

(4) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.

(5) In this section “arrangements” includes arrangements which—

- (a) are formed wholly or partly by one or more contracts or trusts;
- (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
- (c) wholly or partly arise automatically as a matter of law;
- (d) involve any number of parties;
- (e) operate partly by reference to other arrangements between other parties.

(6) An order—

- (a) shall be made by statutory instrument, and

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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### Commencement Information

- I67** S. 48 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1  
**I68** S. 48 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

#### [<sup>F172</sup>48A Creation of liabilities

- (1) The provision that may be made by a property transfer instrument or order in reliance on section 33(1)(b), 42(3)(b), [<sup>F173</sup>42A(3)(b),] 43(3)(b), 44(4)(c)[<sup>F174</sup>, 44A(3)(b)], 45(3)(b) or 46(3)(b) includes provision for the creation of liabilities.
- (2) The provision may be framed by reference to an agreement which has been or is to be entered into, or anything else which has been or is to be done, by any person (including a person other than the person making the instrument or order).]

#### Textual Amendments

- F172** S. 48A inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 21\(2\)](#), 26(1)(f)  
**F173** Words in s. 48A(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 97\(8\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)  
**F174** Word in s. 48A(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 5\(4\)](#); [S.I. 2014/3160](#), art. 2(1)(b)

#### [<sup>F175</sup>Bail-in option

#### Textual Amendments

- F175** Ss. 48B-48W and cross-heading inserted (1.3.2014 for the insertion of s. 48P for specified purposes, 31.12.2014 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 4](#); [S.I. 2014/377](#), art. 2(1)(b), [Sch. Pt. 2](#); [S.I. 2014/3160](#), art. 2(1)(b)

#### 48B Special bail-in provision

- (1) “Special bail-in provision”, in relation to a bank, means any of the following (or any combination of the following)—
- (a) provision cancelling a liability owed by the bank;
  - (b) provision modifying, or changing the form of, a liability owed by the bank;
  - (c) provision that a contract under which the bank has a liability is to have effect as if a specified right had been exercised under it.
- (2) “Special bail-in provision”, in relation to a bank, also includes any associated provision (see subsection (3)) that the Bank of England may think it appropriate to make in consequence of any provision under subsection (1) that—
- (a) is made in the same resolution instrument, or
  - (b) has been made in another resolution instrument in respect of the bank.

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- (3) “Associated provision” means provision cancelling or modifying a contract under which a banking group company has a liability.
- (4) A power to make special bail-in provision—
  - (a) may be exercised only for the purpose of, or in connection with, reducing, deferring or cancelling a liability of the bank;
  - (b) may not be exercised so as to affect any excluded liability.
- (5) The following rules apply to the interpretation of subsection (1).
  - (1) The reference to cancelling a liability owed by the bank includes a reference to cancelling a contract under which the bank has a liability.
  - (2) The reference to modifying a liability owed by the bank includes a reference to modifying the terms (or the effect of the terms) of a contract under which the bank has a liability.
  - (3) The reference to changing the form of a liability owed by the bank, includes, for example—
    - (a) converting an instrument under which the bank owes a liability from one form or class to another,
    - (b) replacing such an instrument with another instrument of a different form or class, <sup>F176</sup> ...
    - (c) creating a new security (of any form or class) in connection with the modification of such an instrument<sup>F177</sup>, or
    - (d) converting those liabilities into securities issued by a bridge bank or a UK parent undertaking (within the meaning of section 6C(7)).]
- (6) Examples of special bail-in provision include—
  - (a) provision that transactions or events of any specified kind have or do not have (directly or indirectly) specified consequences or are to be treated in a specified manner for specified purposes;
  - (b) provision discharging persons from further performance of obligations under a contract and dealing with the consequences of persons being so discharged.
- (7) The form and class of the instrument (“the resulting instrument”) into which an instrument is converted, or with which it is replaced, do not matter for the purposes of paragraphs (a) and (b) of rule 3 in subsection (5); for instance, the resulting instrument may (if it is a security) fall within Class 1 or any other Class in section 14.

[ Liabilities of the bank are “excluded liabilities” if they are—

- <sup>F178</sup>(7A)
  - (a) liabilities listed in subsection (8), or
  - (b) liabilities which the Bank of England has excluded under subsection (10) from the application of special bail-in provision.]

- (8) The following liabilities of the bank <sup>F179</sup>are the excluded liabilities referred to in subsection (7A)(a)] —
  - (a) liabilities representing protected deposits;
  - (b) any liability, so far as it is secured;
  - (c) liabilities that the bank has by virtue of holding client assets;
  - (d) liabilities with an original maturity of less than 7 days owed by the bank to a credit institution or investment firm;



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- (e) liabilities [<sup>F180</sup>with a remaining maturity of less than 7 days] arising from participation in designated settlement systems and owed to such systems or to operators of, or participants in, such systems;
  - <sup>F181</sup>(f) .....
  - (g) liabilities owed to an employee or former employee in relation to salary or other remuneration, except [<sup>F182</sup>—
    - (i) variable remuneration that is not regulated by a collective bargaining agreement, and
    - (ii) variable remuneration of material risk takers as referred to in Article 92(2) of Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;]
  - [<sup>F183</sup>(h) liabilities owed to a pension scheme, except for liabilities owed in connection with variable remuneration of the kind mentioned in paragraph (g)(i) or (ii).]
    - (i) liabilities owed to creditors arising from the provision to the bank of goods or services (other than financial services) that are critical to the daily functioning of the bank's operations.
  - [<sup>F184</sup>(j) liabilities owed by the bank to the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000) in relation to levies imposed by the scheme manager for the purpose of meeting expenses in relation to payments required to be made by Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes.]
- (9) The following special rules apply in cases involving banking group companies—
- (a) a liability [<sup>F185</sup>is not within subsection (8)(d)] if the credit institution or investment firm to which the liability is owed is a banking group company in relation to the bank (see section 81D);
  - (b) in subsection (8)(i) the reference to creditors does not include companies which are banking group companies in relation to the bank.
- [ The Bank of England may, in a resolution instrument, exclude any eligible liability
- <sup>F186</sup>(10) or class of eligible liabilities from the application of any special bail-in provision in relation to the bank if, and only if, the Bank of England—
- (a) thinks the exclusion is justified on one or more of the grounds set out in subsection (12), and
  - (b) notifies the European Commission of its intention to exclude the liabilities before making the instrument that gives effect to the exclusion.
- (11) The power conferred by subsection (10) may be exercised to exclude only part of an eligible liability, or part of each of the eligible liabilities of a particular class; and where it is so exercised that part is treated as an eligible liability excluded under that subsection and the remainder is treated as an eligible liability which has not been so excluded.
- (12) The grounds are—
- (a) that it is not reasonably possible to give effect to special bail-in provision in relation to the liability or class within a reasonable time;
  - (b) that the exclusion is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the bank to continue key operations, services and transactions;

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- (c) that the exclusion is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards protected deposits held by natural persons or micro-enterprises, small enterprises or medium-sized enterprises, which would severely disrupt the functioning of financial markets, including financial market infrastructures, in a manner that could cause a serious disturbance to the economy of an EEA state;
  - (d) that the making of special bail-in provision in relation to the liability would cause a reduction in value such that the losses borne by other creditors would be higher than if the liability were excluded.
- (13) When deciding whether to exclude liabilities under subsection (10) or (11), the Bank of England must give due consideration to—
- (a) the principle that all the liabilities of the bank ought to be treated in accordance with the priority they would enjoy on a liquidation,
  - (b) the principle that any creditors who would have equal priority on a liquidation ought to bear losses on an equal footing with each other,
  - (c) the level of loss absorbing capacity that would remain in the bank if the liability or liabilities of a class were wholly or partly excluded, and
  - (d) the need to maintain adequate resources to deal with the implications for public funds of anything done, in future, in connection with the exercise of one or more of the stabilisation powers.
- (14) For the purposes of subsection (12)—
- “protected deposit” has the meaning given by section 48C, and
  - “micro-enterprise”, “small-enterprise” and “medium-sized enterprise” have the meaning given by Article 2.1(107) of the recovery and resolution directive.]

#### **Textual Amendments**

- F176** Word in s. 48B(5) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(3)**
- F177** Words in s. 48B(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(3)**
- F178** S. 48B(7A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(2)**
- F179** Words in s. 48B(8) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(a)**
- F180** Words in s. 48B(8)(e) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(b)**
- F181** S. 48B(8)(f) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(c)**
- F182** Words in s. 48B(8)(g) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(d)**
- F183** S. 48B(8)(h) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(e)**
- F184** S. 48B(8)(j) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(4)(f)**
- F185** Words in s. 48B(9)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(5)**

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**F186** Ss. 48B(10)-(14) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **48(6)**

#### 48C Meaning of “protected deposit”

[<sup>F187</sup>(1) A deposit is “protected” so far as it is covered by a deposit guarantee scheme under [Directive 94/19/EC](#) of the European Parliament and of the Council of 30th May 1994 on deposit guarantee schemes or [Directive 2014/49/EU](#) of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes.]

(4) In [<sup>F188</sup>subsection (1)] and section 48B(8)(a), “deposit” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), but ignoring the exclusions in article 6.

#### Textual Amendments

**F187** S. 48C(1) substituted for s. 48C(1)-(3) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **49(2)**

**F188** Words in s. 48C(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **49(3)**

#### 48D General interpretation of section 48B

(1) In section 48B—

“client assets” means assets which the bank has undertaken to hold on trust for, or on behalf of, a client;

“contract” includes any instrument;

“credit institution” means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, other than an entity mentioned in Article 2.5(2) to (23) of Directive 2013/36/EU of the European Parliament and of the Council;

“designated settlement system” means a system designated in accordance with Directive [98/26/EC](#) of the European Parliament and of the Council (as amended by Directives [2009/44/EC](#) and [2010/78/EU](#));

“employee” includes the holder of an office;

“investment firm” means an investment firm as defined in Article 4.1(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council that is subject to the initial capital requirement specified in Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council;

“pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities;

“secured” means secured against property or rights, or otherwise covered by collateral arrangements.

(2) In subsection (1)—

“assets” has the same meaning as in section 232(4) (ignoring for these purposes section 232(5A)(b));

“collateral arrangements” includes arrangements which are title transfer collateral arrangements for the purposes of section 48.

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F189(3) .....

#### Textual Amendments

**F189** S. 48D(3) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **50**

### 48E Report on special bail-in provision

- (1) This section applies where the Bank of England makes a resolution instrument containing special bail-in provision (see section 48B).
- (2) The Bank of England must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the liabilities concerned.
- (3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.
- (4) The insolvency treatment principles are that where an instrument includes special bail-in provision—
  - (a) the provision made by the instrument must be consistent with treating all the liabilities of the bank in accordance with the priority they would enjoy on a liquidation, and
  - (b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.
- (5) A report must comply with any other requirements as to content that may be specified by the Treasury.
- (6) A report must be made as soon as reasonably practicable after the making of the resolution instrument to which it relates.
- (7) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

### 48F Power to amend definition of “excluded liabilities”

- (1) The Treasury may by order amend section 48B(8) by—
  - (a) adding to the list of excluded liabilities;
  - (b) amending or omitting any paragraph of that subsection, other than paragraphs (a) to (c).
- (2) The Treasury may by order amend section 48C or 48D.
- (3) The powers conferred by subsections (1) and (2) include power to make consequential and transitional provision.
- (4) An order under this section—
  - (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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- (5) The Treasury must consult before laying a draft order under this section before Parliament.

#### **48G Priority between creditors**

- (1) The Treasury may, for the purpose of ensuring that the treatment of liabilities in any instrument that contains special bail-in provision is aligned to an appropriate degree with the treatment of liabilities on an insolvency, by order specify matters or principles to which the Bank of England is to be required to have regard in making any such instrument.
- (2) An order may, for example, specify the insolvency treatment principles (as defined in section 48E(4)) or alternative principles.
- (3) An order may specify the meaning of “insolvency” for one or more purposes of the order.
- (4) An order may amend sections 44C(4) and 48E(4).
- (5) 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.

#### **48H Business reorganisation plans**

- (1) A resolution instrument may require a [<sup>F190</sup>resolution administrator], or one or more directors of the bank, to—
  - (a) draw up a business reorganisation plan with respect to the bank, and
  - (b) submit it to the Bank of England within the period allowed by (or under) the instrument.
- (2) “Business reorganisation plan” means a plan that includes—
  - (a) an assessment of the factors that caused Condition 1 in section 7 to be met in the case of the bank,
  - (b) a description of the measures to be adopted with a view to restoring the viability of the bank, and
  - (c) a timetable for the implementation of those measures.
- (3) Where a person has submitted a business reorganisation plan to the Bank of England under subsection (1) (or has re-submitted a plan under subsection (4)), the Bank of England—
  - (a) must approve the plan if satisfied that the plan is appropriately designed for meeting the objective mentioned in subsection (2)(b);
  - (b) must otherwise require the person to amend the plan in a specified manner.
- (4) Where the Bank of England has required a person to amend a business re-organisation plan, the person must re-submit the amended plan within the period allowed by (or under) the resolution instrument.
- (5) Before deciding what action to take under subsection (3) the Bank of England must (for each submission or re-submission of a plan) consult—
  - (a) the PRA, and

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- (b) the FCA.
- (6) A business reorganisation plan may include recommendations by the person submitting the plan as to the exercise by the Bank of England of any of its powers under this Part in relation to the bank.
- (7) Where a resolution instrument contains provision under subsection (1), the instrument may—
- (a) specify further matters (in addition to those mentioned in subsection (2)) that must be dealt with in the business reorganisation plan;
  - (b) make provision about the timing of actions to be taken in connection with the making and approval of the plan;
  - (c) enable any provision that the Bank of England has power under paragraph (a) or (b) to make in the instrument to be made instead in an agreement between the Bank of England and the person required to draw up the business reorganisation plan.
- (8) For the purposes of subsection (2)(b) the viability of a bank is to be assessed by reference to whether the bank satisfies, and (if so) for how long it may be expected to continue to satisfy, the threshold conditions (as defined in section 55B of the Financial Services and Markets Act 2000).

**Textual Amendments**

**F190** Words in s. 48H(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **51**

**<sup>F191</sup>48I Bail-in administrator: further functions**

.....

**Textual Amendments**

**F191** Ss. 48I-48K omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **52**

**<sup>F191</sup>48J Bail-in administrator: supplementary**

.....

**Textual Amendments**

**F191** Ss. 48I-48K omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **52**

**<sup>F191</sup>48K Bail-in administrator: money**

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### Textual Amendments

**F191** Ss. 48I-48K omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [52](#)

## 48L Powers in relation to securities

- (1) A resolution instrument may—
  - (a) cancel or modify any securities to which this subsection applies;
  - (b) convert any such securities from one form or class into another.
- (2) Subsection (1) applies to securities issued by the bank that fall within Class 1 in section 14.
- (3) A resolution instrument may—
  - (a) make provision with respect to rights attaching to securities issued by the bank;
  - (b) provide for the listing of securities issued by the bank to be discontinued [<sup>F192</sup>or suspended].
  - <sup>F193</sup>(c) [ provide for the listing or admission to trading on a regulated market of securities in class 1 (and related class 3 securities) created in accordance with that or any other resolution instrument;
  - (d) provide for the listing or admission to trading on a regulated market of existing securities in class 2 modified by that or any other resolution instrument (and, in that connection, for the disapplication of section 85(1) and (2) of the Financial Services and Markets Act 2000 (prohibition on listing etc of transferable securities without approved prospectus).]
- (4) The reference in subsection (1)(b) to converting securities from one form or class into another includes creating a new security in connection with the modification of an existing security.

[ In subsection (2) any reference to a class of securities is to be construed in accordance <sup>F194</sup>(4A) with section 14.]

- (5) The provision that may be made under subsection (3)(a) includes, for example—
  - (a) provision that specified rights attaching to securities are to be treated as having been exercised;
  - (b) provision that the Bank of England, or a [<sup>F195</sup>resolution administrator], is to be treated as authorised to exercise specified rights attaching to securities;
  - (c) provision that specified rights attaching to securities may not be exercised for a period specified in the instrument.

[<sup>F196</sup>(6) In subsection (3)—

- (a) the reference to “listing” is to listing under section 74 of the Financial Services and Markets Act 2000, and
- (b) “regulated market” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000.]

[ Where the listing of securities is suspended in accordance with a resolution instrument, <sup>F197</sup>(6A) those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000 as still being listed.]

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- (7) The provision that may be made under this section in relation to any securities is in addition to any provision that the Bank of England may have power to make in relation to them under section 48B.

#### Textual Amendments

- F192** Words in s. 48L(3)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(2)(a)**
- F193** S. 48L(3)(c)(d) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(2)(b)**
- F194** S. 48L(4A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(3)**
- F195** Words in s. 48L(5)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(4)**
- F196** S. 48L(6) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(5)**
- F197** S. 48L(6A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **53(6)**

#### <sup>F198</sup>48M Termination rights, etc

#### Textual Amendments

- F198** S. 48M omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **54**

#### 48N Directors [<sup>F199</sup>and senior managers]

- (1) A resolution instrument may enable the Bank of England—
- (a) to remove a director [<sup>F200</sup>or senior manager] of a specified bank;
  - (b) to vary the service contract of a director [<sup>F200</sup>or senior manager] of a specified bank;
  - (c) to terminate the service contract of a director [<sup>F200</sup>or senior manager] of a specified bank;
  - (d) to appoint a director [<sup>F200</sup>or senior manager] of a specified bank.
- (2) Subsection (1) also applies to a director [<sup>F201</sup>or senior manager] 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.

[ In this section “senior manager” means a person who—

- <sup>F202</sup>(4) (a) exercises executive functions within a specified bank or banking group company, and
- (b) is responsible, and directly accountable to the directors, for the day to day management of that bank or banking group company.]



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#### Textual Amendments

- F199** Words in s. 48N heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **55(4)**
- F200** Words in s. 48N(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **55(2)**
- F201** Words in s. 48N(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **55(2)**
- F202** S. 48N(4) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **55(3)**

### 48O Directions in or under resolution instrument

- (1) A resolution instrument may—
- (a) require one or more directors of the bank to comply with any general or specific directions that may be set out in the instrument;
  - (b) enable the Bank of England to give written directions (whether general or specific) to one or more directors of the bank.
- (2) A director—
- (a) is not to be regarded as failing to comply with any duty owed to any person (for example, a shareholder, creditor or employee of the bank) by virtue of any action or inaction in compliance with a direction given under subsection (1) (a) or (b);
  - (b) is to be immune from liability in damages in respect of action or inaction in accordance with a direction.
- (3) A director must comply with a direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (4) A direction under subsection (1)(a) or (b) is enforceable on an application made by the Bank of England, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

[ See also section 83ZR for further provision about enforcement of a direction under <sup>F203</sup>(5) this section.]

#### Textual Amendments

- F203** S. 48O(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **56**

### 48P Orders for safeguarding certain financial arrangements

- (1) In this section “protected arrangements” means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.
- (2) In subsection (1)—
- “netting arrangements” means arrangements under which a number of claims or obligations can be converted into a net claim or obligation, and includes, in particular, “close-out” netting arrangements, under which actual

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or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;

“security interests” means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another;

“set-off arrangements” means arrangements under which two or more debts, claims or obligations can be set off against each other;

“title transfer collateral arrangements” means arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged.

- (3) The Treasury may by order—
- (a) restrict the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
  - (b) impose conditions on the exercise of any power within the scope of this paragraph in cases that involve, or where the exercise of the power might affect, protected arrangements;
  - (c) require any instrument that makes special bail-in provision to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;
  - (d) provide for an instrument to be void or voidable, or for other consequences to arise, if or in so far as the instrument is made or purported to be made in contravention of a provision of the order (or of another order under this section);
  - (e) specify principles to which the Bank of England is to be required to have regard in exercising specified powers—
    - (i) that involve protected arrangements, or
    - (ii) where the exercise of the powers might affect protected arrangements.
- (4) References to exercising a power within the scope of paragraph (a) or (b) of subsection (3) are to making an instrument containing provision made in reliance on section 12A(3)(a) or 44B (special bail-in provision).
- (5) An order may apply to protected arrangements generally or only to arrangements—
- (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (6) An order may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.
- (7) In this section “arrangements” includes arrangements which—
- (a) are formed wholly or partly by one or more contracts or trusts;
  - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;
  - (c) wholly or partly arise automatically as a matter of law;
  - (d) involve any number of parties;
  - (e) operate partly by reference to other arrangements between parties.

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- (8) 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.

#### **48Q Continuity**

- (1) A resolution instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.
- (2) A resolution instrument may modify references (express or implied) in an instrument or document.
- (3) A resolution instrument may require or permit any person to provide information and assistance to the Bank of England or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.

#### **48R Execution and registration of instruments etc**

- (1) A resolution instrument may permit or require the execution, issue or delivery of an instrument.
- (2) A resolution instrument may provide for any provision in the instrument to have effect irrespective of—
  - (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
  - (b) registration.
- (3) A resolution instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the resolution instrument.
- (4) A resolution instrument may—
  - (a) entitle a person to be registered in respect of a security;
  - (b) require a person to effect registration.

#### **48S Resolution instruments: general matters**

- (1) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (2) A resolution instrument may include incidental, consequential or transitional provision.
- (3) In relying on subsection (2) a resolution instrument—
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

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## 48T Procedure

- (1) As soon as is reasonably practicable after making a resolution instrument in respect of a bank the Bank of England must send a copy to—
  - (a) the bank,
  - (b) the Treasury,
  - (c) the PRA,
  - (d) the FCA, and
  - (e) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a resolution instrument the Bank of England must publish a copy—
  - (a) on the Bank's internet website,<sup>F204</sup> ...
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected<sup>F205</sup>, and
  - (c) if securities issued by the bank have been admitted to trading on a regulated market (within the meaning of section 103(1) of the Financial Services and Markets Act 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the internet website of the bank in respect of which the instrument was made.]
- (3) Where the Treasury receive a copy of a resolution instrument under subsection (1) they must lay a copy before Parliament.

### Textual Amendments

**F204** Word in s. 48T(2) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 57

**F205** Words in s. 48T(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 57

## 48U Supplemental resolution instruments

- (1) This section applies where the Bank of England has made a resolution instrument (“the original instrument”) with respect to a bank.
- (2) The Bank of England may make, with respect to the bank, one or more resolution instruments designated by the Bank of England as supplemental resolution instruments.
- (3) [<sup>F206</sup>Section 7 does] not apply to a supplemental resolution instrument (but it is to be treated in the same way as a resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (4) Before making a supplemental resolution instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.

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- (5) The possibility of making a supplemental resolution instrument in reliance on subsection (2) is without prejudice to the possibility of making a new instrument in accordance with section 12A(2) (and not in reliance on subsection (2) above).

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**Textual Amendments**

**F206** Words in s. 48U(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **58**

#### **48V Onward transfer**

- (1) This section applies where the Bank of England has made a resolution instrument (“the original instrument”) providing for securities issued by a specified bank to be transferred to any person.
- (2) The Bank of England may make one or more onward transfer resolution instruments.
- (3) An onward transfer resolution instrument is a resolution instrument which—
- (a) provides for the transfer of—
    - (i) securities which were issued by the bank before the original instrument and have been transferred by the original instrument or a supplemental resolution instrument, or
    - (ii) securities which were issued by the bank after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that instrument, by another instrument or otherwise).
- (4) An onward transfer resolution instrument may not transfer securities to the transferor under the original instrument.
- (5) [<sup>F207</sup>Section 7 does] not apply to an onward transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (6) Before making an onward transfer resolution instrument the Bank of England must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (7) Section 48U applies where the Bank of England has made an onward transfer resolution instrument.

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**Textual Amendments**

**F207** Words in s. 48V(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **59**

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#### 48W Reverse transfer

- (1) This section applies where the Bank of England has made an instrument (“the original instrument”) that is either—
  - (a) a resolution instrument providing for the transfer of securities issued by a bank to a person (“the transferee”), or
  - (b) an onward transfer resolution instrument (see section 48V) providing for the transfer of securities issued by a bank to a person (“the onward transferee”).
- (2) In a case falling within subsection (1)(a) the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the transferee (whether or not they were transferred by the original instrument).
- (3) In a case falling within subsection (1)(b), the Bank of England may make one or more reverse transfer resolution instruments in respect of securities issued by the bank and held by the onward transferee.
- (4) A reverse transfer resolution instrument is a resolution 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, or could be or could have been, transferred under paragraph (a).
- (5) Except where subsection (6) applies, the Bank of England may make a reverse transfer resolution instrument under subsection (2) only with the written consent of the transferee.
- (6) This subsection applies where the transferee is—
  - (a) a [<sup>F208</sup>resolution administrator], or
  - (b) a person who is not to be authorised to exercise any rights attaching to the securities except on the Bank of England’s instructions.
- (7) The Bank of England may make a reverse transfer resolution instrument under subsection (3) only with the written consent of the onward transferee.
- (8) [<sup>F209</sup>Section 7 does] not apply to a reverse transfer resolution instrument (but it is to be treated in the same way as any other resolution instrument for all other purposes including for the purposes of an application of a power under this Part).
- (9) Before making a reverse transfer resolution instrument the Bank of England must consult—
  - (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (10) Section 48U applies where the Bank of England has made a reverse transfer resolution instrument.]

#### Textual Amendments

**F208** Words in s. 48W(6)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **60(2)**

**F209** Words in s. 48W(8) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **60(3)**

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## <sup>F210</sup>Replacement of provisional valuation

### Textual Amendments

**F210** Ss. 48X, 48Y and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **61**

### **48X. Replacement of Bank’s provisional valuation**

- (1) Where the Bank of England has carried out a provisional valuation under section 6E(3) before making a mandatory reduction instrument or exercising a stabilisation power, the Bank must arrange for the appointment of an independent valuer in accordance with section 62A to carry out a full valuation in accordance with this section as soon as reasonably practicable.
- (2) The purpose of the valuation carried out under subsection (1) is to—
  - (a) ensure the full extent of any losses on the assets of the bank is recognised in the accounting records of the bank, and
  - (b) inform a decision by the Bank as to whether—
    - (i) additional consideration should be paid by a bridge bank or asset management vehicle for any property, rights or liabilities transferred by a property transfer instrument, or securities transferred by a share transfer instrument, or
    - (ii) the Bank should exercise the power under section 48Y(1) to increase or reinstate any liability which has been reduced or cancelled by a resolution instrument.
- (3) A valuation carried out under subsection (1) must comply with subsections (5) and (6) of section 6E, and be accompanied by the information required in subsection (7) of that section.

### **48Y. Consequences of a replacement valuation**

- (1) Where the independent valuation carried out under section 48X(1) produces a higher valuation of the net asset value of the bank than a provisional valuation carried out under section 6E(3), the Bank of England may—
  - (a) modify any liability of the bank which has been reduced, deferred or cancelled by a mandatory reduction instrument or a resolution instrument so as to increase or reinstate that liability; or
  - (b) instruct a resolution company to pay additional consideration—
    - (i) to the bank for any property, rights or liabilities transferred to the resolution company by a property transfer instrument, or
    - (ii) to the previous holders of securities issued by the bank for any securities transferred to the resolution company by a share transfer instrument.
- (2) The power in subsection (1)(a)—
  - (a) may not be exercised so as to increase the value of the liability beyond the value it would have had if the resolution instrument which reduced, cancelled or deferred it had not been made, and

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- (b) must be exercised by a mandatory reduction instrument or supplemental resolution instrument (whether or not that instrument contains any other provision authorised by this Part).]

*[<sup>F211</sup>Termination rights etc*

**Textual Amendments**

**F211** S. 48Z and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **62**

**48Z. Termination rights etc**

(1) In this section—

“crisis management measure” has the meaning given in Article 2.1(102) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

- (a) the exercise of a stabilisation power in relation to the bank by the Bank of England or the Treasury,
- (b) the appointment of a resolution administrator under section 62B,
- (c) the recognition by the Bank of England of third-country resolution action (or part of such action) in accordance with Chapter 5 of this Part, or
- (d) the exercise by the Bank of a stabilisation power by virtue of section 89I(3) (exercise of powers in support of third-country resolution action);

“crisis prevention measure” has the meaning given in Article 2.1(101) of the recovery and resolution directive, and accordingly in relation to the United Kingdom means—

- (a) the imposition by the PRA or the FCA of a requirement to take relevant measures described in Article 6(6) of the resolution and recovery directive,
- (b) the imposition by the Bank of England of a requirement to take measures to remove impediments to resolvability under Article 17 or 18 of the recovery and resolution directive,
- (c) the imposition by the FCA or the PRA of a requirement to take action described in Article 27 of the recovery and resolution directive, or
- (d) the making of a mandatory reduction instrument by the Bank of England under section 6B;

“default event provision” means a Type 1 or Type 2 default event provision (see subsections (2) and (3));

“group” has the meaning given by section 474 of the Companies Act 2006;

“Part 1 instrument” means—

- (a) a mandatory reduction instrument,
- (b) a share transfer instrument,
- (c) a property transfer instrument, or
- (d) a resolution instrument.



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“recognised third-country resolution action” means third-country resolution action, or a part of such action, recognised by the Bank of England in an instrument under section 89H(2);

“third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;

“third-country parent undertaking” has the meaning given by Article 2.1(87) of that directive.

- (2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—
- (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,
  - (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses, or
  - (i) an interest is created, changes or lapses.
- (3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—
- (a) takes effect only if a specified event occurs or does not occur,
  - (b) takes effect only if a specified situation arises or does not arise,
  - (c) has effect only for so long as a specified event does not occur,
  - (d) has effect only while a specified situation lasts,
  - (e) applies differently if a specified event occurs,
  - (f) applies differently if a specified situation arises, or
  - (g) applies differently while a specified situation lasts.
- (4) For the purposes of subsections (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).
- (5) Subsection (6) applies where a contract or other agreement—
- (a) is entered into by a bank, a third-country institution or a third-country parent undertaking,
  - (b) is entered into by a subsidiary undertaking of a bank, a third-country institution or a third-country parent undertaking, whose obligations are guaranteed by a company which is a member of the same group as the bank, third-country institution or third-country parent undertaking, or
  - (c) is entered into by an undertaking which is a member of the same group as a bank, third-country institution, or third country parent undertaking,
- and the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.
- (6) The following are to be disregarded in determining whether a default event provision applies—

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- (a) a crisis prevention measure, crisis management measure or recognised third-country resolution action taken in relation to the bank, third country institution or a member of the same group as the bank or third country institution, and
  - (b) the occurrence of any event directly linked to the application of such a measure or action.
- (7) A Part 1 instrument or share transfer order may provide for subsection (8) or (9) to apply (but need not apply either) in circumstances where subsection (6) would not apply.
- (8) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies.
- (9) If this subsection applies, the Part 1 instrument or share transfer order is to be disregarded in determining whether a default event provision applies except so far as the instrument or order provides otherwise.
- (10) In subsections (7), (8) and (9) a reference to the Part 1 instrument or share transfer order is a reference to—
- (a) the making of the instrument or order,
  - (b) anything that is done by the instrument or order or is to be, or may be, done under or by virtue of the instrument or order, and
  - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order.
- (11) Provision under subsection (7) may apply subsection (8) or (9)—
- (a) generally or only for specified purposes, cases or circumstances, or
  - (b) differently for different purposes, cases or circumstances.
- (12) A thing is not done by virtue of a Part 1 instrument or share transfer order for the purposes of subsection (10)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument or order.]

### *Compensation*

## **49 Orders**

- (1) This Part provides [<sup>F212</sup>four] methods of protecting the financial interests of transferors and others in connection with share transfer instruments and orders [<sup>F212</sup>, property transfer instruments and orders and resolution instruments].
- (2) A “compensation scheme order” is an order —
- (a) establishing a scheme for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and
  - (b) establishing a scheme for paying any compensation.
- [<sup>F213</sup>(2A) A “bail-in compensation order” is an order establishing a scheme for determining, in accordance with section 52A, whether any transferors or others should be paid compensation.]
- (3) A “resolution fund order” is an order establishing a scheme under which transferors become entitled to the proceeds of the disposal of things transferred—

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- (a) in specified circumstances, and
  - (b) to a specified extent.
- (4) A “third party compensation order” is provision made in accordance with section 59 for compensation to be paid to persons other than transferors.

#### Textual Amendments

- F212** Words in s. 49(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(1\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F213** S. 49(2A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(1\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I69** S. 49 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

### 50 Sale to private sector purchaser

- (1) This section applies if the Bank of England makes a share transfer instrument or a property transfer instrument in accordance with section 11(2).
- (2) The Treasury shall make a compensation scheme order.
- (3) An order made by virtue of subsection (2) may include a third party compensation order.
- (4) In the case of a partial property transfer, an order made by virtue of subsection (2) must include a third party compensation order.

#### Commencement Information

- I70** S. 50 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I71** S. 50 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

### 51 Transfer to temporary public ownership

- (1) This section applies if the Treasury make a share transfer order in accordance with section 13(2).
- (2) The Treasury shall make either—
  - (a) a compensation scheme order, or
  - (b) a resolution fund order.
- (3) A resolution fund order made by virtue of subsection (2)(b) may include—
  - (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of specified classes of creditor, for rights in addition to any rights they may have by virtue of the resolution fund order).
- (4) A compensation scheme order made by virtue of subsection (2) may include a third party compensation order.

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#### Commencement Information

**I72** S. 51 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I73** S. 51 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 52 Transfer to [<sup>F214</sup>resolution company]

- [<sup>F215</sup>(1) This section applies if the Bank of England makes—
- (a) a share transfer instrument or a property transfer instrument under section 12(2), or
  - (b) a property transfer instrument under section 12ZA(3).]
- (2) The Treasury shall make a resolution fund order.
- (3) An order made by virtue of subsection (2) may include—
- (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of [<sup>F216</sup>persons of a specified description,] for rights in addition to any rights they may have by virtue of the resolution fund order).
- (4) In the case of a partial property transfer, the resolution fund order must include a third party compensation order.

#### Textual Amendments

**F214** Words in s. 52 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [63\(2\)](#)

**F215** S. 52(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [63\(1\)](#)

**F216** Words in s. 52(3)(b) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 6\(2\)](#); [S.I. 2014/3160](#), art. 2(1)(b)

#### Commencement Information

**I74** S. 52 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I75** S. 52 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## [<sup>F217</sup>52A Bail-in option

- (1) Subsection (2) applies if the Bank of England makes—
  - (a) a resolution instrument under section 12A(2), or
  - (b) a property transfer instrument under section 41A(2).
- (2) The Treasury must make a bail-in compensation order (see section 49(2A)).
- (3) A bail-in compensation order may include provision for—
  - (a) an independent valuer (in which case sections 54 to 56 are to apply);
  - (b) valuation principles (in which case section 57(2) to (5) is to apply).]

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### Textual Amendments

**F217** S. 52A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(3\)](#); S.I. 2014/3160, art. 2(1)(b)

## 53 Onward and reverse transfers [<sup>F218</sup>etc]

(1) This section applies where—

- [<sup>F219</sup>(zza) the Bank of England makes a supplemental share transfer instrument under section 26,]
- [<sup>F220</sup>(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,]
- [<sup>F221</sup>(zb) the Treasury makes a supplemental share transfer order under section 27,]
  - (a) the Treasury make an onward share transfer order under section 28,
  - (b) the Treasury makes a reverse share transfer order under section 29,
  - (c) the Bank of England makes a [<sup>F222</sup>resolution company] share transfer instrument under section 30,
  - (d) the Bank of England makes a [<sup>F223</sup>resolution company] reverse share transfer instrument under section 31,
- [<sup>F224</sup>(dza) the Bank of England makes a supplemental property transfer instrument under section 42,]
- [<sup>F225</sup>(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,]
  - (e) the Bank of England makes an onward property transfer instrument under section 43,
  - (f) the Bank of England makes a reverse property transfer instrument under section 44,
- [<sup>F226</sup>(fa) the Bank of England makes a reverse property transfer instrument under section 44A(2),]
  - (g) the Treasury make a property transfer order under section 45, <sup>F227</sup>...
  - (h) the Treasury make a reverse property transfer order under section 46.
- [<sup>F228</sup>(i) the Bank of England makes a supplemental resolution instrument under section 48U,
  - (j) the Bank of England makes an onward transfer resolution instrument under section 48V(2), or
  - (k) the Bank of England makes a reverse transfer resolution instrument under section 48W(2) or (3).]

(2) The Treasury may make—

- (a) a compensation scheme order;
- (b) a third party compensation order.

### Textual Amendments

**F218** Word in s. 53 heading inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(4\)\(g\)](#); S.I. 2014/3160, art. 2(1)(b)

**F219** S. 53(1)(zza) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(4\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)

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- F220** S. 53(1)(za) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 97(9)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F221** S. 53(1)(zb) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 6(4)(b)**; S.I. 2014/3160, art. 2(1)(b)
- F222** Words in s. 53(1)(c) substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **64**
- F223** Words in s. 53(1)(d) substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), **64**
- F224** S. 53(1)(dza) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 6(4)(c)**; S.I. 2014/3160, art. 2(1)(b)
- F225** S. 53(1)(da) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 97(9)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F226** S. 53(1)(fa) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 6(4)(d)**; S.I. 2014/3160, art. 2(1)(b)
- F227** Word in s. 53(1) omitted (31.12.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 6(4)(e)**; S.I. 2014/3160, art. 2(1)(b)
- F228** S. 53(1)(i)-(k) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 2 para. 6(4)(f)**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I76** S. 53 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1
- I77** S. 53 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

#### 54 Independent valuer<sup>F229</sup>: compensation scheme order or bail-in compensation order]

- (1) A compensation scheme order [<sup>F230</sup>or bail-in compensation order] may provide for the amount of any compensation payable to be determined by a person appointed in accordance with the order (the “independent valuer”); and subsections (2) to (5) apply to an order which includes provision for an independent valuer.
- (2) An order must provide for the independent valuer to be appointed by a person appointed by the Treasury (“the appointing person”).
- (3) An order may either—
  - (a) require the Treasury to make arrangements to identify a number of possible independent valuers, one of whom is to be selected by the appointing person, or
  - (b) require the appointing person to make arrangements to select the independent valuer, having regard to any criteria specified in the order.
- (4) The independent valuer may be removed only—
  - (a) on the grounds of incapacity or serious misconduct, and
  - (b) by a person specified by the Treasury in accordance with the compensation scheme order [<sup>F231</sup>or bail-in compensation order].
- (5) An order must include provision for resignation and replacement of the independent valuer (and subsections (2) and (3) apply to replacement as to the first appointment).

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### Textual Amendments

- F229** Words in s. 54 heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [65](#)
- F230** Words in s. 54(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 6\(5\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F231** Words in s. 54(4)(b) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 6\(5\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)

### Commencement Information

- I78** S. 54 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I79** S. 54 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 55 Independent valuer: supplemental

- (1) An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) The Treasury may by order confer specific functions on independent valuers; in particular, the order may—
  - (a) enable an independent valuer to apply to a court or tribunal for an order requiring the provision of information or the giving of oral or written evidence;
  - (b) enable or require independent valuers to publish, disclose or withhold information.
- (3) Provision under subsection (2) may—
  - (a) confer a discretion on independent valuers;
  - (b) confer jurisdiction on a court or tribunal;
  - (c) make provision about oaths, expenses and other procedural matters relating to the giving of evidence or the provision of information;
  - (d) create a criminal offence;
  - (e) make other provision about enforcement.
- (4) An independent valuer may appoint staff.
- (5) The Treasury may by order make provision about the procedure to be followed by independent valuers.
- (6) The Treasury shall by order make provision for—
  - (a) reconsideration of a decision of an independent valuer, and
  - (b) appeal to a court or tribunal against a decision of an independent valuer.
- (7) Independent valuers (and their staff) are neither servants nor agents of the Crown (and, in particular, are not civil servants).
- (8) Records of an independent valuer are public records for the purposes of the Public Records Act 1958.
- (9) An order under this section—
  - (a) shall be made by statutory instrument, and

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- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F232</sup>(10) But subsection (9)(b) does not apply if the order is contained in a statutory instrument that contains an order to which section 62 applies.]

#### Textual Amendments

**F232** S. 55(10) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **21(3)**, 26(1)(f)

#### Commencement Information

**I80** S. 55 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 56 Independent valuer: money

- (1) The Treasury may by order provide for the payment by the Treasury of remuneration and allowances to—

- (a) independent valuers,  
 (b) staff of independent valuers,  
 (c) appointing persons,

[<sup>F233</sup>(ca) persons mentioned in section 54(4)(b),] and  
 (d) monitors.

- (2) An order—

- (a) must provide for the appointment by the Treasury of a person to monitor the operation of the arrangements for remuneration and allowances for independent valuers;  
 (b) may require, or enable a compensation scheme order [<sup>F234</sup>, third party compensation order or bail-in compensation order] to require, the monitor's approval before specified things may be done in the course of those arrangements;  
 (c) may include provision about records and accounts;  
 (d) may make provision about numbers of staff and the terms and conditions of their appointment (which may include provision requiring the approval of the Treasury or the monitor).

- (3) In subsection (1) a reference to the payment of allowances to a person includes a reference to the payment to or in respect of the person of sums by way of or in respect of pension.

- (4) Independent valuers (and their staff) are not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).

- (5) An order under this section—

- (a) shall be made by statutory instrument, and  
 (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F235</sup>(6) But subsection (5)(b) does not apply if the order is contained in a statutory instrument that contains an order to which section 62 applies.]



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#### Textual Amendments

- F233** S. 56(1)(ca) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(a)**, 26(1)(f)  
**F234** Words in s. 56(2)(b) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(6)**; S.I. 2014/3160, art. 2(1)(b)  
**F235** S. 56(6) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(b)**, 26(1)(f)

#### Commencement Information

- I81** S. 56 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

## 57 Valuation principles

- (1) A compensation scheme order [<sup>F236</sup>or bail-in compensation order] may specify principles (“valuation principles”) to be applied in determining the amount of compensation.
- (2) Valuation principles may, in particular, require an independent valuer—
  - (a) to apply, or not to apply, specified methods of valuation;
  - (b) to assess values or average values at specified dates or over specified periods;
  - (c) to take specified matters into account in a specified manner;
  - (d) not to take specified matters into account.
- (3) In determining an amount of compensation (whether or not in accordance with valuation principles) an independent valuer must disregard actual or potential financial assistance provided by the Bank of England or the Treasury (disregarding ordinary market assistance offered by the Bank on its usual terms).
- (4) Valuation principles may require or permit an independent valuer to make assumptions; such as, for example, that the bank—
  - (a) has had a permission under [<sup>F237</sup>Part 4A] of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled,
  - (b) is unable to continue as a going concern,
  - (c) is in administration, or
  - (d) is being wound up.
- (5) There is nothing to prevent the application of the valuation principles in an order from resulting in no compensation being payable to a transferor.

#### Textual Amendments

- F236** Words in s. 57(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(7)**; S.I. 2014/3160, art. 2(1)(b)  
**F237** Words in s. 57(4)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 26** (with **Sch. 20**); S.I. 2013/423, art. 3, **Sch.**

#### Commencement Information

- I82** S. 57 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**  
**I83** S. 57 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

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## 58 Resolution fund

- (1) A resolution fund order must include provision for determining—
  - (a) who will be entitled to a share of the proceeds on disposal of things transferred,
  - (b) the way in which the proceeds will be calculated, and
  - (c) the way in which shares will be calculated.
- (2) Provision under subsection (1)(b) may, in particular, provide for proceeds to be calculated net of—
  - (a) amounts required for the repayment of loans from public funds or for other payments in respect of public financial assistance;
  - (b) some or all of the administrative or other expenses incurred in connection with the provisions of this Part.
- (3) A resolution fund order may include provision for—
  - (a) an independent valuer to make a determination under the order (in which case sections 54(2) to (5), 55 and 56 shall apply);
  - (b) valuation principles to be applied in making a determination (in which case section 57(2) shall apply).
- (4) A resolution fund order may confer a discretionary function on—
  - (a) a Minister of the Crown,
  - (b) the Treasury,
  - (c) the Bank of England, or
  - (d) any other specified person.
- (5) A resolution fund order may include provision for the determination of disputes about the application of its provisions (whether by conferring jurisdiction on a court or tribunal or otherwise).
- (6) A resolution fund order may require the Bank of England in managing a [<sup>F238</sup>resolution company] to aim to maximise the proceeds available for distribution in accordance with the order; and an order which includes a requirement must—
  - (a) specify its extent, and
  - (b) include provision about how the Bank is to comply with it.
- (7) A resolution fund order may require the Treasury to ensure that a bank in temporary public ownership in accordance with section 13(2) is managed with the aim of maximising the proceeds available for distribution in accordance with the order; and an order which includes a requirement must—
  - (a) specify its extent, and
  - (b) include provision about how the Treasury is to comply with it.
- (8) A requirement under subsection (6) or (7) is to be complied with only in so far as is compatible with—
  - (a) pursuit of the special resolution objectives, and
  - (b) compliance with the code of practice under section 5.

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### Textual Amendments

**F238** Words in s. 58(6) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 66

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#### Commencement Information

- 184** S. 58 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1  
**185** S. 58 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, Sch. para. 1

### 59 Third party compensation: discretionary provision

- (1) A power or duty in this Part to make a third party compensation order is a power or duty to make provision establishing a scheme for paying compensation to persons other than a transferor.
- (2) A third party compensation order may—
  - (a) form part of a compensation scheme order or resolution fund order, or
  - (b) be a separate order.
- (3) A third party compensation order may include provision for—
  - (a) an independent valuer (in which case sections 54 to 56 shall apply);
  - (b) valuation principles (in which case section 57(2) to (5) shall apply).

#### Commencement Information

- 186** S. 59 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1  
**187** S. 59 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, Sch. para. 1

### 60 Third party compensation: mandatory provision

- (1) The Treasury may make regulations about third party compensation arrangements in the case of partial property transfers.
- (2) In making regulations the Treasury shall, in particular, have regard to the desirability of ensuring that if a residual bank enters insolvency after transfer, pre-transfer <sup>F239</sup>shareholders or] creditors do not receive less favourable treatment than they would have received had it entered insolvency immediately before transfer.
- (3) In subsection (2)—
  - (a) “residual bank” means a bank that is a transferor under a property transfer instrument,
  - (b) “pre-transfer <sup>F240</sup>shareholder or] creditor” means a person who—
    - (i) <sup>F241</sup>holds securities issued by, or is a creditor of, a] residual bank immediately before a property transfer instrument takes effect, and
    - (ii) satisfies conditions specified by the regulations, and
  - (c) the reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) a composition with creditors, and (vii) a scheme of arrangement.
- (4) The regulations may—
  - (a) require a compensation scheme order or a resolution fund order to include a third party compensation order;
  - (b) require a third party compensation order to include provision of a specified kind or to specified effect;

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- (c) make provision which is to be treated as forming part of a third party compensation order (whether (i) generally, (ii) only if applied, (iii) unless disapplied, or (iv) subject to express modification).
- (5) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or combination of factors; in particular, the regulations may provide for entitlement—
  - (a) to depend in part upon the amounts which are or may be payable under a resolution fund order;
  - (b) to be contingent upon the occurrence or non-occurrence of specified events;
  - (c) to be determined wholly or partly by an independent valuer (within the meaning of sections 54 to 56) appointed in accordance with a compensation scheme order or resolution fund order.
- (6) Regulations may make provision about payment including, in particular, provision for payments—
  - (a) on account subject to terms and conditions;
  - (b) by instalment.
- (7) Regulations—
  - (a) shall 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.

#### Textual Amendments

- F239** Words in s. 60(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(2)**
- F240** Words in s. 60(3)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(3)(a)**
- F241** Words in s. 60(3)(b)(i) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(3)(b)**

#### Commencement Information

- I88** S. 60 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I89** S. 60 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

#### <sup>F242</sup>60A Further mandatory provision: bail-in provision

- (1) The Treasury may make regulations about compensation arrangements in the case of—
  - (a) resolution instruments under section 12A(2) and supplemental resolution instruments under section 48U(2), and
  - (b) instruments (made under any provision) that include special bail-in provision.
- (2) Regulations may—
  - (a) require a resolution fund order, a compensation scheme order, a third party compensation order or a bail-in compensation order to include provision of a specified kind or to specified effect;
  - (b) make provision that is to be treated as forming part of any such order (whether (i) generally, (ii) only if applied, (iii) unless disapplied, or (iv) subject to express modification).

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- (3) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or combination of factors; in particular, the regulations may provide for entitlement—
  - (a) to depend in part upon the amounts which are or may be payable under a resolution fund order;
  - (b) to be contingent upon the occurrence or non-occurrence of specified events;
  - (c) to be determined wholly or partly by an independent valuer (within the meaning of sections 54 to 56) appointed in accordance with a compensation scheme order or bail-in compensation order.
- (4) Regulations may make provision about payment including, in particular, provision for payments—
  - (a) on account subject to terms and conditions;
  - (b) by instalment.
- (5) Regulations—
  - (a) are 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.

#### Textual Amendments

**F242** Ss. 60A, 60B inserted (1.3.2014 for specified purposes, 31.12.2014 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(8\)](#); S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2; S.I. 2014/3160, art. 2(1)(b)

### 60B Principle of no less favourable treatment

- (1) In making regulations under section 60A the Treasury must, in particular, have regard to the desirability of ensuring that pre-resolution shareholders and creditors of a bank do not receive less favourable treatment than they would have received had the bank entered insolvency immediately before the coming into effect of the initial instrument.
- (2) References in this section to the initial instrument are—
  - (a) in relation to compensation arrangements in the case of property transfer instruments under section [<sup>F243</sup>11(2), 12(2) or 12ZA(2)], to the first instrument to be made under [<sup>F244</sup>those provisions] with respect to the bank;
  - (b) in relation to compensation arrangements in other cases, to the first resolution instrument to be made under section 12A with respect to the bank.
- (3) The “pre-resolution shareholders and creditors” of a bank are the persons who held securities issued by the bank, or were creditors of the bank, immediately before the coming into effect of the initial instrument.
- (4) References in this section to insolvency include a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors, and (vii) a scheme of arrangement.]

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### Textual Amendments

- F242** Ss. 60A, 60B inserted (1.3.2014 for specified purposes, 31.12.2014 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(8)**; S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2; S.I. 2014/3160, art. 2(1)(b)
- F243** Words in s. 60B(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **68(a)**
- F244** Words in s. 60B(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **68(b)**

## 61 Sources of compensation

- (1) This section applies to—
- (a) compensation scheme orders,
  - (b) resolution fund orders,
  - (c) third party compensation orders, <sup>F245</sup> ...
  - <sup>F246</sup>(ca) bail-in compensation orders,]
  - (d) regulations under section 60<sup>F247</sup>, and]
  - <sup>F247</sup>(e) regulations under section 60A.]
- (2) An order or regulations may provide for compensation or other payments to be made by—
- (a) the Treasury,
  - (b) the Financial Services Compensation Scheme, <sup>F248</sup>subject to section 214C of the Financial Services and Markets Act 2000 (limit on amount of special resolution regime payments),] or
  - (c) any other specified person.

### Textual Amendments

- F245** Word in s. 61(1)(c) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(9)(a)**; S.I. 2014/3160, art. 2(1)(b)
- F246** S. 61(1)(ca) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(9)(b)**; S.I. 2014/3160, art. 2(1)(b)
- F247** S. 61(1)(e) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(9)(c)**; S.I. 2014/3160, art. 2(1)(b)
- F248** Words in s. 61(2)(b) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), s. 26(1)(l), **Sch. 2 para. 41**

### Commencement Information

- I90** S. 61 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

## 62 Procedure

- (1) This section applies to—
- (a) compensation scheme orders,
  - (b) resolution fund orders, <sup>F249</sup> ...
  - <sup>F250</sup>(ba) bail-in compensation orders, and]
  - (c) third party compensation orders.

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- (2) An order—
- (a) shall 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.

#### Textual Amendments

**F249** Word in s. 62(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(10\)](#); S.I. 2014/3160, art. 2(1)(b)

**F250** S. 62(1)(ba) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(10\)](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

**I91** S. 62 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I92** S. 62 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

*<sup>F251</sup>Independent valuer: valuation under section 6E or 48X*

#### Textual Amendments

**F251** S. 62A and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [69](#)

### 62A. Independent valuer: sections 6E and 48X

- (1) The Bank of England must make arrangements for the appointment of a person to act as independent valuer for the purposes of a valuation to be conducted under section 6E or 48X.
- (2) A person may not be appointed as independent valuer under subsection (1) unless that person—
  - (a) qualifies as “independent” in accordance with regulatory technical standards adopted by the European Commission under Article 36.16 of the recovery and resolution directive, or
  - (b) if no such regulatory technical standards have been adopted by the European Commission, satisfies the independence requirement set out in section 1151 of the Companies Act 2006.
- (3) An independent valuer is to hold and vacate office in accordance with the terms of his or her appointment.
- (4) An independent valuer may be removed from office only on the grounds of incapacity or serious misconduct.
- (5) In the event of the death of an independent valuer, or an independent valuer being removed from office or resigning, a new independent valuer must be appointed by the Bank in accordance with this section.
- (6) Sections 55(1) to (5) and (7) to (10), and 56 apply in relation to an independent valuer appointed in accordance with this section as they apply to an independent valuer appointed by virtue of section 54.]



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## *f*<sup>F252</sup>Resolution administrator

### Textual Amendments

**F252** Ss. 62B-62E and cross-heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **70**

### **62B. Resolution administrator**

- (1) The Bank of England may appoint an individual or body corporate as a resolution administrator.
- (2) The power under subsection (1) may be exercised—
  - (a) by a separate instrument of appointment under this section, or
  - (b) by way of provision in a mandatory reduction instrument, a share transfer instrument, a property transfer instrument or a resolution instrument.
- (3) In this section and sections 62C to 62E—
 

“appointment instrument” means an instrument under subsection (2)(a);

“Part 1 instrument” means an instrument of a kind mentioned in subsection (2)(b).
- (4) A resolution administrator is appointed—
  - (a) to hold any securities that may be transferred or issued to that person in the capacity of resolution administrator, and
  - (b) to perform any other functions that may be conferred under any provision of this Part.
- (5) The Bank of England may appoint more than one resolution administrator to perform functions in relation to a bank (but no more than one of them may at any one time be authorised to hold securities as mentioned in subsection (4)(a)).
- (6) Securities held by a resolution administrator (in that capacity, and whether as a result of a Part 1 instrument or otherwise) are to be held in accordance with the terms of a Part 1 instrument that transfers those, or other, securities to the resolution administrator.
- (7) For example, the following provision may be made by virtue of subsection (6)—
  - (a) provision that specified rights of a resolution administrator with respect to all or any of the securities are to be exercisable only as directed by the Bank of England;
  - (b) provision specifying rights or obligations that the resolution administrator is, or is not, to have in relation to some or all of the securities.
- (8) A resolution administrator must—
  - (a) in accordance with the Part 1 instrument or the appointment instrument, take all measures necessary to promote the special resolution objectives, and
  - (b) have regard, in performing any functions of the office, to any other objectives that may be specified in a Part 1 instrument or the appointment instrument.
- (9) Where one or more objectives are specified in accordance with subsection (8), the objectives are to be taken to have equal status with each other, unless the contrary is stated in the Part 1 instrument or the appointment instrument.



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- (10) The following provisions apply in relation to an appointment instrument as they apply in relation to a resolution instrument—
- (a) section 48S(2) and (3) (power to make incidental, consequential provision etc);
  - (b) section 48T (procedure).

## **62C. Resolution administrator: further functions**

- (1) An appointment instrument or a Part 1 instrument may—
- (a) authorise a resolution administrator to manage the bank’s business (or confer on a resolution administrator any other power with respect to the management of the bank’s business);
  - (b) authorise a resolution administrator to exercise any other powers of the bank;
  - (c) confer on a resolution administrator any other power the Bank of England may consider appropriate;
  - (d) provide that the exercise of any power conferred by the instrument in accordance with this section is to be subject to conditions specified in the instrument.
- (2) An appointment instrument or a Part 1 instrument may require a resolution administrator to make reports to the Bank of England—
- (a) on any matter specified in the instrument, and
  - (b) at the times or intervals specified in the instrument.
- (3) If an instrument specifies a matter in accordance with subsection (2)(a), it may provide for further requirements as to the contents of the report on that matter to be specified in an agreement between the Bank of England and the resolution administrator.
- (4) An appointment instrument or a Part 1 instrument may—
- (a) require a resolution administrator to consult specified persons before exercising specified functions (and may specify particular matters on which the specified person must be consulted);
  - (b) provide that a resolution administrator is not to exercise specified functions without the consent of a specified person.

## **62D. Resolution administrator: supplementary**

- (1) A resolution administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) A resolution administrator is not a servant or agent of the Crown (and, in particular, is not a civil servant).
- (3) Where a resolution administrator is appointed under this Part, the Bank of England—
- (a) must make provision in the appointment instrument or a Part 1 instrument for the resignation and replacement of the resolution administrator;
  - (b) may remove the resolution administrator from office only (i) on the ground of incapacity or misconduct, or (ii) on the ground that there is no further need for a person to perform the functions conferred on the resolution administrator.

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## **62E. Resolution administrator: money**

- (1) An appointment instrument or a Part 1 instrument may provide for the payment of remuneration and allowances to a resolution administrator.
- (2) Provision made under subsection (1) may provide that the amounts are—
  - (a) to be paid by the Bank of England, or
  - (b) to be determined by the Bank of England and paid by the bank.
- (3) A resolution administrator is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).]

### *Incidental functions*

## **63 General continuity obligation: property transfers**

- (1) In this section and section 64—
  - (a) “residual bank” means a bank all or part of whose business has been transferred in accordance with section 11(2)(b)[<sup>F253</sup>, 12(2)[<sup>F254</sup>, 12ZA(3)] or 41A(2)],
  - (b) “group company” means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual bank,
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation),
  - (d) “the transferred business” means the part of the bank's business that has been transferred, and
  - (e) “transferee” means a commercial purchaser or [<sup>F255</sup>resolution company] to whom all or part of the transferred business has been transferred.
- [<sup>F256</sup>(1A) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.]
- (2) The residual bank and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the residual bank or group company and the transferee.
- [<sup>F257</sup>(3A) The continuity obligation continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- [<sup>F258</sup>(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the bank whose business has been transferred, under an agreement with that bank, before the property transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).]

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- (5) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.
- (6) The Bank of England may, with the consent of the Treasury, by notice to the residual bank or a group company state that in the Bank's opinion—
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

#### Textual Amendments

- F253** Words in s. 63(1)(a) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 17](#); [S.I. 2014/3160](#), art. 2(1)(b)
- F254** Words in s. 63(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [71\(2\)\(a\)](#)
- F255** Words in s. 63(1)(e) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [71\(2\)\(b\)](#)
- F256** S. 63(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [71\(3\)](#)
- F257** S. 63(3A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [71\(4\)](#)
- F258** S. 63(4A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [71\(5\)](#)

#### Commencement Information

- I93** S. 63 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 64 Special continuity obligations: property transfers

- (1) Expressions in this section have the same meaning as in section 63.
- (2) The Bank of England may—
  - (a) cancel a contract or other arrangement between the residual bank and [<sup>F259</sup>a third party] (whether or not rights or obligations under it have been transferred to a transferee);
  - (b) modify the terms of a contract or other arrangement between the residual bank and [<sup>F260</sup>a third party] (whether or not rights or obligations under it have been transferred to a transferee);
  - (c) add or substitute a transferee as a party to a contract or other arrangement between the residual bank and [<sup>F261</sup>a third party];
  - (d) confer and impose rights and obligations on a group company and a transferee, which shall have effect as if created by contract between them;
  - (e) confer and impose rights and obligations on the residual bank and a transferee which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the Bank of England shall aim, so far as is reasonably practicable, to preserve or include—

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- (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- [<sup>F262</sup>(4) The power under subsection (2) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).
- (5) The power in subsection (2)(d) and (e) may be exercised only—
- (a) in so far as the Bank of England thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively, and
  - (b) with the consent of the Treasury.
- (6) An obligation imposed on the residual bank or a group company under subsection (2) (d) or (e) continues to apply despite the residual bank or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]
- [<sup>F263</sup>(7) For the purposes of subsection (2), “third party” includes a group company.]

#### Textual Amendments

- F259** Words in s. 64(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F260** Words in s. 64(2)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F261** Words in s. 64(2)(c) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(2\)](#)
- F262** S. 64(4)-(6) substituted for s. 64(4) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(3\)](#)
- F263** S. 64(7) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [72\(4\)](#)

#### Commencement Information

- I94** S. 64 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 65 Continuity obligations: onward property transfers

- (1) In this section—
- (a) “onward transfer” means a transfer of property, rights or liabilities (whether or not under a power in this Part) from—
    - (i) a person who is a transferee under a property transfer instrument under section 12(2) [<sup>F264</sup>or 12ZA(3)] (an “original transferee”), or
    - (ii) a bank, securities issued by which were earlier transferred by [<sup>F265</sup>a share transfer instrument under section 12(2) or] a share transfer order under section 13(2), and
  - (b) the person to whom the onward transfer is made is referred to as an “onward transferee”.
- (2) The continuity authority may—

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- (a) provide for an obligation under section 63 to apply in respect of an onward transferee;
  - (b) extend section 64 so as to permit action to be taken under section 64(2) for the purpose of enabling an onward transferee to operate transferred business, or part of it, effectively.
- (3) “The continuity authority” means—
- (a) the Bank of England, where subsection (1)(a)(i) applies, and
  - (b) the Treasury, where subsection (1)(a)(ii) applies.
- (4) Subsection (2) may be relied on to impose obligations on—
- (a) an original transferee (where the original transfer was a property transfer),
  - (b) a residual bank within the meaning of section 63 (where the original transfer was a property transfer),
  - (c) the bank (where the original transfer was a share transfer),
  - (d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of anything within paragraphs (a) to (c), or
  - (e) any combination.
- (5) Subsection (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of section 63 or 64, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 63(3) to (7) and 64(3) and (4) apply to an obligation as applied under subsection (2)—
- (a) construing “transferred business” as the business transferred by means of the onward transfer, and
  - (b) with any other necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

#### Textual Amendments

**F264** Words in s. 65(1)(a)(i) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **73(a)**

**F265** Words in s. 65(1)(a)(ii) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **73(b)**

#### Commencement Information

**I95** S. 65 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 66 General continuity obligation: share transfers

- (1) In this section and section 67—

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- (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 11(2)(a)<sup>[F266]</sup>, 12(2)(a)<sup>[F267]</sup> or 13(2)<sup>[F267]</sup>, or which falls within subsection (1A)],
  - (b) “former group company” means anything which was a group undertaking in relation to the transferred bank immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred bank immediately after the transfer),
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), and
  - (d) “the continuity authority” means—
    - (i) the Bank of England, where ownership was transferred in accordance with section 11(2)(a)<sup>[F268]</sup>, 12(2)(a)<sup>[F269]</sup>, or in a case falling within subsection (1A)], and
    - (ii) the Treasury, where ownership was transferred in accordance with section 13(2).
- <sup>[F270]</sup>(1ZA) In this section a reference to insolvency includes a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors and (vii) a scheme of arrangement.]
- <sup>[F271]</sup>(1A) A bank falls within this subsection if a <sup>[F272]</sup>mandatory reduction instrument or] resolution instrument (or supplemental resolution instrument) has changed the ownership of the bank (wholly or partly) by providing for the transfer, cancellation or conversion from one form or class to another of securities issued by the bank (and the reference in subsection (1)(b) to “the transfer” includes such a cancellation or conversion).]
- (2) Each former group company must provide such services and facilities as are required to enable the transferred bank to operate effectively.
  - (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the transferred bank and the former group company.
- <sup>[F273]</sup>(3A) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.]
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- <sup>[F274]</sup>(4A) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred bank, under an agreement with that bank, before the share transfer instrument or order or the resolution instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and subsection (4) does not apply).]
- (5) The continuity obligation is not limited to the provision of services or facilities directly to the transferred bank.
  - (6) The continuity authority may by notice to a former group company state that in the authority’s opinion—
    - (a) specified activities are required to be undertaken in accordance with the continuity obligation;

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- (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- (8) The Bank of England may act under or by virtue of subsection (6) only with the consent of the Treasury.

#### Textual Amendments

- F266** Words in s. 66(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(2\)\(a\)](#)
- F267** Words in s. 66(1)(a) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F268** Words in s. 66(1)(d) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(2\)\(b\)](#)
- F269** Words in s. 66(1)(d)(i) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F270** S. 66(1ZA) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(3\)](#)
- F271** S. 66(1A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 18\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F272** Words in s. 66(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(4\)](#)
- F273** S. 66(3A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(5\)](#)
- F274** S. 66(4A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [74\(6\)](#)

#### Commencement Information

- I96** S. 66 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 67 Special continuity obligations: share transfers

- (1) Expressions in this section have the same meaning as in section 66.
- (2) The continuity authority may—
  - (a) cancel a contract or other arrangement between the transferred bank and [<sup>F275</sup>a third party];
  - (b) modify the terms of a contract or other arrangement between the transferred bank and [<sup>F276</sup>a third party];
  - (c) confer and impose rights and obligations on a former group company and the transferred bank, which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the continuity authority shall aim, so far as is reasonably practicable, to preserve or include—
  - (a) provision for reasonable consideration, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.

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- [<sup>F277</sup>(4) The power under subsection (2) must be exercised by way of provision in a share transfer instrument or order or resolution instrument (or supplemental instrument or order).
- (5) The power in subsection (2)(c) may be exercised—
- (a) only in so far as the continuity authority thinks it necessary to do so to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively, and
  - (b) by the Bank of England only with the consent of the Treasury.
- (6) An obligation imposed on the transferred bank or a former group company under subsection (2)(b) or (c) continues to apply despite the transferred bank or former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(2) of the Insolvency (Northern Ireland) Order 1989.]

#### Textual Amendments

**F275** Words in s. 67(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **75(2)**

**F276** Words in s. 67(2)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **75(2)**

**F277** S. 67(4)-(6) substituted for s. 67(4) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **75(3)**

#### Commencement Information

**I97** S. 67 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I98** S. 67 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 68 Continuity obligations: onward share transfers

- (1) In this section “onward transfer” means a transfer (whether or not under a power in this Part) of securities issued by a bank where—
- (a) securities issued by the bank were earlier transferred by [<sup>F278</sup>a share transfer instrument under section 12(2),]<sup>[<sup>F279</sup>a resolution instrument under section 12A(2) or supplemental resolution instrument under section 48U(2) or a]</sup> share transfer order under section 13(2), or
  - (b) the bank was the transferee under a property transfer instrument under section 12(2).
- (2) The continuity authority may—
- (a) provide for an obligation under section 66 to apply in respect of the bank after the onward transfer;
  - (b) extend section 67 so as to permit action to be taken under section 67(2) to enable the bank to operate effectively after the onward transfer.
- (3) In this section “continuity authority” has the same meaning as in sections 66 and 67.
- (4) Subsection (2) may be relied on to impose obligations on—
- (a) the bank,



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- (b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the bank,
  - (c) anything which is or was a group undertaking of the residual bank (in a case to which subsection (1)(b) applies), or
  - (d) any combination.
- (5) Subsection (2) may be used to impose obligations—
- (a) in addition to obligations under or by virtue of section 66 or 67, or
  - (b) replacing obligations under or by virtue of either of those sections to a specified extent.
- (6) A power under subsection (2) is exercisable by giving a notice to each person—
- (a) on whom a continuity obligation is to be imposed under the power, or
  - (b) who is expected to benefit from a continuity obligation under the power.
- (7) Sections 66(3) to (7) and 67(3) and (4) apply to an obligation as applied under subsection (2) with any necessary modification.
- (8) The Bank of England may act under or by virtue of subsection (2) only with the consent of the Treasury.

#### Textual Amendments

- F278** Words in s. 68(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 76
- F279** Words in s. 68(1)(a) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 20](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I99** S. 68 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 69 Continuity obligations: consideration and terms

- (1) The Treasury may by order specify matters which are to be or not to be considered in determining—
- (a) what amounts to reasonable consideration for the purpose of sections 63 to 68;
  - (b) what provisions to include in accordance with section 64(3)(b) or 67(3)(b).
- (2) An order—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A continuity authority may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.
- (4) In this section “continuity authority”—
- (a) in relation to sections 63 and 64, means the Bank of England, and
  - (b) in relation to sections 65 to 68, has the same meaning as in those sections.

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#### Commencement Information

**I100** S. 69 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I101** S. 69 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 70 Continuity obligations: termination

- (1) The continuity authority may by notice terminate an obligation arising under section 63 or 66.
- (2) The power under subsection (1) is exercisable by giving a notice to each person—
  - (a) on whom the obligation is imposed, or
  - (b) who has benefited or might have expected to benefit from the obligation.
- (3) In this section “continuity authority”—
  - (a) in relation to section 63, means the Bank of England, and
  - (b) in relation to section 66, has the same meaning as in that section.
- (4) A reference in subsection (1) to obligations under a section includes a reference to obligations under that section as applied under section 65 or 68.

#### Commencement Information

**I102** S. 70 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## [<sup>F280</sup>70A.Suspension of obligations

- (1) The Bank of England may suspend obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power.
- (2) A suspension imposed under subsection (1) does not apply to—
  - (a) payments of eligible deposits or eligible claims, or
  - (b) payments or deliveries to excluded persons.
- (3) A suspension imposed under subsection (1)—
  - (a) begins when the instrument providing for the suspension is first published,
  - (b) must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published, and
  - (c) subject to subsection (2), suspends all obligations to make a payment or delivery under the contract in question, whether the obligation concerned is that of the bank under resolution or of any other party to the contract.
- (4) Where a payment or delivery under the contract concerned first fell due within the period of the suspension, that payment or delivery is treated as being due immediately on the expiry of the suspension.
- (5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

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(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) In this section—

“eligible claim” means a claim in respect of which compensation is payable under the Financial Services Compensation Scheme or a compensation scheme established under [Directive 97/9/EC](#) of the European Parliament and of the Council of 3rd March 1997 on investor-compensation schemes

“eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme or a scheme established under [Directive 2014/49/EU](#) of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes.

#### Textual Amendments

**F280** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

### 70B. Restriction of security interests

(1) Where the Bank of England is exercising a stabilisation power in respect of bank, the Bank may suspend the rights of a secured creditor of the bank to enforce any security interest the creditor has in relation to any assets of the bank.

(2) A suspension under subsection (1)—

- (a) begins when the instrument providing for the suspension is first published, and
- (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.

(3) But the Bank of England may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the bank under resolution which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(4) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(5) Where the power in subsection (1) is being exercised in a partial property transfer, the Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes under that subsection are applied consistently for all banking group companies in respect of which the Bank is exercising a stabilisation power.

(6) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).

(7) For the purposes of this section, a “security interest” means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

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### Textual Amendments

**F280** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

## 70C. Suspension of termination rights

- (1) The Bank of England may suspend the termination right of any party to a qualifying contract (other than a party who is an excluded person).
- (2) A contract is a “qualifying contract” for the purpose of this section if—
  - (a) one of the parties to the contract is a bank in respect of which the Bank is exercising a stabilisation power (a “bank under resolution”) and all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed, or
  - (b) one of the parties to the contract is a subsidiary undertaking of a bank under resolution and the condition in subsection (3) is met.
- (3) The condition is that—
  - (a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank under resolution,
  - (b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank under resolution, and
  - (c) if a property transfer instrument has been made in relation to the bank under resolution—
    - (i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee, or
    - (ii) the Bank of England is providing adequate protection for the performance of the obligations of the subsidiary undertaking under the contract in any other way.
- (4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in subsection (1).
- (5) The power under subsection (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.
- (6) A suspension imposed under subsection (1)—
  - (a) begins when the instrument providing for the suspension is first published, and
  - (b) must end no later than midnight at the end of the first business day following the day on which that instrument is published;
 and, where the suspension is imposed in relation to a subsidiary undertaking of a bank under resolution, “midnight” means midnight in the EEA state in which the subsidiary undertaking is established.
- (7) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank of England that the rights and liabilities of the bank under resolution covered by the contract are not—
  - (a) to be transferred to another undertaking through the exercise of a stabilisation power, or

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- (b) to be made subject to a mandatory reduction instrument or a resolution instrument.
- (8) If—
- (a) no notice has been given by the Bank of England under subsection (7), and
  - (b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under subsection (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),
- a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.
- (9) But, where the rights and liabilities of the bank under resolution or the subsidiary undertaking under the contract have been transferred to another undertaking, subsection (8) applies only if the event giving rise to the termination right has been triggered by that undertaking.
- (10) For the purposes of this section, “termination right” means—
- (a) a right to terminate a contract,
  - (b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract, or
  - (c) a provision that prevents an obligation from arising under the contract.

#### Textual Amendments

**F280** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

### 70D. Suspension: general provisions

- (1) For the purposes of sections 70A to 70C—
- “business day” means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;
- “excluded person” means—
- (a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,
  - (b) a person who has been designated by an EEA state as a system under Article 2(a) of the [Directive 98/26/EC](#) of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or an operator of such a system,
  - (c) a recognised central counterparty, EEA central counterparty or third country central counterparty, or
  - (d) a central bank.
- (2) For the purposes of subsection (1), “EEA central counterparty”, “recognised central counterparty” and “third country central counterparty” have the meaning given in section 285 of the Financial Services and Markets Act 2000.]

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### Textual Amendments

**F280** Ss. 70A-70D inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 77

## 71 Pensions

- (1) This section applies to—
  - [<sup>F281</sup>(za) mandatory reduction instruments,]
    - (a) share transfer orders,
    - (b) share transfer instruments, <sup>F282</sup>...
    - (c) property transfer instruments [<sup>F283</sup>, and]
    - [<sup>F283</sup>(d) resolution instruments.]
- (2) An order or instrument may make provision—
  - (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the bank.
- (3) In particular, an order or instrument may—
  - (a) modify any rights and liabilities;
  - (b) apportion rights and liabilities;
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this section may (but need not) amend the terms of a pension scheme.
- (5) A share or property transfer instrument may make provision in reliance on this section only with the consent of the Treasury.
- (6) In this section—
  - (a) “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities, and
  - (b) a reference to a pension scheme of a bank is a reference to a scheme in respect of which the bank, or a group company of the bank, is or was an employer.
- (7) In subsection (6)(b) the reference to a group company of the bank is a reference to anything that is or was a group undertaking in relation to the bank within the meaning given by section 1161(5) of the Companies Act 2006.

### Textual Amendments

**F281** S. 71(1)(za) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 78

**F282** Word in s. 71(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 21\(a\)](#); S.I. 2014/3160, art. 2(1)(b)

**F283** S. 71(1)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 21\(b\)](#); S.I. 2014/3160, art. 2(1)(b)

### Commencement Information

**I103** S. 71 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

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**I104** S. 71 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

## **F284** 72 **Enforcement**

.....

### **Textual Amendments**

**F284** S. 72 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **79**

## **73 Disputes**

(1) This section applies to—

- [<sup>F285</sup>(za) mandatory reduction instruments,]
- (a) share transfer orders,
- (b) share transfer instruments,<sup>F286</sup> ...
- (c) property transfer instruments[<sup>F287</sup>, <sup>F288</sup> ...
- (d) resolution instruments][<sup>F289</sup>, and
- (e) third-country instruments.]

(2) An order or instrument may include provision for disputes to be determined in a specified manner.

(3) Provision by virtue of subsection (2) may, in particular—

- (a) confer jurisdiction on a court or tribunal;
- (b) confer discretion on a specified person.

### **Textual Amendments**

**F285** S. 73(1)(za) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(a)**

**F286** Word in s. 73(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 23(a)**; S.I. 2014/3160, art. 2(1)(b)

**F287** S. 73(1)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 23(b)**; S.I. 2014/3160, art. 2(1)(b)

**F288** Word in s. 73(1)(c) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(b)**

**F289** S. 73(1)(e) and preceding word inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **80(1)(b)**

### **Commencement Information**

**I105** S. 73 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

**I106** S. 73 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**



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## 74 Tax

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of [<sup>F290</sup>the power to make a mandatory reduction instrument or] a stabilisation power.
  - (2) Regulations may relate to—
    - (a) capital gains tax;
    - (b) corporation tax;
    - (c) income tax;
    - (d) inheritance tax;
    - (e) stamp duty;
    - (f) stamp duty land tax;
    - (g) stamp duty reserve tax.
  - (3) Regulations may apply to—
    - (a) anything done in connection with an instrument or order;
    - (b) things transferred or otherwise affected by virtue of an instrument or order;
    - (c) a transferor or transferee under an instrument or order;
    - (d) persons otherwise affected by an instrument or order.
  - (4) Regulations may—
    - (a) modify or disapply an enactment;
    - (b) provide for an action to have or not have specified consequences;
    - (c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
    - (d) withdraw or restrict a relief;
    - (e) extend, restrict or otherwise modify a charge to tax;
    - (f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.
  - (5) Regulations may make provision for the fiscal consequences of the exercise of [<sup>F291</sup>the power to make a mandatory reduction instrument or] a stabilisation power in respect of things done—
    - (a) during the period of three months before the date on which [<sup>F292</sup>the power to make the mandatory reduction instrument or (as the case may be)] the stabilisation power is exercised, or
    - (b) on or after that date.
- [<sup>F293</sup>(5A) Where the mandatory reduction provision required by section 6B is made in two or more mandatory reduction instruments, in subsection (5)(a) above the reference to the date on which the power to make the mandatory reduction instrument is exercised is, in relation to any of those instruments, a reference to the date on which the power is exercised to make the first of those instruments.]
- (6) In relation to the exercise of a supplemental or onward instrument or order under section 26, 27, 28, 30, 42, 43 [<sup>F294</sup>, 45, 48U or 48V], in subsection (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental or onward instrument or order is made.
  - (7) The Treasury may by order amend subsection (2) so as to—
    - (a) add an entry, or



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- (b) remove an entry.
- (8) Regulations or an order under this section—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

#### Textual Amendments

- F290** Words in s. 74(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(2)**
- F291** Words in s. 74(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(3)(a)**
- F292** Words in s. 74(5)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(3)(b)**
- F293** S. 74(5A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **81(4)**
- F294** Words in s. 74(6) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 24**; [S.I. 2014/3160](#), art. 2(1)(b)

#### Commencement Information

- I107** S. 74 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I108** S. 74 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 1**

## 75 Power to change law

- (1) The Treasury may by order amend the law for the purpose of enabling the powers under this Part to be used effectively, having regard to the special resolution objectives.
- (2) An order may be made—
  - (a) for the general purpose of the exercise of powers under this Part,
  - (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made (but in relying on this subsection the Treasury shall have regard to the fact that it is in the public interest to avoid retrospective legislation).
- (4) In subsection (1) “amend the law” means—
  - (a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),
  - (b) disapply or modify the effect of a rule of law not set out in legislation, or
  - (c) amend any provision of an instrument or order made in the exercise of a stabilisation power.
- (5) Provision under this section may relate to this Part as it applies—
  - (a) to banks,
  - (b) to building societies,
  - (c) to credit unions (by virtue of section 89), <sup>F295</sup> ...

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- [<sup>F296</sup>(ca) to investment firms,]
  - [<sup>F297</sup>(cb) to [<sup>F18</sup>recognised central counterparties], or]
  - (d) to any combination.
- (6) Specific powers under this Part are without prejudice to the generality of this section.
- (7) An order—
- (a) shall 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.
- (8) But if the Treasury think it necessary to make an order without complying with subsection (7)(b)—
- (a) the order may be made,
  - (b) the order shall lapse 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,
  - (c) the lapse of an order under paragraph (b) 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
  - (d) the lapse of an order under paragraph (b) does not prevent the making of a new order (in new terms).

#### Textual Amendments

- F18** Words in Act substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **25(2)** (with regs. 52-58)
- F295** Word in s. 75(5) omitted (1.8.2014) by virtue of [Financial Services Act 2012 \(c. 21\)](#), ss. **101(4)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2
- F296** S. 75(5)(ca) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), ss. **101(4)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2
- F297** S. 75(5)(cb) inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), ss. **102(5)**, 122(3) (with Sch. 20); [S.I. 2014/1847](#), art. 2

#### Commencement Information

- I109** S. 75 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I110** S. 75 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### *Treasury*

#### 76 International obligation notice: general

- (1) The Bank of England may not exercise [<sup>F298</sup>the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or] a stabilisation power in respect of a bank if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom.
- (2) A notice under subsection (1)—
- (a) must be in writing, and

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- (b) may be withdrawn (generally, partially or conditionally).
- (3) If the Treasury give a notice under subsection (1) the Bank of England must consider other exercises of [<sup>F299</sup>the power to make a resolution administrator appointment instrument or a mandatory reduction instrument or] the stabilisation powers with a view to—
- (a) pursuing the special resolution objectives, and
- (b) avoiding the objections on which the Treasury's notice was based.
- (4) The Treasury may by notice to the Bank of England disapply subsection (3) in respect of a bank; and a notice may be revoked by further notice.
- [<sup>F300</sup>(5) “Resolution administrator appointment instrument” means an instrument under section 62B(2)(a).]

#### Textual Amendments

- F298** Words in s. 76(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(2)**
- F299** Words in s. 76(3) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(3)**
- F300** S. 76(5) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **82(4)**

#### Commencement Information

- I111** S. 76 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

## 77 International obligation notice: [<sup>F301</sup>resolution company]

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a [<sup>F302</sup>resolution company].
- (2) The Bank of England must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations—
- (a) to take specified action under this Part in respect of the [<sup>F302</sup>resolution company], or
- (b) not to take specified action under this Part in respect of the [<sup>F302</sup>resolution company].
- (3) A notice under subsection (1)—
- (a) must be in writing, and
- (b) may be withdrawn (generally, partially or conditionally).
- (4) A notice may include requirements about timing.

#### Textual Amendments

- F301** Words in s. 77 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **83(2)**
- F302** Words in s. 77 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **83(1)**

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#### Commencement Information

**I112** S. 77 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

### 78 Public funds: general

- (1) The Bank of England may not exercise [<sup>F303</sup>the power to make a mandatory reduction instrument or] a stabilisation power in respect of a bank without the Treasury's consent if the exercise would be likely to have implications for public funds.
- (2) In subsection (1)—
  - (a) “public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and
  - (b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds.
- (3) The Treasury may by order specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of subsection (1).
- (4) If the Treasury refuse consent under subsection (1), the Bank of England must consider other exercises of [<sup>F304</sup>the power to make a mandatory reduction instrument or] the stabilisation powers with a view to—
  - (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury's refusal was based.
- (5) The Treasury may by notice to the Bank of England disapply subsection (4) in respect of a bank; and a notice may be revoked by further notice.
- (6) An order under subsection (3)—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### Textual Amendments

**F303** Words in s. 78(1) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [84\(2\)](#)

**F304** Words in s. 78(4) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [84\(3\)](#)

#### Commencement Information

**I113** S. 78 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

**I114** S. 78 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### [<sup>F305</sup>78A.Pre-conditions for financial assistance: duty of Bank to give information

- (1) The Treasury may at any time require the Bank of England to inform them in writing whether or not a condition for financial assistance has been met in relation to a particular bank.

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- (2) “Condition for financial assistance” means a condition specified in—
- (a) Article 37(10)(a) (financial assistance through government stabilisation tools), or
  - (b) Article 44(5)(a) (contributions to institution from resolution financing arrangement where eligible liabilities have been excluded from bail-in),
- of the recovery and resolution directive.
- (3) If the Bank of England seeks the Treasury’s consent to the making of a mandatory reduction instrument or the exercise of a stabilisation power in accordance with section 78, the Bank must notify the Treasury in writing—
- (a) whether or not the proposals involve action in relation to which a condition for financial assistance applies, and
  - (b) if the proposals do involve such action, whether or not the condition in question has been met.]

#### Textual Amendments

**F305** S. 78A inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **85**

#### **79 Public funds:** [<sup>F306</sup>resolution company]

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a [<sup>F307</sup>resolution company].
- (2) The Bank of England may not take action in respect of the [<sup>F307</sup>resolution company] without the Treasury's consent if the action would be likely to have implications for public funds.
- (3) Section 78(2) and (3) have effect for the purposes of this section.

#### Textual Amendments

**F306** Words in s. 79 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **86(2)**

**F307** Words in s. 79 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **86(1)**

#### Commencement Information

**I115** S. 79 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

#### [<sup>F308</sup>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.

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- (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).]

#### Textual Amendments

**F308** S. 79A inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 99(1), 122(3)** (with [Sch. 20](#)); [S.I. 2014/3323](#), **art. 2**

### 80 [F309 Resolution company:] report

- (1) Where the Bank of England transfers all or part of a bank's business to a [F310 resolution company], the Bank must report to the Chancellor of the Exchequer about the activities of the [F310 resolution company].
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the [F310 resolution company].
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) or (3) before Parliament.
- (5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a [F310 resolution company].
- (6) A request under subsection (5) may include provision about—
  - (a) the content of the report;
  - (b) timing.

#### Textual Amendments

**F309** Words in s. 80 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), **arts. 1(2), 87(2)**

**F310** Words in s. 80 substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), **arts. 1(2), 87(1)**

#### Commencement Information

**I116** S. 80 in force at 21.2.2009 by [S.I. 2009/296](#), **art. 3, Sch. para. 1**

### [F311 80A Transfer for bail-in purposes: report

- (1) This section applies where the Bank of England makes one or more resolution instruments under section 12A(2) in respect of a bank.
- (2) The Bank of England must, on request by the Treasury, report to the Chancellor of the Exchequer about—
  - (a) the exercise of the power to make a resolution instrument under section 12A(2),
  - (b) the activities of the bank, and
  - (c) any other matters in relation to the bank that the Treasury may specify.

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- (3) In relation to the matters in subsection (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.]

#### Textual Amendments

**F311** S. 80A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 25](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)

## 81 Temporary public ownership: report

- (1) Where the Treasury make one or more share transfer orders under section 13(2) in respect of a bank, the Treasury must lay before Parliament a report about the activities of the bank.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first share transfer order.
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The obligation to produce reports continues to apply in respect of each year until the first during which no securities issued by the bank are owned by—
  - (a) a company wholly owned by the Treasury, or
  - (b) a nominee of the Treasury.

#### Commencement Information

**I117** S. 81 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

## [<sup>F312</sup>81A Accounting information to be included in reports under sections 80]<sup>F313</sup>, 80A(2)(b) and 81]

- (1) A report under section 80(1)]<sup>F314</sup>, 80A(2)(b) or 81] must include accounting information in respect of the bank or [<sup>F315</sup>resolution company] 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 [<sup>F315</sup>resolution company] 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 [<sup>F315</sup>resolution company] 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.]



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#### Textual Amendments

- F312** S. 81A inserted (1.1.2015) by [Financial Services Act 2012 \(c. 21\), ss. 99\(2\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/3323, art. 2](#)
- F313** Words in s. 81A heading substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 26\(b\)](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)
- F314** Words in s. 81A(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 26\(a\)](#); [S.I. 2014/3160, art. 2\(1\)\(b\)](#)
- F315** Words in s. 81A substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 88](#)

[<sup>F316</sup>Groups]

#### Textual Amendments

- F316** S. 82 cross-heading substituted (1.8.2014) by [Financial Services Act 2012 \(c. 21\), ss. 100\(5\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1847, art. 2](#)

### [<sup>F317</sup>81A] Cases where mandatory write-down, conversion etc applies: banking group companies

- (1) Section 6B (mandatory write-down, conversion, etc. of capital instruments) applies in relation to a banking group company in the cases set out in subsections (2), (4) and (8).
- (2) Case 1 is where—
  - (a) the conditions imposed by section 81B or 81ZBA on the exercise of a stabilisation power in accordance with section 11(2), 12(2) or 12ZA(3) are met in respect of the banking group company,
  - (b) the Bank of England has decided to exercise the stabilisation power,
  - (c) if the banking group company—
    - (i) is a financial institution which is a subsidiary of an institution (within the meaning of article 2.1(23) of the recovery and resolution directive) (“the parent institution”), but
    - (ii) is not an entity within Article 1.1(c) or (d) of that directive,
 the requirements of subsection (3) are met, and
  - (d) section 12AA (mandatory write-down etc in bail-in cases) does not apply in relation to the banking group company by virtue of the exercise of a power under section 81BA (bail-in: banking group company).
- (3) For the purposes of subsection (2)(c)—
  - (a) the first requirement is that—
    - (i) the appropriate authority is satisfied that Condition 1 in section 7 is met in relation to the banking group company, and
    - (ii) the Bank of England is satisfied that Conditions 2, 3 and 4 of that section are met in relation to that company;
  - (b) the second requirement is that—
    - (i) where the parent institution is a bank, the PRA is satisfied that Condition 1 in section 7 is met, and the Bank of England is satisfied



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- that Conditions 2, 3 and 4 in that section are met in relation to the parent institution,
- (ii) where the parent institution is a EU institution, subsection (6) applies in relation to the banking group company by reason of the EU institution, and
  - (iii) where the parent institution is a third-country institution, subsection (7) applies in relation to the banking group company by reason of that third country institution.
- (4) Case 2 is where—
- (a) the appropriate authority is satisfied that Condition 1 in section 7 is met in respect of the banking group company,
  - (b) the Bank of England is satisfied that—
    - (i) (ignoring section 6B) Condition 2 in section 7 is met, and
    - (ii) that Condition will continue to be met unless the action required by section 6B is taken in respect of the banking group company, and
  - (c) one of subsections (5), (6) or (7) apply in relation to the banking group company.
- (5) This subsection applies in relation to the banking group company if—
- (a) the PRA is satisfied that Condition 1 in section 7 is met in respect of a bank to which section 81D(1)(a) applies, and
  - (b) the Bank of England is satisfied that (ignoring section 6B) Condition 2 in section 7 is met in relation to that bank.
- (6) This subsection applies in relation to the banking group company if the EU resolution authority or competent authority has determined that—
- (a) the conditions for exercise of the power to write down or convert capital instruments set out in Article 59.3 of the recovery and resolution directive, or
  - (b) the conditions for resolution set out in Article 32.1(a) and (b) of the recovery and resolution directive,
- are satisfied in relation to an EU institution to which section 81D(1)(a) applies.
- (7) This subsection applies in relation to the banking group company if the relevant third-country authority has determined that any conditions required by the law of the third country to be met before—
- (a) any power for the relevant third country authority to write down or convert capital instruments provided for under the law of that third country may be exercised, or
  - (b) third-country resolution action may be taken,
- are met in relation to a third-country institution to which section 81D(1)(a) applies.
- (8) Case 3 is where—
- (a) extraordinary public financial support is required by the banking group company other than in circumstances where subsection (5E) of section 7 applies by virtue of paragraph (c) of that subsection, and
  - (b) the Bank of England is satisfied, on the basis of the valuation carried out in accordance with section 6E, that, in order for a bank or EU institution which is a member of the same group as the banking group company to fulfil its own funds requirements, relevant capital instruments of the banking group

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company need to be written down or converted into Common Equity Tier 1 instruments (or both).

- (9) For the purposes of determining if the matters set out in subsections (3) to (7) are satisfied, the FCA, PRA, Bank of England, EU resolution authority, competent authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.
- (10) For the purposes of subsections (3)(a) and (b), (4), (5) and (8)—
- (a) references in section 7 to the bank are to be read—
    - (i) in the case of subsections (3)(a) and (b), (4) and (5), as references to the banking group company, and
    - (ii) in the case of subsection (8), as references to the banking group company or the parent institution (as the case may be), and
  - (b) section 7(5C)(a) is to be ignored in determining whether Condition 1 in that section is met in relation to the banking group company where that company is not a UK authorised person.
- (11) For the purposes of subsections (3), (4) and (5), the “appropriate authority” means—
- (a) in the case of a banking group company which is a PRA-authorised person, the PRA;
  - (b) in the case of a banking group company which is a UK authorised person but not a PRA-authorised person, the FCA;
  - (c) in the case of a banking group company which is not an UK authorised person—
    - (i) if the PRA is the consolidating supervisor of the group, the PRA;
    - (ii) if the FCA is the consolidating supervisor of the group, the FCA;
    - (iii) if neither paragraph (i) nor paragraph (ii) apply, but there is a PRA-authorised person in the group, the PRA; and
    - (iv) in all other cases, the Bank of England.
- (12) Where the PRA is the “appropriate authority” under subsection (11) in relation to a banking group company in the same group as a UK authorised person which is not a PRA-authorised person, the PRA must consult the FCA before making any decision as to whether the conditions referred to in subsection (3)(a), (4)(a) or (5)(a) (the “relevant conditions”) are satisfied.
- (13) Where the FCA is the “appropriate authority” under subsection (11) in relation to a banking group company in the same group as a PRA-authorised person, the FCA must consult the PRA before making any decision as to whether the relevant conditions are satisfied.
- (14) For the purposes of this section—
- “competent authority” has the meaning given in Article 2.1(21) of the recovery and resolution directive;
  - “consolidating supervisor” means a consolidating supervisor as defined in Article 4.1(41) of the capital requirements regulation;
  - “EU institution” means an institution within the meaning of Article 2.1(23) of the recovery and resolution directive which is incorporated in, or formed under the law of any part of, an EEA state other than the United Kingdom;

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“EU resolution authority” means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);

“financial institution” has the meaning given by Article 2.1(4) of the recovery and resolution directive;

“PRA-authorized person” has the meaning given in section 2B(5) of the Financial Services and Markets Act 2000;

“relevant third-country authority” has the meaning given by Article 2.1(90) of the recovery and resolution directive;

“third-country institution” has the meaning given in section 89H(7);

“third-country resolution action” has the meaning given in section 89H(7);

“UK authorised person” has the same meaning as in section 105(8) of the Financial Services and Markets Act 2000.]

#### Textual Amendments

**F317** S. 81AA inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **89**

### [<sup>F318</sup>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.

[<sup>F319</sup>(2) Condition 1 is that—

- (a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or
- (b) the EU resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or
- (c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.

(2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the 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 [<sup>F320</sup>public interest in the advancement of one or more of the special resolution objectives.]

(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

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- (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.
- [ In this section—
- <sup>F321</sup>(9) “EU institution” has the meaning given by section 81AA(14);
- “EU resolution authority” means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);
- “the general conditions” means the general conditions for the exercise of a stabilisation power set out in section 7;
- “relevant third-country authority” has the meaning given by Article 2.1(90) of the recovery and resolution directive;
- “third-country institution” has the meaning given by section 89H(7);
- “third-country resolution action” has the meaning given by section 89H(7).]

#### Textual Amendments

**F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2

**F319** S. 81B(2)(2A) substituted for s. 81B(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **90(2)**

**F320** Words in s. 81B(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **90(3)**

**F321** S. 81B(9) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **90(4)**

#### [ <sup>F322</sup> **81ZBA** Transfer to asset management vehicle

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12ZA(3) if the following conditions are met.
- (2) Condition 1 is that—

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- (a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or
  - (b) the resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or
  - (c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.
- (2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.
- (3) Condition 2 is that the power is exercised in connection with the exercise of one or more stabilisation powers in respect of the banking group company otherwise than for the purposes of the third stabilisation option.
- (4) Condition 3 (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 the advancement of one or more of the special resolution objectives.
- (5) Condition 4 (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 of England’s opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.
- (6) Condition 5 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (7) Condition 6 is that the Bank of England is satisfied that—
- (a) the situation of the market for the assets which it is proposed to transfer by the exercise of the stabilisation power is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets,
  - (b) the transfer is necessary to ensure the proper functioning of the banking group company from which the transfer is to be made, or
  - (c) the transfer is necessary to maximise the proceeds available for distribution.
- (8) Before determining whether Conditions 2 and 5 and Condition 3 or 4 (as appropriate) are met, and if so how to react, the Bank of England must consult—
- (a) the PRA,
  - (b) the FCA, and
  - (c) the Treasury.
- (9) For the purposes of this section—  
“financial assistance case” has the meaning given by section 81B(8);

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“normal insolvency proceedings” has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure);  
 and the definitions in section 81B(9) apply..]

#### Textual Amendments

**F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5), 122(3)** (with [Sch. 20](#)); [S.I. 2014/1447](#), art. 2(b); [S.I. 2014/1847](#), art. 2

**F322** S. 81ZBA inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **91**

#### Bail-in option

[<sup>F323</sup>81BA

(1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 12A(2) if the following conditions are met.

[<sup>F324</sup>(2) Condition 1 is that either—

- (a) the PRA is satisfied that Condition 1 of the general conditions is met in respect of a bank in the same group and the Bank of England is satisfied that Conditions 2, 3 and 4 of the general conditions are met in respect of that bank, or
- (b) the resolution authority of an EU institution in the same group is satisfied that the conditions for resolution set out in Article 32.1 of the recovery and resolution directive are met in relation to that EU institution, or
- (c) a relevant third-country authority of a third-country institution in the same group is satisfied that any conditions required by the law of the third country to be met before third-country resolution action may be taken are met in relation to that third-country institution.

(2A) For the purposes of determining if a requirement of Condition 1 is met, the PRA, Bank of England, EU resolution authority or relevant third-country authority (as the case may be) may ignore any transfer of losses or capital made between members of the group.]

- (3) Condition 2 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 [<sup>F325</sup>public interest in the advancement of one or more of the special resolution objectives.]
- (4) Condition 3 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (5) Before determining whether Condition 2 is met, and if so how to react, the Bank of England must consult—
  - (a) the Treasury,
  - (b) the PRA, and
  - (c) the FCA.
- (6) 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.

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[ The definitions in section 81B(9) apply for the purposes of this section.]]  
F326(7)

#### Textual Amendments

- F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2
- F323** S. 81BA inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 7(1)**; S.I. 2014/3160, art. 2(1)(b)
- F324** S. 81BA(2)(2A) substituted for s. 81BA(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **92(2)**
- F325** Words in s. 81BA(3) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **92(3)**
- F326** S. 81BA(7) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **92(4)**

### 81C Section 81B <sup>F327</sup> or 81ZBA]: supplemental

(1) In the following provisions references to banks include references to banking group companies—

- (a) section 10(1), <sup>F328</sup> ...  
[ section 48Z, and]  
F329(aa)  
(b) section 75(5)(a).

[ Where section 6B applies to a banking group company by virtue of section 81AA, <sup>F330</sup>(1A) sections 6B to 6D apply with the following modifications—

- (a) references to the bank are to be read as references to the banking group company,
- (b) in section 6B, in subsection (8) the reference to section 6A is to be read as a reference to section 81AA and subsection (9) is to be ignored,
- (c) in sections 6B and 6C references, which (by virtue of paragraph (a)) are read as references to a UK parent undertaking of a banking group company, include, where the banking group company satisfied section 81D(1)(a) by reference to a bank which is not a UK parent undertaking of the banking group company, a reference to that bank,
- (d) for the purposes of section 6D, references to a bank in sections 48L(3), 48O and 48T are to be read as references to the banking group company, and, where the banking group company satisfied section 81D(1)(a) by reference to a bank (“the failing bank”), those references to a bank (except the first reference in section 48T(1)) are also to be read as including a reference to the failing bank.

(1B) Where the Bank of England makes a mandatory reduction instrument in respect of a banking group company, section 6E applies (with any necessary modifications) as if the banking group company were a bank.]

(2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B [<sup>F331</sup> or 81ZBA], the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act

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(except sections 7<sup>F332</sup>, 8 and 8ZA]) 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.

#### Textual Amendments

- F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2
- F327** Words in s. 81C heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(5)**
- F328** Word in s. 81C(1)(a) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(2)(a)**
- F329** S. 81C(1)(aa) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(2)(b)**
- F330** S. 81C(1A)(1B) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(3)**
- F331** Words in s. 81C(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(4)(a)**
- F332** Words in s. 81C(2) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **93(4)(b)**

#### <sup>F333</sup>81CA Section 81BA: supplemental

- (1) This section applies where the Bank of England has power under section 81BA to exercise a stabilisation power in respect of a banking group company.
- (2) The provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except [<sup>F334</sup>section 7]) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2) (“the bank”)—
- the provisions in this Act relating to resolution instruments are to be read in accordance with the general rule in subsection (4), but
  - that is subject to the modifications in subsection (5);
- and provisions in this Act and any other enactment are to be read with any modifications that may be necessary as a result of paragraphs (a) and (b).
- (4) The general rule is that the provisions in this Act relating to resolution instruments (including supplemental resolution instruments) are to be read (so far as the context permits)—
- as applying in relation to the bank as they apply in relation to the parent undertaking, and
  - so, in particular, as allowing any provision that may be made in a resolution instrument in relation to the parent undertaking to be made (also or instead) in relation to the bank.



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- (5) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank<sup>F335</sup>, EU institution or third-country institution mentioned in section 81BA(2) (“the group entity”) —
- (a) section 41A (transfer of property subsequent to resolution instrument) applies as if the reference in subsection (2) to the bank were to the parent undertaking, the bank and any other bank which is or was in the same group;
  - (b) section 48V (onward transfer)—
    - (i) applies as if the references in subsection (3) to “the bank” <sup>F336</sup>included the group entity,] the parent undertaking and any other bank which is or was in the same group, and with the omission of subsection (4) of that section, and
    - (ii) is to be read as permitting the transfer of securities only if they are held by (or for the benefit of) the parent undertaking or a subsidiary company of the parent undertaking;
  - (c) section 48W (reverse transfer) applies as if the references in subsections (2) and (3) to “the bank” <sup>F337</sup>included the group entity,] the parent undertaking and any other bank which is or was in the same group.
- (6) Where section 48B (special bail-in provision) applies in accordance with subsection (4) (so that section 48B applies in relation to the bank mentioned in section 81BA(2) as it applies in relation to the parent undertaking mentioned in subsection (3)), the provision that may be made in accordance with section 48B(1)(b) (see also rule 3(a) and (b) of section 48B(5)) includes provision replacing a liability (of any form) of that bank with a security (of any form or class) of the parent undertaking.
- (7) Where the banking group company mentioned in subsection (1) is a parent undertaking of the bank mentioned in section 81BA(2)—
- (a) section 214B of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime) applies, and
  - (b) the reference in subsection (1)(b) of that section to the bank, and later references in that section, are treated as including references to any other bank which is a subsidiary undertaking of the parent undertaking (but not the parent undertaking itself).]

#### Textual Amendments

- F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2
- F333** S. 81CA inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 7(2)**; S.I. 2014/3160, art. 2(1)(b)
- F334** Words in s. 81CA(2) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **94(2)**
- F335** Words in s. 81CA(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **94(3)(a)**
- F336** Words in s. 81CA(5)(b)(i) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **94(3)(b)**
- F337** Words in s. 81CA(5)(c) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **94(3)(c)**

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## 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 [<sup>F338</sup>EU institution or third-country institution (within the meaning of section 81B(9))], and
  - (b) in respect of which any conditions specified in an order made by the Treasury are met.
- (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 [<sup>F339</sup>81AA to 81CA] 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 [<sup>F340</sup>sections 81B to 81CA] and this section as in that Act.]

### Textual Amendments

- F318** Ss. 81B-81D inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(5)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(b); S.I. 2014/1847, art. 2
- F338** Words in s. 81D(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **95(2)**
- F339** Words in s. 81D(6) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **95(3)**
- F340** Words in s. 81D(7) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 7(3)(b)**; S.I. 2014/3160, art. 2(1)(b)

## 82 Temporary public ownership

- (1) The Treasury may take a parent undertaking of a bank (the “holding company”) into temporary public ownership, in accordance with section 13(2), if the following conditions are met.

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- (2) Condition 1 is that [<sup>F341</sup>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 the bank.
- (3) Condition 2 is that the Treasury are satisfied that it is necessary to take action in respect of the holding company for the purpose specified in Condition A or B of section 9.
- (4) Condition 3 is that the holding company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (5) Before determining whether Condition 2 is met the Treasury must consult—
  - [<sup>F342</sup>(a) the PRA,
  - (aa) the FCA, and]
  - (b) the Bank of England.
- (6) Expressions used in this section have the same meaning as in the Companies Act 2006.

#### Textual Amendments

**F341** Words in s. 82(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 27\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F342** S. 82(5)(a)(aa) substituted for s. 82(5)(a) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 27\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I118** S. 82 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

## 83 Supplemental

- (1) In the following provisions references to banks include references to holding companies—
  - (a) section 10(1),
  - [<sup>F343</sup>(aa) section 12ZA(2)(c),]
  - (b) section 13(3),
  - (c) section 16(1), and
  - (d) section 75(5)(a).
- (2) Where the Treasury take a bank's holding company into temporary public ownership in reliance on section 82—
  - (a) section 20(2) applies to (i) directors of the holding company, (ii) directors of the bank, and (iii) directors of a bank in the same group,
  - (b) section 25(2) applies as if references to a bank were references to a holding company,
  - (c) sections 27 to 29 apply as if references to a bank were references to a holding company,
  - (d) a share transfer may be made in respect of securities which were issued by the bank or by another bank which is or was in the same group; and a transfer—
    - (i) shall be made by onward share transfer order under section 28 or by reverse share transfer order under section 29 (in addition to any that may be made under those sections as applied by paragraph (c) above),

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- (ii) may be made under section 28 only in respect of securities held by (or for the benefit of) the holding company or a subsidiary undertaking of the holding company,
  - (iii) is not subject to section 28(4), [<sup>F344</sup>and]
  - [<sup>F345</sup>(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)).]
  - (e) section 45 applies as if—
    - (i) the reference to a bank in subsection (1) were a reference to a holding company, and
    - (ii) a reference to the bank in subsection (3) were a reference to the holding company, the bank and any other bank which is or was in the same group,
  - (f) sections 65 to 68 apply, with—
    - (i) references to the bank or the transferred bank taken as references to the bank, the holding company and any other bank which is or was in the same group, and
    - (ii) references to securities of the bank taken as including references to securities of the holding company (so that, in particular, sections 65(1)(a)(ii) and 68(1)(a) include references to the earlier transfer of securities issued by the holding company),
  - (g) other provisions of this Act about share transfer orders apply with any necessary modifications,
  - (h) section 214B of the Financial Services and Markets Act 2000 applies (contribution to costs of special resolution regime<sup>F346</sup>...), and
  - (i) the reference in section 214B(1)(b) to the bank, and later references in the section, are treated as including references to any other bank which is also a subsidiary undertaking of the holding company (but not to the holding company itself).
- (3) A reference in this Act or another enactment to a share transfer order in respect of securities issued by a bank includes (so far as the context permits) a reference to a share transfer order in respect of securities issued by a holding company.
- (4) In so far as sections 47 and 60 apply in relation to orders treated as property transfer instruments by virtue of section 45(5)(b) or 46(5)(b) (including those sections as applied by virtue of subsection (2) above) the reference in section 47(1) to the property of a bank includes a reference to the property of a holding company and of any other bank which is or was in the same group.
- (5) Expressions used in this section have the same meaning as in the Companies Act 2006.
- (6) A reference to two banks being in the same group is a reference to their being group undertakings in respect of each other.

#### Textual Amendments

**F343** S. 83(1)(aa) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **96(1)**

**F344** Word in s. 83(2)(d)(iii) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. **97(10)(a)**, 122(3) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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**F345** S. 83(2)(d)(iv) substituted for s. 83(2)(d)(iv)(v) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 97\(10\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F346** Words in s. 83(2)(h) omitted (8.4.2010) by virtue of [Financial Services Act 2010 \(c. 28\), s. 26\(1\)\(l\), Sch. 2 para. 42](#)

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**Commencement Information**

**I119** S. 83 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

<sup>F347</sup> **CHAPTER 4**

INFORMATION, INVESTIGATION AND ENFORCEMENT

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**Textual Amendments**

**F347** Pt. 1 Ch. 4 inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 97](#)

*Powers to gather information*

**83ZA. Information**

- (1) This section applies only to information and documents reasonably required in connection with the exercise by the Bank of England of functions conferred by or under—
  - (a) this Part, or
  - (b) any other enactment giving effect to the resolution and recovery directive.
- (2) The Bank of England may, by notice in writing given to a bank or banking group company, require the bank or banking group company—
  - (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (4) An officer who has written authorisation from the Bank of England to do so may require a bank or banking group company without delay—
  - (a) to provide the officer with specified information or information of a specified description, or
  - (b) to produce to the officer specified documents or documents of a specified description.
- (5) The Bank of England may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) The Bank of England may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,

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as it may reasonably require.

- (7) The powers conferred by subsections (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a bank.
- (8) “Officer” means an officer of the Bank of England, and includes a member of the Bank’s staff or an agent of the Bank.
- (9) “Specified” means—
  - (a) in subsections (2) and (3), specified in the notice, and
  - (b) in subsection (4), specified in the authorisation.
- (10) For the purposes of this section, a person is connected with a bank if that person is or has at any relevant time been—
  - (a) a member of that bank’s group,
  - (b) a controller of that bank (within the meaning of section 422 of the Financial Services and Markets Act 2000),
  - (c) any other member of a partnership of which that bank is a member, or
  - (d) in relation to that bank, a person mentioned in Part 1 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in that Part to the authorised person as references to the bank).
- (11) In subsection (10)(a) “group” has the meaning given by section 3(2)(b).

### **83ZB. Reports by skilled persons**

- (1) This section applies where the Bank of England has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”) under section 83ZA.
- (2) This subsection applies to—
  - (a) a bank (“B”),
  - (b) a member of B’s group,
  - (c) a partnership of which B is a member, or
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
 who is, or was at the relevant time, carrying on a business.
- (3) The Bank of England may either—
  - (a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or
  - (b) itself appoint a person to provide the Bank with a report on the matter concerned.
- (4) When acting under subsection (3)(a), the Bank may require the report to be in such form as may be specified in the notice.
- (5) The Bank must give notice of an appointment under subsection (3)(b) to the person concerned.
- (6) The person appointed to make a report—

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- (a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and
  - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.
- (7) It is the duty of—
- (a) the person concerned, and
  - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,
- to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) The Bank may, in relation to an appointment under subsection (3)(b), require B to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.
- (10) In this section “group” has the meaning given by section 3(2)(b).

#### *Appointment of investigators*

### **83ZC. Appointment of persons to carry out general investigations**

- (1) This section applies only for the purposes of the functions of the Bank of England mentioned in section 83ZA(1).
- (2) If it appears to the Bank of England that there is good reason for doing so, the Bank may appoint one or more competent persons to conduct an investigation on its behalf into—
  - (a) the nature, conduct or state of the business of a bank,
  - (b) a particular aspect of that business, or
  - (c) the ownership or control of a bank.
- (3) If a person appointed under subsection (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been—
  - (a) a member of a group of which the bank under investigation is part, or
  - (b) a partnership of which the bank is a member.
- (4) A person appointed under subsection (2) who decides to investigate the business of any person under subsection (3) must give that person written notice of that decision.
- (5) In this section—
  - “business” includes any part of a business, and
  - “group” has the meaning given by section 3(2)(b).

### **83ZD. Appointment of person to carry out investigations in particular cases**

- (1) This section applies if it appears to the Bank of England that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.

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- (2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.
- (3) In this section “relevant requirement” means—
  - (a) a requirement imposed by the Bank of England under this Part (other than section 83ZN (regulatory sanctions)), or
  - (b) a requirement imposed by or under—
    - (i) any other provision of this Act, or
    - (ii) any other Act or subordinate legislation,
 which gives effect to the recovery and resolution directive.

### **83ZE. Investigations etc in support of foreign resolution authorities**

- (1) On receiving a request to which subsection (3) applies from a foreign resolution authority, the Bank of England may—
  - (a) exercise the power conferred by section 83ZA, or
  - (b) appoint one or more competent persons to investigate any matter.
- (2) Accordingly, for the purposes of subsection (1)(a), section 83ZA(1) has effect as if it also referred to information and documents reasonably required by the Bank of England to meet such a request.
- (3) This subsection applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of—
  - (a) functions under the recovery and resolution directive, or
  - (b) functions in relation to third-country resolution action (within the meaning of section 89H) corresponding to those exercisable by an EU resolution authority pursuant to the recovery and resolution directive.
- (4) An investigator appointed under subsection (1)(b) has the same powers as an investigator appointed under section 83ZD.
- (5) If the request has been made by an EU resolution authority in pursuance of any EU obligation, the Bank must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.
- (6) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—
  - (a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,
  - (c) the seriousness of the case and its importance to persons in the United Kingdom,
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (7) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.



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- (8) Subsections (6) and (7) do not apply if the Bank considers that the exercise of its investigative power is necessary to comply with an EU obligation.
- (9) “EU resolution authority” means an authority designated by an EEA state other than the United Kingdom in accordance with Article 3 of the recovery and resolution directive.
- (10) “Foreign resolution authority” means—
  - (a) an EU resolution authority, or
  - (b) an authority, in a territory which is not and does not form part of an EEA state, which exercises functions referred to in subsection (2)(b).
- (11) “Investigative power” means one of the powers mentioned in subsection (1).

### *Conduct of investigations*

#### **83ZF. Investigations: general**

- (1) This section applies if the Bank of England appoints one or more competent persons (“investigators”) under section 83ZC or 83ZD to conduct an investigation on its behalf.
- (2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
- (3) A notice under subsection (2) must—
  - (a) specify the provisions under which, and as a result of which, the investigator was appointed, and
  - (b) state the reason for the investigator’s appointment.
- (4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.
- (5) An investigator must make a report of the investigation to the Bank.
- (6) The Bank may, by a direction to an investigator, control—
  - (a) the scope of the investigation,
  - (b) the period during which the investigation is to be conducted,
  - (c) the conduct of the investigation, and
  - (d) the reporting of the investigation.
- (7) A direction may, in particular—
  - (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (d) require the investigator to make such interim reports as are so specified.
- (8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

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- (9) If the appointment is under section 83ZD, subsections (2) and (8) do not apply if the Bank believes that the notice required by the subsection in question would be likely to result in the investigation being frustrated.

### **83ZG. Powers of persons appointed under section 83ZC**

- (1) This section applies to an investigator appointed under section 83ZC to conduct an investigation on behalf of the Bank of England.
- (2) The investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (4) A requirement under subsection (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- (5) For the purposes of this section, a person (“B”) is connected with the person under investigation (“A”) if B is or has at any relevant time been—
  - (a) a member of A’s group;
  - (b) a controller of A;
  - (c) a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to the Financial Services and Markets Act 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).
- (6) In this section—
 

“controller” has the same meaning as in the Financial Services and Markets Act 2000 (see section 422),

“group” has the meaning given by section 3(2)(b), and

“specified” means specified in a notice in writing.

### **83ZH. Powers of persons appointed as a result of section 83ZD**

- (1) This section applies to an investigator appointed under section 83ZD to conduct an investigation on behalf of the Bank of England.
- (2) The investigator has—
  - (a) the powers conferred by section 83ZG on an investigator appointed under section 83ZC, and
  - (b) the powers conferred by subsections (3) and (4).
- (3) The investigator may require the person who is the subject of the investigation (“the person under investigation”) to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.

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- (4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions, or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (5) A requirement may only be imposed under subsection (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (6) Section 83ZG(5) and (6) applies for the purposes of this section.

### **83ZI. Admissibility of statements made to investigators**

- (1) A statement made to an investigator appointed under section 83ZC or 83ZD by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies—
  - (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,by or on behalf of the prosecution, the PRA or the FCA (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to any offence other than one under—
  - (a) section 83ZN(4),
  - (b) section 398 of the Financial Services and Markets Act 2000 (misleading FCA or PRA: residual cases),
  - (c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
  - (d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (e) Article 10 of the Perjury (Northern Ireland) Order 1979.
- (4) “Information requirement” means a requirement imposed by an investigator under section 83ZG, 83ZH or 83ZJ.

*Information and documents: supplemental provision*

### **83ZJ. Information and documents: supplemental provision**

- (1) If the Bank of England has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—
  - (a) take copies or extracts from the document, or

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- (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.
- (4) If the person to whom a document is so produced has reasonable grounds for believing—
  - (a) that the document may have to be produced for the purposes of any legal proceedings, and
  - (b) that it might otherwise be unavailable for those purposes,
 it may be retained until the proceedings are concluded.
- (5) If a person who is required under this Part to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person's knowledge and belief, where the document is.
- (6) A lawyer may be required under this Part to furnish the name and address of the lawyer's client.
- (7) No person may be required under this Part to disclose information or produce a document in respect of which the person ("A") owes an obligation of confidence by virtue of carrying on the business of banking unless—
  - (a) A is the person under investigation or a member of that person's group,
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
  - (d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.
- (8) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (9) In this section—
  - "controller" has the same meaning as in the Financial Services and Markets Act 2000 (see section 422),
  - "group" has the meaning given by section 3(2)(b),
  - "investigator" means a person appointed under section 83ZC or 83ZD,
  - "relevant person", in relation to a person who is required to produce a document, means a person who—
    - (a) has been or is or is proposed to be a director or controller of that person,
    - (b) has been or is an auditor of that person,
    - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or
    - (d) has been or is an employee of that person.

### **83ZK. Protected items**

- (1) A person may not be required under this Part to produce, disclose or permit the inspection of protected items.

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- (2) “Protected items” means—
- (a) communications between a professional legal adviser and that adviser’s client or any person representing such a client which fall within subsection (3),
  - (b) communications between a professional legal adviser, that adviser’s client or any person representing such a client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection), and
  - (c) items which—
    - (i) are enclosed with, or referred to in, such communications,
    - (ii) fall within subsection (3), and
    - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
- (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### **83ZL. Entry of premises under warrant**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank of England or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required, or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
- (a) that the premises specified in the warrant are premises of a bank or a member of the same group (within the meaning of section 3(2)(b)) as a bank,
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
- (a) that an offence mentioned in section 83ZN(4) or (5) has been (or is being) committed by any person,
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,
  - (c) that an information requirement could be imposed in relation to those documents or that information, and

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- (d) that if such a requirement were to be imposed—
  - (i) it would not be complied with, or
  - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) A warrant under this section authorises a constable—
  - (a) to enter the premises specified in the warrant,
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them,
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and
  - (e) to use such force as may be reasonably necessary.
- (6) A warrant under this section may be executed by any constable.
- (7) The warrant may authorise persons to accompany any constable who is executing it.
- (8) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.
- (9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.
- (10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.
- (11) In the application of this section to Scotland—
  - (a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff; and
  - (b) for the references to information on oath substitute references to evidence on oath.
- (12) “Investigator” means an investigator appointed under section 83ZC or 83ZD.
- (13) “Information requirement” means a requirement imposed—
  - (a) by the Bank of England under section 83ZA or 83ZJ, or
  - (b) by an investigator under section 83ZG, 83ZH or 83ZJ.

### **83ZM. Retention of documents obtained under section 83ZL**

- (1) Any document of which possession is taken under section 83ZL (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

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- (2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

### 83ZN. Offences etc

- (1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on the defaulter under section 83ZG, 83ZH or 83ZJ, the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.
- (3) “Officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83ZC, 83ZD or 83ZE is guilty of an offence if—
  - (a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or
  - (b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.
- (5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—
  - (a) provides information which that person knows to be false or misleading in a material particular, or
  - (b) recklessly provides information which is false or misleading in a material particular,is guilty of an offence.
- (6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 83ZL is guilty of an offence.
- (7) Subsection (8) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the relevant day.
- (8) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction—

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- (a) in England and Wales, to imprisonment for a term not exceeding 3 months or a fine, or both;
  - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.
- (9) Subsection (10) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the relevant day.
- (10) A person guilty of an offence under subsection (4), (5) or (6) is liable, on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.
- (11) In this section—
- “court” means—
    - (a) the High Court;
    - (b) in Scotland, the Court of Session;
  - “relevant day” means the day on which the Bank Recovery and Resolution Order 2014 (which inserted this section into this Act) was made;
  - “relevant requirement” has the meaning given in section 83ZD.

### **83ZO. Prosecution of offences under section 83ZN**

- (1) Proceedings for an offence under section 83ZN may be instituted—
- (a) in England and Wales, only by the Bank of England or by or with the consent of the Director of Public Prosecutions, and
  - (b) in Northern Ireland, only by the Bank of England or by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (2) In exercising its power to institute proceedings for an offence under section 83ZN, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.
- (3) Conditions or restrictions may be imposed under subsection (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

### **83ZP. Offences under section 83ZN by bodies corporate etc**

- (1) If an offence under section 83ZN committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on the part of an officer,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if that member were a director of the body.
- (3) If an offence under section 83ZN committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner,



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the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

- (4) In subsection (3) “partner” includes a person purporting to act as partner.
- (5) “Officer” in relation to a body corporate means—
- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and
  - (b) an individual who is a controller of the body (and for these purposes, “controller” has the meaning given in section 422 of the Financial Services and Markets Act 2000).
- (6) If an offence under section 83ZN committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

#### *Enforcement of relevant requirements*

### **83ZQ. Injunctions: prevent failure to comply with relevant requirement**

- (1) If, on the application of the Bank of England, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.
- (2) The jurisdiction conferred by this section is exercisable—
- (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (3) In this section “relevant requirement” has the meaning given in section 83ZD.

### **83ZR. Regulatory sanctions**

- (1) If the Bank of England considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—
- (a) publish a statement to that effect;
  - (b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;
  - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;
  - (d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—
    - (i) a named bank,
    - (ii) a bank of a specified description, or
    - (iii) any bank.

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- (2) A prohibition under subsection (1)(d) may apply—
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) If the Bank of England considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—
  - (a) publish a statement to that effect;
  - (b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;
  - (c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the order.
- (4) A penalty under this section—
  - (a) must be paid to the Bank of England, and
  - (b) may be enforced by the Bank as a debt.
- (5) In this section “relevant requirement” has the meaning given in section 83ZD.

### **83ZS. Determination of sanctions**

When determining the type of sanction, and level of any penalty, to be imposed on a person under section 83ZR, the Bank of England must take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the failure,
- (b) the degree of responsibility of the person,
- (c) the financial strength of the person,
- (d) the amount of profits gained or losses avoided by the person,
- (e) the losses for third parties caused by the failure,
- (f) the level of co-operation of the person with the Bank,
- (g) previous failures by the person, and
- (h) any potential systemic consequences of the failure.

### **83ZT. Procedure: warning notice**

- (1) If the Bank of England proposes to impose a sanction on a person under section 83ZR(1) or (3) it must give that person a warning notice.
- (2) Section 387 of the Financial Services and Markets Act 2000 applies in relation to a warning notice given under subsection (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to subsections (3) and (4).
- (3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—
  - (a) if it is about a proposal to publish a statement, set out the terms of the statement,
  - (b) if it is about a proposal to impose a penalty, specify the amount of the penalty,

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- (c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and
  - (d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.
- (4) For the purposes of subsection (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

### **83ZU. Procedure: decision notice**

- (1) If the Bank of England decides to impose a sanction on a person under section 83ZR(1) or (3) it must without delay give that person a decision notice.
- (2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.
- (3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.
- (4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.
- (5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.
- (6) Section 388 of the Financial Services and Markets Act 2000 applies in relation to a decision notice given under subsection (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to subsection (7).
- (7) Section 388 of that Act has effect for the purposes of subsection (6) as if—
  - (a) in subsection (1)(e)(i) for “this Act” there were substituted “section 83ZW of the Banking Act 2009”, and
  - (b) subsections (1A) and (2) were omitted.

### **83ZV. Procedure: general**

- (1) Sections 389, 390 and 392 to 394 of the Financial Services and Markets Act 2000 apply in relation to a warning notice given under section 83ZT, a decision notice given under section 83ZU and the Bank as they apply in relation to a warning notice or decision notice given under that Act and the regulator which gave that notice, subject to subsections (2) to (4).
- (2) Section 389 of that Act has effect as if subsection (2) were omitted,
- (3) Section 390 of that Act has effect as if—
  - (a) in subsection (2A), in paragraph (a), for “133(6)(b)” there were substituted “133(5)(b)”,
  - (b) in that paragraph, for “133(6)” there were substituted “133(5)”,
  - (c) for subsection (4) there were substituted—
    - “(4) A final notice about a direction under section 83ZR(1)(c) or (3)(c) of the Banking Act 2009 or a prohibition under section 83ZR(1)(d) of that Act must—

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- (a) specify the conduct to which the direction relates or the extent of the prohibition, and
  - (b) give details of the date on which the direction or prohibition has effect.”.
- (4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—
- “(a) warning notice given under section 83ZT(1) of the Banking Act 2009;
  - (b) a decision notice given under section 83ZU(1) of the Banking Act 2009.”.

### **83ZW. Appeal**

- (1) If the Bank of England decides to impose a sanction on a person under section 83ZR, the person may appeal to the Upper Tribunal.
- (3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.

### **83ZX. Injunctions: failure to comply with certain section 83ZR sanctions**

- (1) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,
 the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Bank, the court is satisfied—
  - (a) that there has been a compliance failure, and
  - (b) that there are steps which could be taken for remedying the failure,
 the court may make an order requiring anyone who appears to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.
- (3) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there may have been a compliance failure by any person, or
  - (b) that a person may have been knowingly concerned in a compliance failure,
 the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.
- (4) “Compliance failure” means—
  - (a) a failure to comply with a direction under section 83ZR(1)(c) or (3)(c), or
  - (b) a breach of a prohibition imposed under section 83ZR(1)(d).
- (5) The jurisdiction conferred by this section is exercisable—
  - (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (6) In this section—
  - (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
  - (b) references to remedying a failure include mitigating its effect, and
  - (c) references to dealing with assets include disposing of them.

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## 83ZY. Publication

- (1) In the case of a warning notice under section 83ZT(1)—
  - (a) neither the Bank of England nor a person to whom it is given or copied may publish the notice,
  - (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and
  - (c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.
- (2) A person to whom a decision notice under section 83ZU(1) is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.
- (3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.
- (5) Subject to subsection (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.
- (6) Where the Bank publishes information under subsection (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its official website information about the status of the appeal and its outcome.
- (7) Subject to subsection (8), where the Bank gives a final notice—
  - (a) it must, without undue delay, publish details of any sanction to which the notice relates on its internet website, and
  - (b) it may publish such other information about the matter to which the notice relates as it considers appropriate.
- (8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—
  - (a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or
  - (b) were it not published anonymously, publication would—
    - (i) jeopardise the stability of financial markets or an ongoing criminal investigation, or
    - (ii) cause, insofar as it can be determined, disproportionate damage to the persons involved.
- (9) Where subsection (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.

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- (10) Where the Bank publishes information in accordance with subsections (6) to (9), it must—
- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998 requires the information to be retained for a different period, and
  - (b) disclose to the European Banking Authority any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348 of the Financial Services and Markets Act 2000.
- (11) In this section “notice of discontinuance” and “final notice” have the same meaning as in sections 389 and 390 of the Financial Services and Markets Act 2000 (which are applied (with modifications) by section 83ZV).

### **83ZZ. Co-operation**

In connection with the exercise of its powers to impose sanctions under section 83ZR, the Bank of England must take such steps as it considers appropriate to co-operate with—

- (a) the FCA,
- (b) the PRA, and
- (c) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Part or any other enactment giving effect to the recovery and resolution directive.

### **83Z1. Delegation of enforcement functions**

- (1) The Bank of England may, by agreement made with the appropriate regulator, delegate to that regulator its enforcement functions, subject to such restrictions and conditions, and for such period, as may be specified in the agreement.
- (2) For the purposes of this section—
  - (a) “enforcement functions” of the Bank of England are its functions under, or by virtue of—
    - (i) section 83ZD;
    - (ii) section 83ZF;
    - (iii) section 83ZJ;
    - (iv) section 83ZL;
    - (v) section 83ZO;
    - (vi) sections 83ZQ to 83ZZ;
  - (b) “the appropriate regulator” means—
    - (i) the FCA or the PRA, where the requirement concerned was imposed on a UK authorised person which is not a PRA-authorised person, and
    - (ii) in any other case, the PRA.
- (3) The Bank of England must make provision for the reimbursement of any expenses incurred by the appropriate regulator in the performance, in accordance with the terms of any agreement, of any functions delegated under this section.

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### *Enforcement of share transfer orders*

#### **83Z2. Enforcement: share transfer orders**

- (1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under a share transfer order.
- (2) Regulations—
  - (a) may confer jurisdiction on a court or tribunal,
  - (b) may not impose a penalty or create a criminal offence,
  - (c) may make provision which has effect in respect of an order only if applied by the order.
- (3) Regulations are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.]

## [<sup>F348</sup>CHAPTER 5

### SPECIAL CASES]

#### **Textual Amendments**

**F348** Pt. 1 Ch. 5 formed from ss. 83A-89G (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **98**

### [<sup>F349</sup>*Banks not regulated by PRA*

#### **Textual Amendments**

**F349** S. 83A and cross-heading inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 28** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### **83A Modifications of Part**

- (1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.
- (2) In this section—
  - “ FCA-regulated bank ” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;
  - “ immediate group ” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;
  - “ PRA-authorized person ” has the meaning given by section 2B(5) of that Act.

### TABLE OF MODIFICATIONS

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<i>Provision</i>	<i>Modification</i>
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- [<sup>F350</sup>Section 6A Treat the reference to the PRA in subsections (3)(a) and (7) as references to the FCA.
- Section 6C Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
- Section 7 (a) Treat the references to the PRA in subsections [<sup>F351</sup>(1), (5A), (5C), (5D) and (5F)] as references to the FCA.  
 (b) <sup>F352</sup> . . . .  
 (c) If the bank has as a member of its immediate group a PRA-authorized person the FCA must consult the PRA before determining whether or not Condition 2 is met.  
 [<sup>F353</sup>(d) Subsections (5G)(a) and (5H)(a) do not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
- [<sup>F354</sup>Section 7A In subsection (1), the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorized person ]
- <sup>F355</sup> <sup>F355</sup>  
 . . . . .  
<sup>F355</sup> <sup>F355</sup>  
 . . . . .
- [<sup>F356</sup>Section 8ZA (a) Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.  
 (b) Treat the definition of “normal insolvency proceedings” in subsection (5) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
- Section 9 Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- [<sup>F357</sup>Section 12AA Treat the definition of “normal insolvency proceedings” in subsection (2) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
- Section 24 Ignore subsection (1)(c).
- Section 25 Ignore subsection (2)(c).
- Section 26 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 26A Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 27 Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 28 Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.
- Section 29 Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.



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Section 30	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 31	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 41	Ignore subsection (1)(c).
[ <sup>F358</sup> Section 41A	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.]
Section 42	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 42A	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 43	Subsection (7)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 44	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
[ <sup>F358</sup> Section 44A	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.]
Section 45	Subsection (8)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 46	Subsection (7)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
[ <sup>F358</sup> Section 48H	Subsection (5)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48U	Subsection (4)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48V	Subsection (6)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.
Section 48W	Subsection (9)(a) does not apply unless the bank has as a member of its immediate group a PRA-authorised person.]
[ <sup>F357</sup> Section 63	Treat the reference to insolvency in subsection (1A), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 66	Treat the reference to insolvency in subsection (1ZA), as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011
Section 81AA	Treat the references to the PRA in subsections (3)(b) and (5)(a) as references to the FCA.]
Section 81B	[ <sup>F359</sup> (a) Treat the references to the PRA in subsections (2) and (2A) as references to the FCA. (b) Ignore subsection (6)(b) unless the bank has as a member of its immediate group a PRA-authorised person.]
[ <sup>F360</sup> Section 81ZBA	(a) Treat the references to the PRA in subsections (2)(a) and (2A) as references to the FCA.

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	(b) Ignore subsection (8)(a) unless the bank has as a member of its immediate group a PRA-authorized person.
	(c) Treat the definition of “normal insolvency proceedings” in subsection (9) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]
[ <sup>F358</sup> Section 81BA	[ <sup>F361</sup> (a) Treat the references to the PRA in subsections (2)(a) and (2A) as references to the FCA. (b)] Subsection (5)(b) does not apply unless the bank has as a member of its immediate group a PRA-authorized person.]
Section 82	(a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore subsection (5)(a).
[ <sup>F362</sup> Section 89H	Treat the definition of “normal insolvency proceedings” in subsection (7) as including investment bank special administration, established by the Investment Bank Special Administration Regulations 2011]]

### Textual Amendments

- F350** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(2)**
- F351** Words in s. 83A(2) table substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(a)**
- F352** Words in s. 83A(2) table omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(b)**
- F353** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(3)(c)**
- F354** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(4)**
- F355** Words in s. 83A(2) table omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(5)**
- F356** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(6)**
- F357** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(7)**
- F358** Words in s. 83A(2) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 8**; S.I. 2014/3160, art. 2(1)(b)
- F359** Words in s. 83A(2) table substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(8)**
- F360** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(9)**
- F361** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(10)**
- F362** Words in s. 83A(2) table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **99(11)**

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*Building societies, &c.*

**84 Application of Part 1: general**

This Part shall apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to the provisions of the Table.

<b>Section</b>	<b>Topic</b>	<b>Modification or note</b>
F363	F363	F363
...	...	...
13	Temporary public ownership	The procedure provided by section 85 has effect in place of share transfer orders.
14 to 32	Transfer of securities	The procedure provided by section 85 has effect in place of share transfer orders; and— (a) sections 28 and 30 do not apply, and (b) section 27 applies following an order under section 85 as following a share transfer order.
33	Property transfer instrument: nature	A property transfer instrument in respect of a building society may— (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).
33 and 36	Property transfer instrument: continuity	A property transfer instrument in respect of a bank which provides for transfer to a building society may confer rights and impose liabilities by way of actual or deemed

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		shares in the building society.
34	Property transfer instrument: effect	A property transfer instrument may, in particular, have effect without causing sections 93 to 102D of the Building Societies Act 1986 (mergers and transfers) to apply.
42	Supplemental property transfer instrument	A supplemental property transfer instrument in respect of a building society may— <ul style="list-style-type: none"> <li>(a) cancel shares in the building society;</li> <li>(b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).</li> </ul>
45	Temporary public ownership: property transfer	<ul style="list-style-type: none"> <li>(a) Section 45 applies following an order under section 85 as following a share transfer order.</li> <li>(b) A property transfer order in respect of a building society may cancel shares in the building society.</li> </ul>
49 to 62	Compensation	<ul style="list-style-type: none"> <li>(a) A reference to a share transfer order includes a reference to an order under section 85.</li> <li>(b) A resolution fund order may not be made under section 51(2)(b).</li> </ul>

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		(c) If and in so far as an order under section 85 provides for the issue of new deferred shares, section 51(2) shall not apply [ <sup>F364</sup> but the Treasury may make a third party compensation order].
63 to 75	Incidental functions	A reference to a share transfer order includes a reference to an order under section 85.

#### Textual Amendments

**F363** Words in s. 84 omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(1)**

**F364** Words in s. 84 inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **21(5)**, 26(1)(f)

#### Commencement Information

**I120** S. 84 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 1**

## 85 Temporary public ownership

- (1) For the purpose of exercising the [<sup>F365</sup> fifth] stabilisation option in respect of a building society the Treasury may make one or more orders for the purposes of—
  - (a) arranging for deferred shares of a building society to be publicly owned,
  - (b) cancelling private membership rights in the building society,
  - (c) allowing the building society to continue in business while in public ownership, and
  - (d) eventually either winding up or dissolving the building society.
- (2) For the purpose specified in subsection (1)(a) an order may—
  - (a) arrange for the transfer of existing deferred shares;
  - (b) provide for new deferred shares.
- (3) For the purpose of arranging for the transfer of existing deferred shares an order may—
  - (a) provide for deferred shares to be transferred;
  - (b) make other provision for the purposes of, or in connection with, the transfer of deferred shares (whether or not the transfer has been or is to be effected by the order, by another order under this section or otherwise);
  - (c) relate to all or any specified class or description of deferred shares issued by the building society.
- (4) For the purpose of providing for new deferred shares an order may—

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- (a) issue or allow the Treasury to issue new deferred shares on behalf of the building society;
  - (b) specify or allow the Treasury to specify the terms and effect of new deferred shares;
  - (c) specify or allow the Treasury to specify the recipient of new deferred shares.
- (5) For the purpose specified in subsection (1)(b) an order may—
- (a) cancel or permit the cancellation of shares (whether or not deferred) in the building society;
  - (b) confer rights and impose liabilities, or allow them to be conferred and imposed, in place of cancelled shares;
  - (c) prevent the issue or acquisition of shares in or other rights in respect of the building society otherwise than in accordance with the order.
- (6) For the purpose specified in subsection (1)(c) an order may make any provision which the Treasury think desirable to facilitate the business of the building society after the making of provision in accordance with subsections (3) to (5).
- (7) An order in respect of a building society may—
- (a) make provision expressly or impliedly disapplying or modifying the memorandum or rules of the building society;
  - (b) disapply or modify an enactment about, or in its application to, building societies.
- (8) The following sections apply to orders under this section as to share transfer orders: sections 17, 18, 20, 21, <sup>F366</sup>... , 23, 25<sup>F367</sup>, 48Z], 71, [<sup>F368</sup>73 and 83Z2].

#### Textual Amendments

**F365** Word in s. 85(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(3)**

**F366** Word in s. 85(8) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(a)**

**F367** Word in s. 85(8) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(b)**

**F368** Words in s. 85(8) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **100(4)(c)**

#### Commencement Information

**I121** S. 85 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I122** S. 85 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 86 Distribution of assets on dissolution or winding up

- (1) The Treasury may by order make provision about the distribution of surplus assets of a building society which—
- (a) is the subject of a property transfer instrument or order, and
  - (b) is later wound up or dissolved by consent.
- (2) An order under section 85 may include provision about the distribution of surplus assets of the building society if it is later wound up or dissolved by consent.

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- (3) “Surplus” means remaining after the satisfaction of liabilities to creditors and shareholders.
- (4) An order under or by virtue of this section—
  - (a) may include any provision of a kind that may be made by order under section 90B of the Building Societies Act 1986 (power to alter priorities on dissolution or winding up),
  - (b) may be made whether or not the power under that section has been exercised, and
  - (c) shall be treated for all procedural purposes in the same way as an order under that section.

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**Commencement Information**

**I123** S. 86 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I124** S. 86 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 87 Interpretation

- (1) Expressions used in this group of sections and in the Building Societies Act 1986 have the same meaning in this group of sections as in that Act.
- (2) An order under section 119(1) of that Act defining “deferred shares”—
  - (a) may make special provision for the meaning of that expression in the application of this group of sections, and
  - (b) shall otherwise apply to this group of sections as to that Act.

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**Commencement Information**

**I125** S. 87 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I126** S. 87 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

## 88 Consequential provision

- (1) The Treasury may by order make provision, in addition to the provisions of this group of sections, in consequence of the application of this Part to building societies.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) An order—
  - (a) shall 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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**Commencement Information**

**I127** S. 88 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I128** S. 88 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

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## 89 Credit unions

- (1) The Treasury may by order provide for the application of this Part to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) subject to modifications set out in the order.
- (2) An order may disapply, modify or apply (with or without modifications) any enactment which relates, or in so far as it relates, to credit unions.
- (3) An order—
  - (a) shall 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) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.
- (5) In the application of this section to Northern Ireland the reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985.

### Commencement Information

**I129** S. 89 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1

**I130** S. 89 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

### <sup>F369</sup>Investment firms

### Textual Amendments

**F369** S. 89A and cross-heading inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 101\(5\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1447](#), art. 2(e); [S.I. 2014/1847](#), art. 2

## 89A Application to investment firms

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in <sup>F370</sup>the following Table—

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b).
Section 4	Ignore subsections (2)(b), (6) and (7)(b).
Section 5	Ignore subsection (1)(b).
Section 7	Ignore subsection (7).
Section 8	Ignore subsection (2)(c).
Section 8ZA	In subsection (5), ignore the reference to the bank insolvency procedure.



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<i>Provision</i>	<i>Modification</i>
Section 12AA	In subsection (2), in the definition of “normal insolvency proceedings” ignore the reference to the bank insolvency procedure.
Section 14	Ignore subsection (5).
Section 60	In subsection (3)(c), ignore the reference to bank insolvency.
Section 60B	In subsection (4), ignore the reference to bank insolvency.
Section 63	In subsection (1A), ignore the reference to bank insolvency.
Section 66	In subsection (1ZA), ignore the reference to bank insolvency.]

[<sup>F371</sup>(2) In the case of investment firms which are FCA-regulated investment firms, in subsection (1) the reference to this Part is a reference to this Part as it applies to FCA-regulated banks by virtue of section 83A.

(3) In this section—

“FCA-regulated bank” has the meaning given by section 83A(2);

“FCA-regulated investment firm” means an investment firm which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.]]

#### Textual Amendments

**F370** Words in s. 89A(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **101(2)**

**F371** S. 89A(2)(3) substituted for s. 89A(2) (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **101(3)**

[<sup>F372</sup>[<sup>F373</sup>*Recognised central counterparties*]

#### Textual Amendments

**F372** Ss. 89B-89G and cross-heading inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), ss. **102(6)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(h); S.I. 2014/1847, art. 2

**F373** Words in Act substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **25(2)** (with regs. 52-58)

### **89B** Application to [<sup>F373</sup>recognised central counterparties]

(1) [<sup>F374</sup>Subject to subsection (1ZA), this Part] applies to [<sup>F373</sup>recognised central counterparties] as it applies to banks, subject to—

[ subsection (1A),]

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<sup>F375</sup>(za)

- (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
- (b) any other necessary modifications.

[ For the purposes of this section and sections 89C to 89G, this Act has effect <sup>F376</sup>(1ZA) disregarding any amendments made by the Bank Recovery and Resolution Order 2014.]

[ The provisions relating to the third stabilisation option (bail-in) are to be disregarded <sup>F377</sup>(1A) in the application of this Part to recognised central counterparties.]

(2) For section 13 substitute—

**“Transfer of ownership**

- (1) The [<sup>F378</sup>fourth] stabilisation option is to transfer ownership of the [<sup>F373</sup>recognised central counterparty] to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”

(3) For sections 28 and 29 substitute—

**“Onward transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a [<sup>F373</sup>recognised central counterparty], in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of—
    - (i) securities which were issued by the [<sup>F373</sup>recognised central counterparty] before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    - (ii) securities which were issued by the [<sup>F373</sup>recognised central counterparty] after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the [<sup>F373</sup>recognised central counterparty] (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
  - (a) the Bank of England,
  - (b) a nominee of the Treasury, or
  - (c) a company wholly owned by the Bank of England or the Treasury.

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- (6) Sections 7 and 8 do not apply to an onward 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).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
  - (a) if the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person, the PRA, and
  - (b) the FCA.
- (8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

### Reverse share transfer

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a [<sup>F373</sup>recognised central counterparty] to a person (“the original transferee”).
- (2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the [<sup>F373</sup>recognised central counterparty] and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the [<sup>F373</sup>recognised central counterparty] and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  - (b) provides for transfer to the original transferee (where subsection (3) applies);
  - (c) 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) or (b).
- (5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
  - (a) the original transferee is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the original transferee.
- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—

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- (a) the onward transferee is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Sections 7 and 8 do not apply to a 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).
- (8) Before making a reverse share transfer instrument the Bank of England must consult—
- (a) if the [F373 recognised central counterparty] is a PRA-authorised person, the PRA, and
  - (b) the FCA.
- (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute—

**“Transfer of ownership: property transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a [F373 recognised central counterparty], in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of the [F373 recognised central counterparty] to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the [F373 recognised central counterparty] (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
  - (a) the Bank of England,
  - (b) a company wholly owned by the Bank of England or the Treasury, or
  - (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.
- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.

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- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
- (a) if the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person, the PRA, and
  - (b) the FCA.

### **Transfer of ownership: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A 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 which are, could be or could have been transferred.
- (4) The Bank of England must not make a reverse property transfer instrument unless—
- (a) the transferee under the original instrument is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
- (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
- (a) if the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person, the PRA, and
  - (b) the FCA.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”
- (5) For section 81 substitute—

### **“Transfer of ownership: report**

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a [<sup>F373</sup>recognised central counterparty] under section 13(2).

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- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.
- (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 13(2).”
- (6) The table mentioned in subsection (1)(a) is as follows—

#### TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	Ignore subsection (2)(b) and (c). In subsection (3)(c), for “to temporary public ownership” substitute “ of ownership ”. In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “ 15, 26 and 28 to 31 ”.
Section 4	Ignore subsection (2)(b) and (c). Ignore subsection (3)(a), (b) and (ba). In subsection (5), for “banking” substitute “ financial ”. In subsection (6), for “protect depositors” substitute “ maintain the continuity of central counterparty clearing services ”. Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c). In subsection (3)— (a) for “Sections 12 and 13 require” substitute “ Section 12 requires ”, and (b) ignore the words “and temporary public ownership”.
Section 6	In subsection (4)— (a) after “Before” insert “ issuing or ”, and (b) ignore paragraph (d). In subsection (5) after “after” insert “ issuing or ”.
Section 7	In subsection (1), for “PRA” substitute “ Bank of England ”. In subsection (2), for the words following “satisfy the” substitute “ recognition requirements ”. The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the [ <sup>F373</sup> recognised central counterparty]. In subsection (3), for “satisfy the threshold conditions” substitute “ maintain the continuity of any critical clearing

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services it provides while also satisfying the recognition requirements ”.

In subsection (4), for “PRA” substitute “ Bank of England ”.

Ignore subsection (4A).

In subsection (5)—

- (a) for “PRA” substitute “ Bank of England ”, and
- (b) ignore paragraph (a) unless the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person, in which case for “Bank of England” substitute “ PRA ”.

Ignore subsections (7) and (8).

For the purposes of section 7—

- (a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England's opinion, threaten the stability of the financial systems of the United Kingdom, and
- (b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.

Section 8 In subsection (1), omit “in accordance with section 11(2) or 12(2)”.

Ignore subsection (2)(c) and (d).

In subsection (3), ignore paragraph (a) unless the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person.

In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.

Section 9 Ignore section 9.

Section 11 Ignore subsection (2)(a).

Section 13 See above.

Section 14 Ignore subsection (5).

Section 16 Ignore section 16.

Section 20 Ignore subsections (2) and (4).

Section 24 In subsection (1), ignore paragraph (c) unless the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person.

Section 25 Ignore section 25.

Section 26 In subsection (1), for “11(2)” substitute “ 13(2) ”.

In subsection (5), ignore paragraph (a) unless the [<sup>F373</sup>recognised central counterparty] is a PRA-authorized person.

In subsection (6), for “11(2)” substitute “ 13(2) ”.

Sections 26A and 27 Ignore sections 26A and 27.

27

Sections 28 and 29 See above.

29

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- Section 30      In subsection (5), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 31      In subsection (4), for “7, 8 and 51” substitute “ 7 and 8 ”.  
 In subsection (5), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 41      In subsection (1), ignore paragraph (c) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 42      In subsection (5), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 42A     In subsection (5), for “7, 8 and 50” substitute “ 7 and 8 ”.  
 In subsection (6), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 43      In subsection (6), for “7, 8 and 52” substitute “ 7 and 8 ”.  
 In subsection (7), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Section 44      In subsection (5), for “7, 8 and 52” substitute “ 7 and 8 ”.  
 In subsection (6), ignore paragraph (a) unless the [F373 recognised central counterparty] is a PRA-authorised person.
- Sections 45 and 46    See above.
- Sections 49 to 53    Ignore sections 49 to 53.
- Section 54      In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.  
 In subsection (4)(b), for “compensation scheme order” substitute “ the order under section 89F ”.
- Section 55      In subsection (10), for “to which section 62 applies” substitute “ under section 89F ”.
- Section 56      In subsection (6), for “to which section 62 applies” substitute “ under section 89F ”.
- Section 57      In subsection (1), for “A compensation scheme order” substitute “ An order under section 89F ”.  
 In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled” substitute “ no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part ”.
- Section 58      In subsection (1), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.  
 Ignore subsection (3).



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- In subsection (4), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.
- In subsection (5), for “A resolution fund order” substitute “ An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred ”.
- Ignore subsections (6) to (8).
- Section 59 Ignore section 59.
- Section 60 In subsection (3)(c), ignore the references to bank insolvency and bank administration.
- In subsection (4)—
- (a) ignore paragraphs (a) and (b), and
  - (b) in paragraph (c), for “a third party compensation order” substitute “ an order under section 89F ”.
- In subsection (5)—
- (a) ignore paragraph (a), and
  - (b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “ an order under section 89F ”.
- Section 61 In subsection (1)—
- (a) ignore paragraphs (a) to (c), and
  - (b) treat the subsection as including a reference to orders under section 89F.
- Ignore subsection (2)(b).
- Section 62 Ignore section 62.
- Section 65 In subsection (1)(a)(ii), for “order” substitute “ instrument ”.
- In subsection (3)—
- (a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and
  - (b) ignore paragraph (b).
- Section 66 In subsection (1)—
- (a) in paragraph (a), ignore the reference to section 11(2)(a),
  - (b) in paragraph (d)(i), ignore the words following “England”, and
  - (c) ignore paragraph (d)(ii).
- Section 68 In subsection (1)(a), for “order” substitute “ instrument ”.
- Section 69 In subsection (4)—
- (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and
  - (b) ignore paragraph (b).
- Section 70 In subsection (3)—
- (a) in paragraph (a), ignore the words “in relation to section 63”, and
  - (b) ignore paragraph (b).

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Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.
Section 81B	In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2) ”. [ <sup>F379</sup> In subsection (2), for “PRA” substitute “Bank of England”] Ignore subsection (3)(c) and (d).  In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”.  Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

#### Textual Amendments

- F374** Words in s. 89B(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **102(2)**
- F375** S. 89B(1)(za) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(a)**; S.I. 2014/3160, art. 2(1)(b)
- F376** S. 89B(1ZA) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **102(3)**
- F377** S. 89B(1A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(b)**; S.I. 2014/3160, art. 2(1)(b)
- F378** Word in s. 89B(2) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 9(c)**; S.I. 2014/3160, art. 2(1)(b)
- F379** Words in s. 89B(6) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 10 para. 7**; S.I. 2014/377, art. 2(1)(a), **Sch. Pt. 1**

#### 89C [<sup>F380</sup>Recognised central counterparty] rules

- (1) A property transfer instrument made in respect of a [<sup>F373</sup>recognised central counterparty] may make provision about the consequences of a transfer for the rules of the [<sup>F380</sup>recognised central counterparty].
- (2) In particular, an instrument may—
  - (a) modify or amend the rules of a [<sup>F373</sup>recognised central counterparty];
  - (b) in a case where some, but not all, of the business of a [<sup>F373</sup>recognised central counterparty] is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect—
  - (a) for a specified period, or

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- (b) until a specified event occurs or does not occur.

#### Textual Amendments

**F380** Words in s. 89C substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **25(3)** (with regs. 52-58)

### 89D [<sup>F381</sup>Recognised central counterparty] membership

- (1) A property transfer instrument made in respect of a [<sup>F373</sup>recognised central counterparty] may make provision about the consequences of a transfer for membership of the [<sup>F381</sup>recognised central counterparty].
- (2) In particular, an instrument may—
- make provision modifying the terms on which a person is a member of a [<sup>F373</sup>recognised central counterparty];
  - in a case where some, but not all, of the business of a [<sup>F373</sup>recognised central counterparty] is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

#### Textual Amendments

**F381** Words in s. 89D substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(3) (with regs. 52-58)

### 89E Recognition of transferee company

- (1) The Bank of England may provide for a company to which the business of a [<sup>F373</sup>recognised central counterparty] is transferred in accordance with section 12(2) to be treated as a [<sup>F382</sup>recognised central counterparty] for the purposes of the Financial Services and Markets Act 2000—
- for a specified period, or
  - until a specified event occurs.
- (2) The provision may have effect—
- for a period specified in the instrument, or
  - until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
- may be exercised only with the consent of the Treasury, and
  - must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

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#### Textual Amendments

**F382** Words in s. 89E(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(4) (with regs. 52-58)

### 89F <sup>[F383]</sup> **Recognised central counterparty] compensation orders**

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
  - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
  - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
  - (c) for compensation to be paid to persons other than transferors.
- (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.

#### Textual Amendments

**F383** Words in s. 89F substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(3) (with regs. 52-58)

### 89G **Interpretation: “[<sup>F373</sup>recognised central counterparty]” &c.**

- <sup>[F384]</sup>(1) In this Part, “recognised central counterparty” has the meaning given by section 285 of the Financial Services and Markets Act 2000.]
- (2) But [<sup>F385</sup>“recognised central counterparty” does not include a recognised clearing house] which is also—
  - (a) a bank,
  - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (c) 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
  - (d) an investment firm.
- <sup>[F386]</sup>(3) Where a stabilisation power is exercised in respect of a recognised central counterparty, the body does not cease to be a recognised central counterparty for the purposes of this Part if the recognition order under Part 18 of the Financial Services and Markets Act 2000 is later revoked.]
- (4) In this Part—

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F387

“PRA-*authorised person*” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.]

#### Textual Amendments

- F384** S. 89G(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(5)(a) (with regs. 52-58)
- F385** Words in s. 89G(2) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(5)(b) (with regs. 52-58)
- F386** S. 89G(3) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(5)(c) (with regs. 52-58)
- F387** Words in s. 89G(4) omitted (1.4.2013) by virtue of [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), 25(5)(d) (with regs. 52-58)

## [<sup>F388</sup>CHAPTER 6

### THIRD-COUNTRY RESOLUTION ACTIONS

#### Textual Amendments

- F388** Pt. 1 Ch. 6, 7 inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **103**

#### *Third-country resolution actions*

### **89H. Recognition of third-country resolution actions**

- (1) This section applies where the Bank of England is notified of third-country resolution action in respect of a third-country institution or third-country parent undertaking.
- (2) The Bank must make an instrument which—
  - (a) recognises the action, or
  - (b) refuses to recognise the action, or
  - (c) recognises part of the action and refuses to recognise the remainder.An instrument within paragraph (a), (b) or (c) is a “third-country instrument” (as is an instrument under section 89I(4)(b)).
- (3) The Bank may only make a decision under subsection (2) with the approval of the Treasury.
- (4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—
  - (a) recognition would have an adverse effect on financial stability in the United Kingdom or another EEA state;

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- (b) the taking of action in relation to a branch located in the United Kingdom of a third-country institution is necessary to achieve one or more of the special resolution objectives;
  - (c) under the third-country resolution action creditors (including in particular depositors) located or payable in an EEA state would not, by reason of being located or payable in the EEA state, receive the same treatment as creditors (including depositors) who are located or payable in the third country concerned and have similar legal rights;
  - (d) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;
  - (e) recognition would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention) or contrary to a provision of EU law.
- (5) The recognition of third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.
- (6) When exercising any function under or by virtue of this section or section 89I, the Bank and the Treasury must give due consideration to the interests of any EEA state where the third-country institution or third-country parent undertaking operates, and (in particular) to the potential effect of the exercise of any of those functions on—
- (a) where the institution or undertaking is a member of a group, any member of the group in such an EEA state, and
  - (b) the financial stability in such an EEA state.
- (7) In this section—
- “EU institution” has the meaning given by Article 2.1(23) of the recovery and resolution directive,
  - “group” has the meaning given by section 474 of the Companies Act 2006,
  - “normal insolvency proceedings” has the meaning given in Article 2.1(47) of the recovery and resolution directive (and, in particular, includes the bank insolvency procedure and the bank administration procedure),
  - “third-country group company” means an undertaking—
    - (a) which is (or, but for third-country resolution action or the exercise of a stabilisation power, would be) in the same group as a third-country institution or a third-country parent undertaking, and
    - (b) in respect of which any conditions specified in an order made by the Treasury under section 81D are met (applying that order as if references to the bank were references to the third-country institution or third-country parent undertaking),
  - “third-country institution” has the meaning given by Article 2.1(86) of the recovery and resolution directive;
  - “third-country parent undertaking” has the meaning given by Article 2.1(87) of the recovery and resolution directive;
  - “third-country resolution action” means action under the law of a third country to manage the failure or likely failure of a third-country institution, third country parent undertaking or an EU institution—
    - (a) the anticipated results of which are, in relation to a third-country institution or third-country parent undertaking or EU institution, broadly comparable to results which could have been anticipated from the

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- exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the institution or undertaking, and
- (b) the objectives of which are broadly comparable, in relation to the third country, to the objectives in section 4 as they apply in relation to the United Kingdom;
- “third country” means a state other than an EEA state.

## **89I. Effect of recognition of third-country resolution action by Bank of England**

- (1) This section applies where an instrument under section 89H recognises any third-country resolution action (or a part of it).
- (2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.
- (3) For the purposes of supporting, or giving full effect to, the third-country resolution action (or the part), the Bank of England may exercise, in relation to a third-country institution, a third-country parent undertaking or another third-country group company, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.
- (4) But, for the purposes of exercising a power by virtue of subsection (3), provision which could otherwise be made under this Part in a mandatory reduction instrument, share transfer instrument, property transfer instrument or resolution instrument may instead be made in—
- (a) the instrument made under section 89H recognising the third-country resolution action (or part), or
- (b) a further instrument made by the Bank of England under this section.

An instrument under paragraph (b) is a “third-country instrument” (as is an instrument under section 89H(2)(a), (b) or (c)).

- (5) This Part (other than this section) applies in relation to the exercise of any power by virtue of subsection (3), subject to subsections (6) to (8) and any other necessary modifications.
- (6) Section 4 (special resolution objectives) has effect as if after subsection (9) there were inserted—
- “(9A) Objective 8 is to support third-country resolution action with a view to promoting objectives which, in relation to the third country concerned, correspond to Objectives 1 to 7 in relation to the United Kingdom.”.
- (7) Sections 7 to 8ZA do not apply.
- (8) Section 60B (principle of no less favourable treatment) applies in relation to compensation arrangements in the case of third-country instruments in relation to any third-country resolution action (or a part of it) as if—
- (a) references to the initial instrument were to the first third-country instrument under section 89H recognising that action (or part), and
- (b) in subsection (3) the reference to the coming into effect of the initial instrument were a reference to the taking of the third-country resolution action recognised (or recognised in part) by that instrument.

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- (9) Section 81B, 81ZBA and 81BA have effect in relation to the exercise of a stabilisation power in respect of a third-country group company as if for subsections (2) and (3) (in each case) there were substituted—
- “(2) Condition 1 is that third-country resolution action has been taken in respect of a third-country institution, a third-country parent undertaking or another third-country group company, in the same group.
- (3) Condition 2 is that the Bank of England is satisfied that the exercise of the power in respect of the third-country group company is necessary, having regard to the public interest in the stability of the financial systems of the United Kingdom and the third-country concerned.
- (3A) In subsections (2) and (3) “third-country resolution action”, “third-country institution”, “third-country parent undertaking”, “third-country group company” and “third country” have the meaning given by section 89H(7).”.
- (10) Section 89H(7) applies for the purposes of this section.

#### **89J. Third-country instruments: supplementary provision**

- (1) Section 23 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.
- (2) Section 24 (procedure: instruments) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that section to the bank are to be read as references to the third-country institution, third-country parent undertaking or other third-country group company, to which the third-country instrument relates.
- (3) Section 76 (international obligation notice: general) applies in relation to the making of a third-country instrument under section 89H or 89I as it applies in relation to the exercise of a stabilisation power, except that—
- (a) for the purposes of section 76(3), section 4 is to be read subject to the modification in section 89I(6), and
- (b) in subsection (4), the reference to a bank is to be read as a reference to a third-country institution, a third-country parent undertaking or another third-country group company, in respect of which a third-country instrument is made.
- (4) Section 77 (international obligation notice: bridge bank) applies where the Bank of England has, by virtue of section 89I, transferred all or part of the business of a third-country institution, a third-country parent undertaking or another third-country group company, to a bridge bank as it applies where the Bank of England has transferred all or part of the business of a bank or banking group company to a bridge bank.
- (5) Section 89I(7) applies for the purposes of this section.



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## CHAPTER 7

### GENERAL PROVISIONS

#### 89K. Insolvency Proceedings

- (1) If —
- (a) a stabilisation power has been exercised in respect of a relevant firm, or
  - (b) the conditions in section 7 are met in relation to a relevant firm,
- insolvency proceedings may not be commenced in relation to that firm except by, or with the consent of, the Bank of England.
- (2) For the purposes of subsection (1), the commencement of insolvency proceedings means—
- (a) making an application for an administration order;
  - (b) presenting a petition for winding up;
  - (c) proposing a resolution for voluntary winding up;
  - (d) appointing an administrator.
- (3) In this section—
- (a) “relevant firm” means—
    - (i) a bank, building society, investment firm, financial holding company, mixed financial holding company or a mixed activity holding company, or
    - (ii) a financial institution which is a subsidiary undertaking of an entity within sub-paragraph (i);
  - (b) “building society” has the meaning given in the Building Societies Act 1986;
  - (c) “financial holding company” has the meaning given in Article 4.1(2) of the capital requirements regulation;
  - (d) “financial institution” has the meaning given in Article 4.1(26) of the capital requirements regulation;
  - (e) “mixed activity holding company” has the meaning given in Article 4.1(22) of the capital requirements regulation;
  - (f) “mixed financial holding company” has the meaning given in Article 2.15 of [Directive 2002/87/EC](#) of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

#### 89L. Restrictions on disclosure of confidential information

- (1) Sections 348, 349, 352 and 353 of the Financial Services and Markets Act 2000 (disclosure of information) apply for the purposes of this Part with the following modifications.
- (2) Section 348 of that Act has effect as if—
- (a) in subsection (2)(b), after “Act” there were inserted “or of the Bank of England under Part 1 of the Banking Act 2009 or the Bank Recovery and Resolution (No 2) Order 2014”,

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- (b) in subsection (3)(a), at the end there were inserted “or the Banking Act 2009”, and
  - (c) in subsection (5)—
    - (i) after paragraph (c) there were inserted—
      - “(ca) the Bank of England;
      - (cb) a resolution administrator appointed under Part 1 of the Banking Act 2009;”,
    - (ii) in paragraph (e) for “to (c)” there were substituted “to (cb)”, and
    - (iii) after subsection (6)(b) there were inserted—
      - “(c) a competent person appointed by the Bank of England under Chapter 4 of Part 1 of the Banking Act 2009.”
- (3) Section 349 of that Act has effect as if, in subsection (2)(c), for “or the PRA” substitute “the PRA, the Bank of England or a resolution administrator appointed by virtue of section 62B of the Banking Act 2009”.
- (4) Section 353 of that Act has effect as if in subsection (1)—
- (a) in paragraph (a), after “under this Act” there were inserted “or the Banking Act 2009”, and
  - (b) in paragraph (b) after “to the” there were inserted “Bank of England, the”.

#### **89M. Giving of notices, documents etc under Part 1**

Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices), and subsection (4) of that section, apply in relation to any notice, direction or document of any kind required to be given under any provision of this Part (however that requirement is expressed) as if those provisions were provisions of that Act.]

## **PART 2**

### BANK INSOLVENCY

#### **Modifications etc. (not altering text)**

- C3** Pt. 2 applied (with modifications) by 1986 c. 53, s. 90C (as inserted (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 2**)
- C4** Pt. 2 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **Sch. 1 para. 1**
- C5** Pt. 2 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **Sch. 1 para. 6**
- C6** Pt. 2 restricted (7.1.2010) by [Banking Act 2009 \(Exclusion of Insurers\) Order 2010 \(S.I. 2010/35\)](#), **arts. 1, 2**
- C7** Pt. 2: amendment to earlier affecting provision SI 2009/805, Sch. 1 (7.4.2010) by [Building Societies \(Insolvency and Special Administration\) \(Amendment\) Order 2010 \(S.I. 2010/1189\)](#), **arts. 1(2), 2**
- C8** Pt. 2 applied (with modifications) (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), **reg. 1, Sch. 1 paras. 6, 7**

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## Introduction

### 90 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that—
  - (a) a bank enters the process by court order,
  - (b) the order appoints a bank liquidator,
  - (c) the bank liquidator aims to arrange for the bank's eligible depositors to have their accounts transferred or to receive their compensation from the FSCS,
  - (d) the bank liquidator then winds up the bank, and
  - (e) for those purposes, the bank liquidator has powers and duties of liquidators, as applied and modified by the provisions of this Part.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 90 to 93	Introduction
Sections 94 to 98	Bank insolvency order
Sections 99 to 105	Process of bank liquidation
Sections 106 to 112	Tenure of bank liquidator
Sections 113 to 116	Termination of process, &c.
Sections 117 to 122	Other processes
Sections 123 to 135	Miscellaneous

#### Commencement Information

**1131** S. 90 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### 91 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under [<sup>F389</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include—
  - (a) a building society within the meaning of section 119 of the Building Societies Act 1986,
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
  - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c)—

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- (a) shall 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.
- (5) Section 130 makes provision for the application of this Part to building societies.
- (6) Section 131 makes provision for the application of this Part to credit unions.

#### Textual Amendments

**F389** Words in s. 91(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 30](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I132** S. 91 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**I133** S. 91 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

## 92 Interpretation: “the court”

In this Part “the court” means—

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

#### Commencement Information

**I134** S. 92 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

## 93 Interpretation: other expressions

[<sup>F390</sup>(1) In this Part—

- (a) “the PRA” means the Prudential Regulation Authority, and
- (b) “the FCA” means the Financial Conduct Authority.]

(2) In this Part a reference to “the FSCS” is a reference to—

- (a) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000), or
- (b) where appropriate, the scheme manager of that Scheme.

(3) In this Part “eligible depositors” means depositors who are eligible for compensation under the FSCS.

(4) For the purposes of a reference in this Part to inability to pay debts—

- (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
- (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and

for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.

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- (5) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (6) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (7) A reference in this Part to action includes a reference to inaction.
- (8) The expression “fair” is used in this Part as a shorter modern equivalent of the expression “just and equitable” (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression).

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#### Textual Amendments

**F390** S. 93(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 31](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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#### Commencement Information

**I135** S. 93 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### *Bank insolvency order*

#### **94 The order**

- (1) A bank insolvency order is an order appointing a person as the bank liquidator of a bank.
- (2) A person is eligible for appointment as a bank liquidator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank insolvency order takes effect in accordance with section 98; and—
  - (a) the process of a bank insolvency order having effect may be described as “bank insolvency” in relation to the bank, and
  - (b) while the order has effect the bank may be described as being “in bank insolvency”.

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#### Commencement Information

**I136** S. 94 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

#### **95 Application**

- (1) An application for a bank insolvency order may be made to the court by—
  - (a) the Bank of England,
  - (b) the [<sup>F391</sup>PRA], or
  - (c) the Secretary of State.
- (2) An application must nominate a person to be appointed as the bank liquidator.

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- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below).

#### Textual Amendments

**F391** Word in s. 95(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 32](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Commencement Information

**I137** S. 95 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 96 Grounds for applying

- (1) In this section—
- (a) Ground A is that a bank is unable, or likely to become unable, to pay its debts,
  - (b) Ground B is that the winding up of a bank would be in the public interest, and
  - (c) Ground C is that the winding up of a bank would be fair.
- (2) The Bank of England may apply for a bank insolvency order only if—
- (a) the [<sup>F392</sup>PRA] has informed the Bank of England that the [<sup>F392</sup>PRA] is satisfied that [<sup>F393</sup>Condition 1 in section 7 is met], and
  - (b) the Bank of England is satisfied—
    - [<sup>F394</sup>(ai) that Condition 2 in section 7 is met,]
    - (i) that the bank has eligible depositors, and
    - (ii) that Ground A or C applies.
- (3) The [<sup>F392</sup>PRA] may apply for a bank insolvency order only if—
- [<sup>F395</sup>(a) the Bank of England has—
    - (i) informed the PRA that it is satisfied that Condition 2 in section 7 is met, and
    - (ii) has consented to the application,]
  - (b) the [<sup>F392</sup>PRA] is satisfied—
    - (i) that [<sup>F396</sup>Condition 1 in section 7 is met],
    - (ii) that the bank has eligible depositors, and
    - (iii) that Ground A or C applies.
- (4) The Secretary of State may apply for a bank insolvency order only if satisfied—
- (a) that the bank has eligible depositors, and
  - (b) that Ground B applies.
- (5) The sources of information on the basis of which the Secretary of State may be satisfied of the matters specified in subsection (4) include those listed in section 124A(1) of the Insolvency Act 1986 (petition for winding up on grounds of public interest).

#### Textual Amendments

**F392** Word in s. 96 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 33](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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- F393** Words in s. 96(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [104\(2\)\(i\)](#)
- F394** S. 96(2)(b)(ai) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [104\(2\)\(ii\)](#)
- F395** S. 96(3)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [104\(3\)\(a\)](#)
- F396** Words in s. 96(3)(b)(i) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), [104\(3\)\(b\)](#)

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**Commencement Information**

- I138** S. 96 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 97 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the <sup>F397</sup>PRA] if satisfied—
  - (a) that the bank has eligible depositors, and
  - (b) that Ground A or C of section 96 applies.
- (2) The court may make a bank insolvency order on the application of the Secretary of State if satisfied—
  - (a) that the bank has eligible depositors, and
  - (b) that Grounds B and C of section 96 apply.
- (3) On an application for a bank insolvency order the court may—
  - (a) grant the application in accordance with subsection (1) or (2),
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

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**Textual Amendments**

- F397** Word in s. 97(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 34](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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**Commencement Information**

- I139** S. 97 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 98 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section.
- (2) In the case where—
  - (a) notice has been given to the <sup>F398</sup>PRA] under section 120 of an application for an administration order or a petition for a winding up order, and
  - (b) the <sup>F398</sup>PRA] or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section,the bank insolvency order is treated as having taken effect when the application or petition was made or presented.



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- (3) In any other case, the bank insolvency order is treated as having taken effect when the application for the order was made.
- (4) Unless the court directs otherwise on proof of fraud or mistake, proceedings taken in the bank insolvency, during the period for which it is treated as having had effect, are treated as having been taken validly.

#### Textual Amendments

**F398** Word in s. 98(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 35](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Commencement Information

**I140** S. 98 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### *Process of bank liquidation*

## 99 Objectives

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—
  - (a) has the relevant account transferred to another financial institution, or
  - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank's creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment).

#### Commencement Information

**I141** S. 99 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 100 Liquidation committee

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part.
- [<sup>F399</sup>(2) The liquidation committee is to consist initially of—
  - (a) two individuals nominated by the Bank of England,
  - (b) one individual nominated by the PRA,
  - (c) one individual nominated by the FCA, and
  - (d) one individual nominated by the FSCS.]
  - (3) The bank liquidator must report to the liquidation committee about any matter—
    - (a) on request, or



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- (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator—
  - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
  - (b) must notify the liquidation committee when in the bank liquidator's opinion Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable.
- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either—
  - (a) resolve that Objective 1 in section 99 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
  - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (6) Where a liquidation committee passes a full payment resolution—
  - (a) the bank liquidator must summon a meeting of creditors,
  - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,
  - (c) those individuals replace the members nominated by the Bank of England<sup>F400</sup>, the PRA and the FCA],
  - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
  - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about—
  - (a) the establishment of liquidation committees,
  - (b) the membership of liquidation committees,
  - (c) the functions of liquidation committees, and
  - (d) the proceedings of liquidation committees.

#### Textual Amendments

**F399** S. 100(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 36\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F400** Words in s. 100(6)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 36\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I142** S. 100 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**I143** S. 100 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

## 101 Liquidation committee: supplemental

- (1) A meeting of the liquidation committee may be summoned—
  - (a) by any of the members, or

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- (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present.
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).
- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court—
  - (a) for an order under subsection (4) above, or
  - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.
- (7) After the removal of the nominated members under section 100(6)(c) the [<sup>F401</sup>PRA, the FCA] and the Bank of England—
  - (a) may attend meetings of the liquidation committee,
  - (b) are entitled to copies of documents relating to the liquidation committee's business,
  - (c) may make representations to the liquidation committee, and
  - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(6)(e)—
  - (a) it may be re-formed by a creditors' meeting summoned by the bank liquidator for the purpose, and
  - (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank's creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below)—
  - (a) ignore a reference in this Part to the liquidation committee,
  - (b) for section 113(2) to (4) substitute requirements for the bank liquidator, before making a proposal—
    - (i) to produce a final report,
    - (ii) to send copies in accordance with section 113(2)(b),
    - (iii) to make it available in accordance with section 113(2)(c), and
    - (iv) to be satisfied as specified in section 113(4)(b),
  - (c) ignore Condition 2 in section 114, and
  - (d) for section 115(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must—
    - (i) produce a final report,
    - (ii) send copies in accordance with section 115(2)(b),
    - (iii) make it available in accordance with section 115(2)(c), and

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- (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

#### Textual Amendments

**F401** Words in s. 101(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 37](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I144** S. 101 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

### 102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue—
  - (a) Objective 1(a) in section 99,
  - (b) Objective 1(b) in section 99, or
  - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
- (2) In making a recommendation the liquidation committee must consider—
  - (a) the desirability of achieving Objective 1 as quickly as possible, and
  - (b) Objective 2 in section 99.
- (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 103 below).
- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court.

#### Commencement Information

**I145** S. 102 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

### 103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (2) The following provisions of this section provide for—
  - (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and
  - (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
  - (a) the modifications set out in subsection (4),
  - (b) any other modification specified in the Table, and

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- (c) any other necessary modification.
- (4) The modifications are that—
  - (a) a reference to the liquidator is a reference to the bank liquidator,
  - (b) a reference to winding up is a reference to bank insolvency,
  - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
  - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
  - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency,
  - (f) a reference to going into liquidation is a reference to entering bank insolvency,
  - (g) a reference to a winding-up order is a reference to a bank insolvency order, and
  - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

#### TABLE OF APPLIED PROVISIONS

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 127	Avoidance of property dispositions	Ignore section 127(2).
Section 128	Avoidance of attachment, &c.	
Section 130	Consequences of winding-up order	Ignore section 130(4).
Section 131	Company's statement of affairs	<ul style="list-style-type: none"> <li>(a) Treat references to the official receiver as references to the bank liquidator.</li> <li>(b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator.</li> </ul>
Section 135	Provisional appointment	(a) Treat the reference to the presentation

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		of a winding-up petition as a reference to the making of an application for a bank insolvency order.
		(b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply).
		(c) Ignore the reference to the official receiver.
		(d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed.
		(e) A provisional bank liquidator may not pay dividends to creditors.
		(f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.
Section 141	Liquidation Committee (England and Wales)	The application of section 141 is subject to— (a) sections 100, 101 and 109 of this Act, (b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii)

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		the possibility of calling creditors' meetings under other provisions, and
		(c) the omission of references to the official receiver.
Section 142	Liquidation Committee (Scotland)	The application of section 142 is subject to—
		(a) sections 100, 101 and 109 of this Act,
		(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect
		(i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and
		(c) the omission of references to the official receiver.
Section 143	General functions of liquidator	(a) Section 143(1) is subject to Objective 1 in section 99 above.
		(b) Ignore section 143(2).
Section 144	Custody of property	
Section 145	Vesting of property	
Section 146	<i>Duty to summon final meeting</i>	<i>Section 146 is not applied—but section 115 below makes similar provision.</i>
Section 147	Power to stay or sist proceedings	An application may be made only by—
		(a) the bank liquidator,
		(b) the [F402PRA],
		(c) the Bank of England,
		(d) the FSCS, or
		(e) a creditor or contributory (but only if

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		the liquidation committee has passed a full payment resolution).
Section 148	List of contributories and application of assets	<i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator—rules by virtue of section 125 may achieve a similar delegation to the bank liquidator.</i>
Section 149	Debts due from contributories	
Section 150	Power to make calls	
Section 152	Order on contributory: evidence	
Section 153	Exclusion of creditors	
Section 154	Adjustment of rights of contributories	
Section 155	Inspection of books by creditors	In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 99 above.
Section 156	Payment of expenses of winding up	
Section 157	Attendance at company meetings (Scotland)	
Section 158	Power to arrest absconding contributory	
Section 159	<i>Powers to be cumulative</i>	<i>Section 159 is not applied—but subsection (5) above makes similar provision.</i>
Section 160	Delegation of powers to liquidator (England and Wales)	
Section 161	Orders for calls on contributories (Scotland)	
Section 162	Appeals from orders (Scotland)	An appeal may be brought only if the liquidation committee has passed a full payment resolution.

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Section 167 and  
Schedule 4

General powers of  
liquidator

- (a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 101(3) above).
- (b) In exercising or considering whether to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 99.
- (c) A reference to the liquidation committee is to the liquidation committee established by section 100.
- (d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration.

*Some additional general powers are conferred by section 104 below.*

Section 168

Supplementary powers of  
liquidator

- (a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution.
- (b) Section 168(5) also applies in



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		the case of the imposition of bank insolvency by order of the Court of Session.
		(c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 100 or 102 above).
Section 169	Supplementary powers (Scotland)	(a) Ignore section 169(1). (b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above.
Section 170	Liquidator's duty to make returns	The liquidation committee is added to the list of persons able to apply under section 170(2).
Section 172	Removal of liquidator	<i>Section 172 is not applied to a bank liquidator—but section 108 makes similar provision.</i> Section 172(1), (2) and (5) are applied to a provisional bank liquidator.
<i>Section 174</i>	<i>Release of liquidator</i>	<i>Section 174 is not applied—but section 115 makes similar provision.</i>
Section 175	Preferential debts	
Section 176	Preferential charge on goods restrained	
Section 176ZA	Expenses of winding up	
Section 176A	Share of assets for unsecured creditors	

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Section 177	Appointment of special manager	
Section 178	Power to disclaim onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 183	Effect of execution or attachment (England and Wales)	
Section 184	Execution of writs (England and Wales)	
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order.
Section 186	Rescission of contracts by court	
Section 187	Transfer of assets to employees	
Section 188	Publicity	
Section 189	Interest on debts	
Section 190	Exemption from stamp duty	
Section 191	Company's books as evidence	
Section 192	Information about pending liquidations	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 195	Meetings to ascertain wishes of creditors or contributories	The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99.

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Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons (Scotland)	
Section 199	Costs of application for leave to proceed (Scotland)	
Section 200	Affidavits	
Section 206	Fraud in anticipation of winding up	
Section 207	Transactions in fraud of creditors	
Section 208	Misconduct in course of winding up	
Section 209	Falsification of company's books	
Section 210	Material omissions	
Section 211	False representations to creditors	
Section 212	Summary remedy against directors, &c.	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	
Section 215	Sections 213 & 214: procedure	
Section 216	Restriction on re-use of company names	
Section 217	Personal liability for debts	
Section 218	Prosecution of officers and members of company	(a) Ignore subsections (4) and (6). (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) In subsection (5) treat the reference to subsection (4)

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		as a reference to subsection (3).
Section 219	Obligations under section 218	
Section 231	Appointment of 2 or more persons	
Section 232	Validity of acts	
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	Ignore references to the official receiver
Section 236	Inquiry into company's dealings	Ignore references to the official receiver
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238.
Section 239	Preferences (England and Wales)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239.
Section 240	Sections 238 & 239: relevant time	
Section 241	Orders under sections 238 & 239	Having notice of the relevant proceedings means having notice of— (a) an application by the Bank of England, the [F403PRA] or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below.
Section 242	Gratuitous alienations (Scotland)	Anything done by the bank in connection

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		with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law.
Section 243	Unfair preferences (Scotland)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the purpose of section 243 or any other rule of law.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.
Sections 423–425	Transactions defrauding creditors	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423.
Sections 430 to 432 and Schedule 10	Offences	

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Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.
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#### Textual Amendments

- F402** Word in s. 103 Table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 38\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F403** Word in s. 103 Table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 38\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C9** S. 103 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\), reg. 1, Sch. 1 para. 4](#)

#### Commencement Information

- I146** S. 103 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

## 104 Additional general powers

- (1) A bank liquidator has the following powers.
- (2) Power to effect and maintain insurances in respect of the business and property of the bank.
- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

#### Modifications etc. (not altering text)

- C10** S. 104 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\), reg. 1, Sch. 1 para. 4](#)

#### Commencement Information

- I147** S. 104 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

## 105 Status of bank liquidator

A bank liquidator is an officer of the court.

#### Commencement Information

- I148** S. 105 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

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### *Tenure of bank liquidator*

#### **106 Term of appointment**

A bank liquidator appointed by bank insolvency order remains in office until vacating office—

- (a) by resigning under section 107,
- (b) on removal under section 108 or 109,
- (c) on disqualification under section 110,
- (d) on the appointment of a replacement in accordance with section 112,
- (e) in accordance with sections 113 to 115, or
- (f) on death.

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#### **Commencement Information**

**I149** S. 106 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

#### **107 Resignation**

- (1) A bank liquidator may resign by notice to the court.
- (2) Rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below) may restrict a bank liquidator's power to resign.
- (3) Resignation shall take effect in accordance with those rules (which shall include provision about release).

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#### **Commencement Information**

**I150** S. 107 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**I151** S. 107 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

#### **108 Removal by court**

- (1) A bank liquidator may be removed by order of the court on the application of—
  - (a) the liquidation committee,
  - (b) the [<sup>F404</sup>PRA], or
  - (c) the Bank of England.
- (2) Before making an application the [<sup>F405</sup>PRA] must consult the Bank of England [<sup>F406</sup>and the FCA].
- (3) Before making an application the Bank of England must consult the [<sup>F407</sup>PRA and the FCA].
- (4) A bank liquidator removed by order has release with effect from a time determined by—
  - (a) the Secretary of State, or
  - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

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### Textual Amendments

- F404** Word in s. 108(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F405** Word in s. 108(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F406** Words in s. 108(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F407** Words in s. 108(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

### Commencement Information

- I152** S. 108 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 109 Removal by creditors

- (1) A bank liquidator may be removed by resolution of a meeting of creditors held pursuant to section 195 of the Insolvency Act 1986 (as applied by section 103 above) provided that the following conditions are met.
- (2) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (3) Condition 2 is that the notice given to creditors of the meeting includes notice of intention to move a resolution removing the bank liquidator.
- (4) Condition 3 is that the Bank of England<sup>F408</sup>, the PRA and the FCA—
  - (a) receive notice of the meeting, and
  - (b) are given an opportunity to make representations to it.
- (5) A bank liquidator who is removed under this section has release with effect—
  - (a) from the time when the court is informed of the removal, or
  - (b) if the meeting removing the bank liquidator resolves to disapply paragraph (a), from a time determined by—
    - (i) the Secretary of State, or
    - (ii) in the case of a bank liquidator in Scotland, the Accountant of Court.

### Textual Amendments

- F408** Words in s. 109(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 40](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

### Commencement Information

- I153** S. 109 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 110 Disqualification

- (1) If a bank liquidator ceases to be qualified to act as an insolvency practitioner, the appointment lapses.
- (2) A bank liquidator whose appointment lapses under subsection (1) has release with effect from a time determined by—



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- (a) the Secretary of State, or
- (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

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**Commencement Information**

**I154** S. 110 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 111 Release

A bank liquidator who is released is discharged from all liability in respect of acts or omissions in the bank insolvency and otherwise in relation to conduct as bank liquidator (but without prejudice to the effect of section 212 of the Insolvency Act 1986 as applied by section 103 above).

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**Commencement Information**

**I155** S. 111 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 112 Replacement

- (1) Where a bank liquidator vacates office the Bank of England must as soon as is reasonably practicable appoint a replacement bank liquidator.
- (2) But where a bank liquidator is removed by resolution of a meeting of creditors under section 109—
  - (a) a replacement may be appointed by resolution of the meeting, and
  - (b) failing that, subsection (1) above applies.

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**Commencement Information**

**I156** S. 112 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

*Termination of process, &c.*

## 113 Company voluntary arrangement

- (1) A bank liquidator may make a proposal in accordance with section 1 of the Insolvency Act 1986 (company voluntary arrangement).
- (2) Before making a proposal the bank liquidator—
  - (a) shall present a final report on the bank liquidation to the liquidation committee,
  - (b) shall send a copy of the report to—
    - <sup>[F409]</sup>(i) the PRA,
    - (ia) the FCA,]
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and

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- (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request.
- (3) A proposal may be made only with the consent of the liquidation committee.
- (4) The liquidation committee may consent only if—
- (a) it has passed a full payment resolution, and
  - (b) the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositor still eligible for compensation under the scheme will be dealt with in accordance with section 99(2)(a) or (b).
- (5) The bank liquidator must be the nominee (see section 1(2) of the 1986 Act).
- (6) Part 1 of the 1986 Act shall apply to a proposal made by a bank liquidator, with the following modifications.
- (7) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.
- (9) On the termination of a company voluntary arrangement the bank liquidator may apply to the court to lift the suspension of the bank insolvency order.

#### Textual Amendments

**F409** S. 113(2)(b)(i)(ia) substituted for s. 113(2)(b)(i) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 41](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

#### Commencement Information

**I157** S. 113 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 114 Administration

- (1) A bank liquidator who thinks that administration would achieve a better result for the bank's creditors as a whole than bank insolvency may apply to the court for an administration order (under paragraph 38 of Schedule B1 to the Insolvency Act 1986).
- (2) An application may be made only if the following conditions are satisfied.
- (3) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (4) Condition 2 is that the liquidation committee has resolved that moving to administration might enable the rescue of the bank as a going concern.
- (5) Condition 3 is that the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositors still eligible for compensation under the scheme will receive their payments or have their accounts transferred during administration.

#### Commencement Information

**I158** S. 114 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

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## 115 Dissolution

- (1) A bank liquidator who thinks that the winding up of the bank is for practical purposes complete shall summon a final meeting of the liquidation committee.
- (2) The bank liquidator—
  - (a) shall present a final report on the bank insolvency to the meeting,
  - (b) shall send a copy of the report to—
    - <sup>[F410]</sup>(i) the PRA,
      - (ia) the FCA,]
      - (ii) the FSCS,
      - (iii) the Bank of England,
      - (iv) the Treasury, and
      - (v) the registrar of companies, and
    - (c) shall make the report available to members, creditors and contributories on request.
  - (3) At the meeting the liquidation committee shall—
    - (a) consider the report, and
    - (b) decide whether to release the bank liquidator.
  - (4) If the liquidation committee decides to release the bank liquidator, the bank liquidator—
    - (a) shall notify the court and the registrar of companies, and
    - (b) vacates office, and has release, when the court is notified.
  - (5) If the liquidation committee decides not to release the bank liquidator, the bank liquidator may apply to the Secretary of State for release; if the application is granted, the bank liquidator—
    - (a) vacates office when the application is granted, and
    - (b) has release from a time determined by the Secretary of State.
  - (6) In the case of a bank liquidator in Scotland, a reference in subsection (5) to the Secretary of State is a reference to the Accountant of Court.
  - (7) On receipt of a notice under subsection (4)(a) the registrar of companies shall register it.
  - (8) At the end of the period of 3 months beginning with the day of the registration of the notice, the bank is dissolved (subject to deferral under section 116).

### Textual Amendments

**F410** S. 115(2)(b)(i)(ia) substituted for s. 115(2)(b)(i) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 42](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

### Commencement Information

**I159** S. 115 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

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## 116 Dissolution: supplemental

- (1) The Secretary of State may by direction defer the date of dissolution under section 115, on the application of a person who appears to the Secretary of State to be interested.
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1).
- (3) Subsection (1) does not apply where the bank insolvency order was made by the court in Scotland; but the court may by direction defer the date of dissolution on an application by a person appearing to the court to have an interest.
- (4) A person who obtains deferral under subsection (1) or (3) shall, within 7 days after the giving of the deferral direction, deliver a copy of the direction to the registrar of companies for registration.
- (5) A person who without reasonable excuse fails to comply with subsection (4) is liable to a fine and, for continued contravention, to a daily default fine, in each case of the same amount as for a contravention of section 205(6) of the Insolvency Act 1986 (dissolution).
- (6) The bank liquidator may give the notice summoning the final meeting under section 115 above at the same time as giving notice of any final distribution of the bank's property; but, if summoned for an earlier date the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the bank liquidator is able to report to the meeting that the winding up of the bank is for practical purposes complete.
- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 115 above.

### Commencement Information

**I160** S. 116 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### *Other processes*

## 117 Bank insolvency as alternative order

- (1) On a petition for a winding up order or an application for an administration order in respect of a bank the court may, instead, make a bank insolvency order.
- (2) A bank insolvency order may be made under subsection (1) only—
  - (a) on the application of the [<sup>F411</sup>PRA] made with the consent of the Bank of England [<sup>F412</sup>and the FCA], or
  - (b) on the application of the Bank of England.

### Textual Amendments

**F411** Word in s. 117(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 43\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F412** Words in s. 117(2)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 43\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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**Commencement Information**

**I161** S. 117 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 2

**118 Voluntary winding-up**

A resolution for voluntary winding up of a bank under section 84 of the Insolvency Act 1986 shall have no effect without the prior approval of the court.

**Commencement Information**

**I162** S. 118 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 2

**119 Exclusion of other procedures**

- (1) The following paragraphs of Schedule B1 to the Insolvency Act 1986 (administration) apply to a bank insolvency order as to an administration order.
- (2) Those paragraphs are—
  - (a) paragraph 40 (dismissal of pending winding-up petition), and
  - (b) paragraph 42 (moratorium on insolvency proceedings).
- (3) For that purpose—
  - (a) a reference to an administration order is a reference to a bank insolvency order,
  - (b) a reference to a company being in administration is a reference to a bank being in bank insolvency, and
  - (c) a reference to an administrator is a reference to a bank liquidator.

**Commencement Information**

**I163** S. 119 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 2

**120 Notice to [<sup>F413</sup>PRA] of preliminary steps**

- (1) An application for an administration order in respect of a bank may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a bank may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a bank may not be made unless the conditions below are satisfied.
- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the [<sup>F414</sup>the PRA and the Bank of England have] been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the bank, that a resolution for voluntary winding up may be made, or

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- (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed [<sup>F415</sup>(in Scotland, lodged)] with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
- (a) the period of [<sup>F416</sup>7 days], beginning with the day on which the notice is received, has ended, or
  - [<sup>F417</sup>(b) both—
    - (i) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 in relation to the firm (and Condition 5 has been met, if applicable), and
    - (ii) each of the PRA and the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order.]
- (8) Condition 4 is that no application for a bank insolvency order is pending.
- [<sup>F418</sup>(8A) Condition 5—
- (a) applies only if a resolution instrument has been made under section 12A with respect to the bank in the 3 months ending with the date on which the PRA receives the notification under Condition 1, and
  - (b) is that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.]
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a bank's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (10) [<sup>F419</sup>Where notice has been given under Condition 1] —
- [<sup>F420</sup>(a) .....
  - (b) the [<sup>F421</sup>PRA] shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a bank insolvency order, [<sup>F422</sup>...
  - (c) if the Bank of England decides to apply for a bank insolvency order or to exercise a stabilisation power under Part 1, the Bank shall inform the person who gave the notice, within the period in Condition 3(a)[<sup>F423</sup>, and
  - (d) if Condition 5 applies, the Bank of England must, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.]
- [<sup>F424</sup>(11) References in this section to the insolvency procedure to which the notice relates are to the procedure for the determination, resolution or appointment in question (see subsections (1) to (4)).]

#### Textual Amendments

**F413** Word in s. 120 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F414** Words in s. 120(5) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 105\(2\)](#)

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- F415** Words in s. 120(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F416** Words in s. 120(7)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 105\(3\)\(a\)](#)
- F417** S. 120(7)(b) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 105\(3\)\(b\)](#)
- F418** S. 120(8A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F419** Words in s. 120(10) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 105\(4\)\(a\)](#)
- F420** S. 120(10)(a) omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 105\(4\)\(b\)](#)
- F421** Word in s. 120 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F422** Word in s. 120(10)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F423** S. 120(10)(d) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F424** S. 120(11) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 10\(d\)](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I164** S. 120 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

### [<sup>F425</sup>120] Notice to the regulators and the Bank of England of preliminary steps

- (1) Section 120 shall apply to relevant firms as it applies to banks, except that for this purpose—
- (a) subsections (5) and (10) of that section have effect as if any reference to the PRA were a reference to the appropriate regulator, and
  - (b) subsection (7) has effect as if for paragraph (b) there were substituted—
    - “(b) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 in relation to the firm (and Condition 5 has been met, if applicable).”
- (2) In this section—
- (a) “relevant firm” means—
    - (i) a financial holding company, investment firm, mixed financial holding company or a mixed activity holding company, or
    - (ii) a financial institution which is a subsidiary undertaking of a bank or an entity within paragraph (a)(i);
  - (b) “financial holding company” has the meaning given in Article 4.1(2) of the capital requirements regulation (within the meaning of section 3);
  - (c) “financial institution” has the meaning given in Article 4.1(26) of the capital requirements regulation (within the meaning of section 3);
  - (d) “mixed activity holding company” has the meaning given in Article 4.1(22) of the capital requirements regulation (within the meaning of section 3);
  - (e) “mixed financial holding company” has the meaning given in Article 2.15 of [Directive 2002/87/EC](#) of the European Parliament and of the Council of



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16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

- (3) In this section, references to “the appropriate regulator” are—
- (a) to the PRA, in relation to a PRA-authorized person; and
  - (b) to the FCA in relation to any other authorised person.]

#### Textual Amendments

**F425** S. 120A inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **106**

## 121 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act—
- (a) a reference to liquidation includes a reference to bank insolvency,
  - (b) a reference to winding up includes a reference to making or being subject to a bank insolvency order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank insolvency order, and
  - (d) a reference to a liquidator includes a reference to a bank liquidator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank insolvency order, the responsible office-holder is the bank liquidator.
- (4) After section 21 of the Disqualification Act (interaction with Insolvency Act) insert—

### “21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

#### Commencement Information

**I165** S. 121 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 122 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly—
- (a) provide for an enactment about insolvency to apply to bank insolvency (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency in consequence of this Part.
- (2) An order under subsection (1)—
- (a) shall be made by statutory instrument, and



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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### Commencement Information

- I166** S. 122 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2  
**I167** S. 122 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

### Miscellaneous

#### 123 Role of FSCS

- (1) For the purpose of co-operating in the pursuit of Objective 1 in section 99 the FSCS—
- (a) may make or arrange for payments to or in respect of eligible depositors of the bank, and
  - (b) may make money available to facilitate the transfer of accounts of eligible depositors of the bank.
- (2) The FSCS may include provision about expenditure under this section; and, in particular—
- (a) money may be raised through the imposition of a levy under Part 15 of the Financial Services and Markets Act in respect of expenditure or possible expenditure under this section, and
  - (b) sums raised in connection with the scheme (whether or not under paragraph (a)) may be expended under this section.
- (3) In section 220(3)(a) of the Financial Services and Markets Act 2000 (Compensation Scheme: information) after “liquidator” insert “, bank liquidator”.
- (4) The FSCS is entitled to participate in proceedings for or in respect of a bank insolvency order.
- (5) A bank liquidator must—
- (a) comply with a request of the FSCS for the provision of information, and
  - (b) provide the FSCS with any other information which the bank liquidator thinks might be useful for the purpose of co-operating in the pursuit of Objective 1.
- (6) A bank liquidator may enter into an agreement under section 221A of the Financial Services and Markets Act 2000 (Compensation Scheme: delegation of functions) for the bank liquidator to exercise functions of the scheme manager for the purpose of facilitating the pursuit of Objective 1.
- (7) Where a bank insolvency order is made in respect of a bank, the fact that it later ceases to be an authorised person does not prevent the operation of the compensation scheme in respect of it; and for that purpose the bank is a relevant person within the meaning of section 213(9) of the Financial Services and Markets Act 2000 despite the lapse of authorisation.

#### Commencement Information

- I168** S. 123 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

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## 124 Transfer of accounts

- (1) This section applies where a bank liquidator arranges, in pursuit of Objective 1 in section 99, for the transfer of eligible depositors' accounts from the bank to another financial institution.
- (2) The arrangements may disapply, or provide that they shall have effect despite, any restriction arising by virtue of contract or legislation or in any other way.
- (3) In subsection (2) “restriction” includes—
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name).
- (4) In making the arrangements mentioned in subsection (1) the bank liquidator must ensure that eligible depositors will be able to remove money from transferred accounts as soon as is reasonably practicable after transfer.

### Commencement Information

**I169** S. 124 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## 125 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1) insert—
 

“(1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—

  - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
    - (i) the Treasury, and
    - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
  - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2)—
  - (a) after “subsection (1),” insert “ (1A) ”;
  - (b) in paragraph (b), after “Secretary of State” insert “ or the Treasury ”.
- (4) After subsection (2B) insert—
 

“(2C) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2009.”
- (5) In subsection (3)—
  - (a) after “provisional liquidator” insert “ or bank liquidator ”, and
  - (b) after “Parts I to VII of this Act” insert “ or Part 2 of the Banking Act 2009 ”.

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- (6) In subsection (5), after “the Secretary of State” insert “ or the Treasury ”.
- (7) In paragraph 27 of Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules), after “Secretary of State” insert “ or the Treasury ”.
- (8) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

**Commencement Information**

**I170** S. 125 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

**126 Fees**

After section 414(8) of the Insolvency Act 1986 (fees orders) insert—

“(8A) This section applies in relation to Part 2 of the Banking Act 2009 (bank insolvency) as in relation to Parts I to VII of this Act.”

**Commencement Information**

**I171** S. 126 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

**127 Insolvency Services Account**

A bank liquidator who obtains money by realising assets in the course of the bank insolvency must pay it into the Insolvency Services Account (kept by the Secretary of State).

**Commencement Information**

**I172** S. 127 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

**128 Evidence**

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (a) insert (before the “and”)—

“(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency),”.

**Commencement Information**

**I173** S. 128 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

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## 129 Co-operation between courts

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).
- (2) At the end of that section add—
  - “(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.”

### Commencement Information

**I174** S. 129 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

## <sup>F426</sup>129A Banks not regulated by PRA

- (1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.
- (2) In this section—
  - “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;
  - “immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;
  - “PRA-authorized person” has the meaning given by section 2B(5) of that Act.

### TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 95	Treat the reference to the PRA in subsection (1) as a reference to the FCA.
Section 96	<ol style="list-style-type: none"> <li>(a) Treat the references to the PRA in subsections (2) and (3) as references to the FCA.</li> <li>(b) If the bank has as a member of its immediate group a PRA-authorized person the Bank of England must consult the PRA before applying for a bank insolvency order.</li> <li>(c) The FCA must consult the PRA before applying for a bank insolvency order.</li> </ol>
Section 97	Treat the reference to the PRA in subsection (1) as a reference to the FCA.
Section 98	Treat the references to the PRA in subsection (2) as references to the FCA.
Section 100	<ol style="list-style-type: none"> <li>(a) Treat the reference to two individuals in subsection (2) (a) as a reference to one individual.</li> <li>(b) Ignore subsection (2)(b).</li> <li>(c) Ignore the reference to the PRA in subsection (6)(c).</li> </ol>

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Section 101	Ignore the reference to the PRA in subsection (7).
Section 103	In the Table, in the entries relating to sections 147 and 241 of the Insolvency Act 1986, treat the reference to the PRA as a reference to the FCA.
Section 108	(a) Treat the reference to the PRA in subsections (1) and (2) as a reference to the FCA. (b) Ignore the duty to consult the FCA in subsection (2). (c) Ignore the reference to the PRA in subsection (3).
Section 109	Ignore the reference to the PRA in subsection (4).
Section 113	Ignore subsection (2)(b)(i).
Section 115	Ignore subsection (2)(b)(i).
Section 117	(a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore the duty to obtain the consent of the FCA in subsection (2)(a).
Section 120	(a) Treat the references to the PRA in subsections (5), (7) and (10) as references to the FCA. (b) Ignore the duty to inform the FCA in subsection (10)(a).]

#### Textual Amendments

**F426** S. 129A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 45](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### 130 Building societies

- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
  - (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, any provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (3) An order—
  - (a) shall 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) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies.

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#### Commencement Information

- I175** S. 130 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2  
**I176** S. 130 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

### 131 Credit unions

- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
  - (a) amend the Credit Unions Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, any provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.
- (3) An order—
  - (a) shall 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) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.

#### Commencement Information

- I177** S. 131 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2  
**I178** S. 131 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

### 132 Partnerships

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

#### Modifications etc. (not altering text)

- C11** S. 132(1): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 17 para. 23](#) (with arts. 28-31)

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#### Commencement Information

**I179** S. 132 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

### 133 Scottish partnerships

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I180** S. 133 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

**I181** S. 133 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

### 134 Northern Ireland

In the application of this Part to Northern Ireland—

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) references to the Secretary of State, except in section 122, are to be treated as references to the Department of Enterprise, Trade and Investment,
- (d) a reference to the Insolvency Services Account is to be treated as a reference to the Insolvency Account,
- (e) a reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985,
- (f) the Judgments Enforcement (Northern Ireland) Order 1981 has effect in place of sections 183 and 184 of the Insolvency Act 1986 (applied by section 103 above), and
- (g) the reference in section 132 to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

#### Modifications etc. (not altering text)

**C12** S. 134 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, [Sch. 1 para. 4](#)

#### Commencement Information

**I182** S. 134 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)



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### 135 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.
- (3) An order—
  - (a) shall 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.

#### Commencement Information

- I183** S. 135 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)  
**I184** S. 135 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

## PART 3

### BANK ADMINISTRATION

#### Modifications etc. (not altering text)

- C13** Pt. 3 modified (21.2.2009) by [Banking Act 2009 \(Bank Administration\) \(Modification for Application to Multiple Transfers\) Regulations 2009 \(S.I. 2009/313\)](#), regs. 1(1), 2, 3, [Sch. 1](#)
- C14** Pt. 3 modified (21.2.2009) by [The Banking Act 2009 \(Bank Administration\) \(Modification for Application to Banks in Temporary Public Ownership\) Regulations 2009 \(S.I. 2009/312\)](#), regs. 1(1), 2-4, [Sch.](#)
- C15** Pt. 3 applied (with modifications) by [Building Societies Act 1986 \(c. 53\)](#), s. 90C (as inserted (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [art. 2](#))
- C16** Pt. 3 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), Sch. 1 Pts. 1, 3 (as amended (7.4.2010) by [S.I. 2010/1189](#), arts. 1(2), 2)
- C17** Pt. 3 applied (with modifications) (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 1, [Sch. 2 para. 6](#) (as amended (1.4.2013) by [S.I. 2013/472](#), [Sch. 2 para. 198\(q\)\(ii\)](#) (with [Sch. 2 para. 213](#)))

#### *Introduction*

### 136 Overview

- (1) This Part provides for a procedure to be known as bank administration.
- (2) The main features of bank administration are that—
  - (a) it is used where part of the business of a bank is sold to a commercial purchaser in accordance with section 11 or transferred to a bridge bank in accordance with section 12 (and it can also be used in certain cases of multiple transfers under Part 1),
  - (b) the court appoints a bank administrator on the application of the Bank of England,



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- (c) the bank administrator is able and required to ensure that the non-sold or non-transferred part of the bank (“the residual bank”) provides services or facilities required to enable the commercial purchaser (“the private sector purchaser”) or the transferee (“the bridge bank”) to operate effectively, and
  - (d) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 136 to 140	Introduction
Sections 141 to 148	Process
Sections 149 to [F427 152A]	Multiple transfers
Sections 153 and 154	Termination
Sections 155 to 168	Miscellaneous

#### Textual Amendments

**F427** Word in s. 136(3) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 28](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

**I185** S. 136 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### 137 Objectives

- (1) A bank administrator has two objectives—
- (a) Objective 1: support for commercial purchaser or bridge bank (see section 138), and
  - (b) Objective 2: “normal” administration (see section 140).
- (2) Objective 1 takes priority over Objective 2 (but a bank administrator is obliged to begin working towards both objectives immediately upon appointment).

#### Commencement Information

**I186** S. 137 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### 138 Objective 1: supporting private sector purchaser or bridge bank

- (1) Objective 1 is to ensure the supply to the private sector purchaser or bridge bank of such services and facilities as are required to enable it, in the opinion of the Bank of England, to operate effectively.
- (2) For the purposes of Objective 1—
- (a) the reference to services and facilities includes a reference to acting as transferor or transferee under a supplemental or reverse property transfer instrument, and

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- (b) the reference to “supply” includes a reference to supply by persons other than the residual bank.
- (3) In the case of bank administration following a private sector purchase the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the private sector purchaser; and—
- (a) in pursuing Objective 1 the bank administrator must have regard to the terms of that or any other agreement entered into between the residual bank and the private sector purchaser,
  - (b) in particular, the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms,
  - (c) if in doubt about the effect of those terms the bank administrator may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below), and
  - (d) the private sector purchaser may refer to the court a dispute about any agreement with the residual bank, by applying for directions under paragraph 63 of Schedule B1.
- (4) In the case of bank administration following transfer to a bridge bank, the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the bridge bank; and—
- (a) the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with an agreement,
  - (b) the bank administrator must ensure that so far as is reasonably practicable an agreement entered into includes provision for consideration at market rate,
  - (c) paragraph (b) does not prevent the bank administrator from entering into an agreement on any terms that the bank administrator thinks necessary in pursuit of Objective 1, and
  - (d) this subsection does not apply after Objective 1 ceases.
- (5) Where a bank administrator requires the Bank of England's consent or approval to any action in accordance with this Part, the Bank may withhold consent or approval only on the grounds that the action might prejudice the achievement of Objective 1.

**Commencement Information**

**I187** S. 138 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

**139 Objective 1: duration**

- (1) Objective 1 ceases if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank.
- (2) A bank administrator who thinks that Objective 1 is no longer required may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1) above.

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- (3) If immediately upon the making of a bank administration order the Bank of England thinks that the residual bank is not required in connection with the private sector purchaser or bridge bank, the Bank of England may give a notice under subsection (1).
- (4) A notice under subsection (1) is referred to in this Part as an “Objective 1 Achievement Notice”.

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**Commencement Information**

**I188** S. 139 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

## 140 Objective 2: “normal” administration

- (1) Objective 2 is to—
  - (a) rescue the residual bank as a going concern (“Objective 2(a)”), or
  - (b) achieve a better result for the residual bank's creditors as a whole than would be likely if the residual bank were wound up without first being in bank administration (“Objective 2(b)”).
- (2) In pursuing Objective 2 a bank administrator must aim to achieve Objective 2(a) unless of the opinion either—
  - (a) that it is not reasonably practicable to achieve it, or
  - (b) that Objective 2(b) would achieve a better result for the residual bank's creditors as a whole.
- (3) In pursuing Objective 2(b) in bank administration following transfer to a bridge bank, the bank administrator may not realise any asset unless—
  - (a) the asset is on a list of realisable assets agreed between the bank administrator and the Bank of England, or
  - (b) the Bank of England has given an Objective 1 Achievement Notice.

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**Commencement Information**

**I189** S. 140 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

## Process

### 141 Bank administration order

- (1) A bank administration order is an order appointing a person as the bank administrator of a bank.
- (2) A person is eligible for appointment as a bank administrator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank administration order takes effect in accordance with its terms; and—
  - (a) the process of a bank administration order having effect may be described as “bank administration” in relation to the bank, and

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- (b) while the order has effect the bank may be described as being “in bank administration”.

**Commencement Information**

**I190** S. 141 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 3](#)

## 142 Application

- (1) An application for a bank administration order may be made to the court by the Bank of England.
- (2) An application must nominate a person to be appointed as the bank administrator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 160 below).

**Commencement Information**

**I191** S. 142 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 3](#)

## 143 Grounds for applying

- (1) The Bank of England may apply for a bank administration order in respect of a bank if the following conditions are met.
- (2) Condition 1 is that the Bank of England has made or intends to make a property transfer instrument in respect of the bank in accordance with section 11(2) or 12(2).
- (3) Condition 2 is that the Bank of England is satisfied that the residual bank—
  - (a) is unable to pay its debts, or
  - (b) is likely to become unable to pay its debts as a result of the property transfer instrument which the Bank intends to make.

**Commencement Information**

**I192** S. 143 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 3](#)

## 144 Grounds for making

- (1) The court may make a bank administration order if satisfied that the conditions in section 143 were met.
- (2) On an application for a bank administration order the court may—
  - (a) grant the application,
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

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#### Commencement Information

**II93** S. 144 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 3

### 145 General powers, duties and effect

- (1) A bank administrator may do anything necessary or expedient for the pursuit of the Objectives in section 137.
- (2) The following provisions of this section provide for—
  - (a) general powers and duties of bank administrators (by application of provisions about administrators), and
  - (b) the general process and effects of bank administration (by application of provisions about administration).
- (3) The provisions set out in the Tables apply in relation to bank administration as in relation to administration, with—
  - (a) the modifications set out in subsection (4),
  - (b) any other modification specified in the Tables, and
  - (c) any other necessary modification.
- (4) The modifications are that—
  - (a) a reference to the administrator is a reference to the bank administrator,
  - (b) a reference to administration is a reference to bank administration,
  - (c) a reference to an administration order is a reference to a bank administration order,
  - (d) a reference to a company is a reference to the bank,
  - (e) a reference to the purpose of administration is a reference to the Objectives in section 137, and
  - (f) in relation to provisions of the Insolvency Act 1986 other than Schedule B1, the modifications in section 103 above apply (but converting references into references to bank administration or administrators rather than to bank insolvency or liquidators).
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

#### TABLE 1 OF APPLIED PROVISIONS

##### SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 40(1)(a)	Dismissal of pending winding-up petition	

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|----------|---|---|
| Para. 41 | Dismissal of administrative or other receiver |   |
| Para. 42 | Moratorium on insolvency proceedings          | Ignore sub-paras. (4) and (5).  |
| Para. 43 | Moratorium on other legal process             | <p>(a) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice consent of the bank administrator may not be given for the purposes of para. 43 without the approval of the Bank of England.</p> <p>(b) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice, in considering whether to give permission under sub-para. (6) to a winding-up the court must have regard to the Objectives in section 137.</p> <p>(c) In considering whether to give permission for the purposes of para. 43 the court must have regard to the Objectives in section 137.</p> |

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Para. 44(1)(a) and (5)	Interim moratorium	
Para. 46	Announcement of appointment	Ignore sub-para. (6)(b) and (c).
Paras. 47 & 48	Statement of affairs	
Para. 49	Administrator's proposals	(a) Para. 49 does not apply unless the Bank of England has given an Objective 1 Achievement Notice; <i>for bank administrator's proposals before the Bank of England has given an Objective 1 Achievement Notice, see section 147.</i> (b) Treat the reference in sub-para. (1) to the purpose of administration as a reference to Objective 2. (c) Before making proposals under sub-para. (1) in the case of bank administration following transfer to a bridge bank, the bank administrator must consult the Bank of England about the chances of a payment to the residual bank from a scheme established by resolution fund order under section 49(3). (d) Treat the reference in sub-para. (2)(b) to the objective mentioned in para. 3(1)(a) or (b) as

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| Paras. 50–58 | Creditors' meeting | <p>a reference to Objective 2(a).</p> <p>(e) Ignore sub-para. (3)(b).</p> <p>(f) Treat references in sub-para. (5) to the company's entering administration as references to satisfaction of the condition in para. (a) above.</p> <p>(a) Treat references in para. 51(2) to the company's entering administration as references to the giving of an Objective 1 Achievement Notice.</p> <p>(b) The bank administrator may comply with a request under para. 56(1)(a) only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.</p> <p>(c) A creditors' meeting may not establish a creditors' committee in reliance on para. 57 until the Bank of England has given an Objective 1 Achievement Notice.</p> <p>(d) Until that time the Bank of England shall have the functions of the creditors' committee.</p> |
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Para. 59	General powers	A bank administrator may not rely on para. 59 (or subsection (1) above) for the purpose of recovering property transferred by property transfer instrument.
Para. 60 and Schedule 1	General powers	(a) The exercise of powers under Schedule 1 is subject to section 137(2). (b) In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice powers under the following paragraphs of Schedule 1 may be exercised only with the Bank of England's consent: 2, 3, 11, 14, 15, 16, 17, 18 and 21.
Para. 61	Directors	
Para. 62	Power to call meetings of creditors	
Para. 63	Application to court for directions	(a) Before the Bank of England has given an Objective 1 Achievement Notice, the bank administrator may apply for directions if unsure whether a proposed action would prejudice the pursuit of Objective 1; and before making an application

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			in reliance on this paragraph the bank administrator must give notice to the Bank of England, which shall be entitled to participate in the proceedings.
		(b)	In making directions the court must have regard to the Objectives in section 137.
Para. 64.	Management powers.		
Para. 65	Distribution to creditors	(a)	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice a bank administrator may make a distribution only with the Bank of England's consent.
		(b)	Ignore sub para. (3).
Para. 66	Payments		
Para. 67	Taking custody of property		
Para. 68	Management		Before the approval of proposals under para. 53 a bank administrator shall manage the bank's affairs, business and property in accordance with principles agreed between the bank administrator and the Bank of England.
Para. 69	Agency		
Para. 70	Floating charges		The bank administrator may take action only

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		if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 71	Fixed charges	The court may make an order only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 72	Hire-purchase property	In the case of administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice an application may be made only with the Bank of England's consent.
Para. 73	Protection for secured and preferential creditors	(a) Treat a reference to proposals as including a reference to the principles specified in the modification of para. 68 set out above. (b) Para. 73(1)(a) does not apply until the Bank of England has given an Objective 1 Achievement Notice.
Para. 74	Challenge to administrator's conduct	(a) The Bank of England may make an application to the court, on any grounds, including grounds of insufficient pursuit of Objective 1 in section 137 (in addition to applications that may anyway be made under para. 74).

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		(b) Until the Bank of England has given an Objective 1 Achievement Notice, an order may be made on the application of a creditor only if the court is satisfied that it would not prejudice pursuit of Objective 1 in section 137.
Para. 75	Misfeasance	In addition to applications that may anyway be made under para. 75, an application may be made by the bank administrator or the Bank of England.
[ <sup>F428</sup> Para. 79]	[ <sup>F428</sup> Termination: successful rescue]	[ <sup>F428</sup> (a) Ignore sub-para. (2). (b) See section 153.]
Para. 84	Termination: no more assets for distribution	<i>See section 154.</i>
Para. 85	Discharge of administration order	
Para. 86	Notice to Companies Registrar of end of administration	<i>See section 153.</i>
Para. 87	Resignation	A bank administrator may resign only by notice in writing— (a) to the court, copied to the Bank of England, or (b) in the case of a bank administrator appointed by the creditors' committee under para. 90, to the creditors' committee.
Para. 88	Removal	Until the Bank of England has given an Objective 1 Achievement Notice, an application for an order may be made only with the Bank of England's consent.

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Para. 89	Disqualification	The notice under sub-para. (2) must be given to the Bank of England.
Paras. 90 & 91	Replacement	(a) Until an Objective 1 Notice has been given, the Bank of England, and nobody else, may make an application under para. 91(1). (b) After that, either the Bank of England or a creditors' committee may apply. (c) Ignore para. 91(1) (b) to (e) and (2).
Para. 96	Substitution of floating charge-holder	Para. 96 applies to a bank administrator, but— (a) only after an Objective 1 Achievement Notice has been given, and (b) ignoring references to priority of charges.
Para. 98	Discharge	Discharge takes effect— (a) where the person ceases to be bank administrator before an Objective 1 Achievement Notice has been given, at a time determined by the Bank of England, and (b) otherwise, at a time determined by resolution of the creditors' committee (for which purpose ignore sub-para. (3)).
Para. 99	Vacation of office: charges and liabilities	In the application of sub-para. (3), payments may be made only— (a) in accordance with directions of the

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		Bank of England, and (b) if the Bank is satisfied that they will not prejudice Objective 1 in section 137.
Paras. 100-103	Joint administrators	Until an Objective 1 Achievement Notice has been given, an application under para. 103 may be made only by the Bank of England.
Para. 104	Validity	
Para. 106 (and section 430 and Schedule 10)	Fines	
Paras. 107–109	Extension of time limits	(a) Until an Objective 1 Achievement Notice has been given, an application under para. 107 may be made only with the Bank of England's consent.  (b) In considering an application under para. 107 the court must have regard to Objective 1 in section 137.  (c) In para. 108(1) “consent” means consent of the Bank of England.
<i>Para. 110</i>	<i>Amendment of provisions about time</i>	<i>An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this section (whether or not in the same way as it amends the provision as it applies otherwise).</i>
Para. 111	Interpretation	
Paras. 112–116	Scotland	

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## TABLE 2 OF APPLIED PROVISIONS

### OTHER PROVISIONS OF THE INSOLVENCY ACT 1986

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 135	Provisional appointment	<p>(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank administration order.</p> <p>(b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply).</p> <p>(c) Ignore the reference to the official receiver.</p> <p>(d) Only a person who is qualified to act as an insolvency practitioner and who consents to act may be appointed.</p> <p>(e) The court may only confer on a provisional bank administrator functions in connection with the pursuance of Objective 1; and section 138(2)(a) does not apply before a bank administration order is made.</p> <p>(f) A provisional bank</p>

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		<p>administrator          may not pursue          Objective 2.</p> <p>(g) The appointment          of a provisional          bank          administrator          lapses on the          appointment          of a bank          administrator.</p> <p>(h) Section 172(1),          (2) and (5)          apply to a          provisional bank          administrator.</p>
Section 168(4) (and para. 13 of Schedule 4)	Discretion in managing and distributing assets	<p>In the case of bank          administration following          transfer to a bridge bank,          until the Bank of England          has given an Objective          1 Achievement Notice          distribution may be made          only—</p> <p>(a) with the Bank of          England's consent, or</p> <p>(b) out of assets which          have been designated          as realisable          by agreement          between the bank          administrator and the          Bank of England.</p>
Section 176A	Unsecured creditors	<p>In the case of bank          administration following          transfer to a bridge bank,          until the Bank of England          has given an Objective          1 Achievement Notice          distribution may be made          in reliance on s. 176A          only—</p> <p>(a) with the Bank of          England's consent, or</p> <p>(b) out of assets which          have been designated          as realisable          by agreement          between the bank          administrator and the          Bank of England.</p>



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Section 178	Disclaimer of onerous property	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice notice of disclaimer may be given only with the Bank of England's consent.
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 188	Publicity	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	Ignore subsection (6).
Section 233	Utilities	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	
Section 236	Inquiry into company's dealings	
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Ss. 238 & 239: relevant time	
Section 241	Orders under ss. 238 & 239	(a) In considering making an order in reliance on section 241 the court must have regard to Objective 1 of section 137. (b) Ignore subsections (2A)(a) and (3) to (3C).

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Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	In considering the grant of a decree under subsection (5) the court must have regard to Objective 1 of section 137.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank administration.
Sections 423–425	Transactions defrauding creditors	<p>(a) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 137.</p> <p>(b) In considering making an order in reliance on section 425 the court must have regard to Objective 1 of section 137.</p>

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Sections 430–432 & Schedule 10	Offences	
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

#### Textual Amendments

**F428** Words in s. 145 Table 1 inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(6)**, 26(1)(f)

#### Modifications etc. (not altering text)

**C18** S. 145 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), **reg. 1, Sch. 1 para. 4**

#### Commencement Information

**I194** S. 145 in force at 21.2.2009 by [S.I. 2009/296](#), **art. 3, Sch. para. 3**

### [<sup>F429</sup>145] Power to direct bank administrator

- (1) This section applies where—
  - (a) a bank administration order has been made, and
  - (b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with [<sup>F430</sup>the making of a mandatory reduction instrument or] the exercise of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of TFEU applies (“State aid”).
- (2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).
- (3) The purposes are—
  - (a) to inform the European Commission that State aid has been, may have been, or may be, given;
  - (b) to obtain a decision from the Commission whether State aid—
    - (i) has been given, or
    - (ii) would be given, if the action proposed was taken;
  - (c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;
  - (d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;
  - (e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);
  - (f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;
  - (g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.

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- (4) Before giving a direction under this section the Treasury must consult the bank administrator.
- (5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.
- (8) Immunity by virtue of subsection (7) does not extend to action—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.
- (10) In this section “TFEU” means the Treaty on the Functioning of the European Union.]

#### Textual Amendments

**F429** S. 145A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 103**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

**F430** Words in s. 145A(1)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **107**

## 146 Status of bank administrator

A bank administrator is an officer of the court.

#### Commencement Information

**I195** S. 146 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

## 147 Administrator's proposals

- (1) This section applies before the giving of an Objective 1 Achievement Notice (at which point paragraph 49 of Schedule B1 to the Insolvency Act 1986 applies in accordance with section 145).
- (2) The bank administrator must as soon as is reasonably practicable after appointment make a statement setting out proposals for achieving the Objectives in section 137.
- (3) The statement must say whether the bank administrator proposes to pursue Objective 2(a) or 2(b) in section 140.
- (4) The statement must have been agreed with the Bank of England.

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- (5) But a bank administrator who is unable to agree a statement with the Bank of England may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (as applied by section 145); and the court may make any order, including dispensing with the need for the Bank of England's agreement.
- (6) The bank administrator must send the statement to the [F431PRA and a copy of it to the FCA].
- (7) The bank administrator may revise the statement (and subsections (4) to (6) apply to a revised statement as to the original).
- (8) The statement shall be treated in the same way (subject to this section) as a statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986.

#### Textual Amendments

**F431** Words in s. 147(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 47](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I196** S. 147 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 3](#)

## 148 Sharing information

- (1) This section applies to bank administration following transfer to a bridge bank.
- (2) Within the period of 5 days beginning with the day on which the bank administrator is appointed, the Bank of England must give the bank administrator information about the financial positions of the residual bank and the bridge bank.
- (3) While the residual bank is in bank administration the bridge bank must give the bank administrator on request information about the financial position of the bridge bank that the bank administrator requires for the purposes of pursuing Objective 1 in section 137.
- (4) Until the Bank of England has given an Objective 1 Achievement Notice, the bank administrator must—
  - (a) give the Bank of England information on request,
  - (b) allow the Bank of England access to records on request,
  - (c) give the bridge bank information on request,
  - (d) allow the bridge bank access to records on request,
  - (e) keep the Bank of England informed about, and allow the Bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137, and
  - (f) keep the bridge bank informed about, and allow the bridge bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137.
- (5) The Treasury shall by regulations prescribe—
  - (a) the classes of information that must be provided under subsections (2) to (4), and
  - (b) the classes of record to which access must be allowed under subsection (4).

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- (6) Regulations under subsection (5)—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Commencement Information**

**I197** S. 148 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

**I198** S. 148 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

*Multiple transfers*

**149 General application of this Part**

- (1) This section applies where more than one property transfer instrument is made in respect of a bank.
- (2) For that purpose “property transfer instrument” includes—
  - (a) supplemental instruments under section 42,
  - (b) onward property transfer instruments under section 43, and
  - (c) property transfer orders under section 45.
- (3) This Part applies to the bank with any modifications specified by the Treasury in regulations.
- (4) The regulations—
  - (a) shall 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.

**Commencement Information**

**I199** S. 149 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

**I200** S. 149 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

**150 Bridge bank to private purchaser**

- (1) This section applies where the Bank of England gives a bank administrator —
  - (a) an Objective 1 Achievement Notice in respect of a bridge bank, and
  - (b) notice that Objective 1 is still required to be pursued in respect of a commercial purchaser who has acquired all or part of the business of the bridge bank.
- (2) An Objective 1 Achievement Notice accompanied by a notice under subsection (1)(b) is referred to in this Part as an Objective 1 Interim Achievement Notice.
- (3) Where an Objective 1 Interim Achievement Notice is given, Objective 1 continues to apply—
  - (a) in accordance with section 138(3), and
  - (b) with the commercial purchaser being treated as the “private sector purchaser”.

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- (4) An Objective 1 Interim Achievement Notice in respect of the bridge bank—
  - (a) has effect as between the bank administrator and the bridge bank, but
  - (b) has no other effect for the purposes of provisions of this Part which refer to the giving of an Objective 1 Achievement Notice.
- (5) When the Bank of England gives the bank administrator an Objective 1 Achievement Notice in respect of the commercial purchaser, section 139 and other provisions of this Part which refer to the giving of an Objective 1 Achievement Notice shall have effect.

#### Commencement Information

**I201** S. 150 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### 151 Property transfer from bridge bank

- (1) This section applies where the Bank of England —
  - (a) transfers all or part of the business of a bank (“the original bank”) to a bridge bank (“the original bridge bank”) by making a property transfer instrument in accordance with section 12(2), and
  - (b) later makes or proposes to make an onward property transfer instrument under section 43(2) from the bridge bank to a transferee (“the onward transferee”).
- (2) If the onward transferee is a company which is wholly owned by the Bank of England—
  - (a) the onward transferee is treated as a bridge bank for the purposes of this Part, and
  - (b) the original bridge bank is treated as a residual bank for the purposes of this Part.
- (3) In any other case, the Bank of England may determine that the original bridge bank is to be treated as a residual bank for the purposes of this Part.
- (4) Where the original bridge bank is put into bank administration in reliance on subsection (2)(b), Objective 1 shall apply in accordance with section 138(4) in relation to both—
  - (a) services provided by the original bank to the original bridge bank, and
  - (b) services provided by the original bridge bank to the onward transferee.
- (5) Where the original bridge bank is put into bank administration in reliance on a determination under subsection (3), Objective 1 shall apply in accordance with—
  - (a) section 138(3) in relation to services provided by the original bridge bank to the onward transferee, and
  - (b) section 138(4) in relation to services provided by the original bank to the original bridge bank.
- (6) But the Bank may determine—
  - (a) that subsection (5) does not apply, and
  - (b) that section 150 shall apply as if the Bank had given—
    - (i) an Objective 1 Interim Achievement Notice in respect of the original bridge bank, and
    - (ii) a notice under section 150(1)(b) in respect of the onward transferee.

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#### Commencement Information

**I202** S. 151 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### 152 Property transfer from temporary public ownership

- (1) This section applies where the Treasury—
  - (a) make a share transfer order, in respect of securities issued by a bank (or a bank's holding company), in accordance with section 13(2), and
  - (b) later make a property transfer order from the bank (or from another bank which is or was in the same group as the bank) under section 45(2).
- (2) This Part applies to the transferor under the property transfer order as to the transferor under a property transfer instrument.
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and the regulations—
  - (a) shall 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.

#### Commencement Information

**I203** S. 152 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

**I204** S. 152 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

### [<sup>F432</sup>152A] Property transfer from transferred institution

- (1) This section applies where the Bank of England—
  - (a) makes a resolution instrument that transfers securities issued by a bank (or a bank's parent undertaking), in accordance with section 12A(2), and
  - (b) later makes a property transfer instrument from the bank or from another bank which is or was in the same group as the bank, in accordance with section 41A(2).
- (2) This Part applies to the transferor under the property transfer instrument made in accordance with section 41A(2) as to the transferor under a property transfer instrument made in accordance with section 12(2).
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and any regulations—
  - (a) are 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.]

#### Textual Amendments

**F432** S. 152A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 29](#); [S.I. 2014/3160](#), art. 2(1)(b)



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## Termination

### 153 Successful rescue

- (1) This section applies if—
  - (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator has pursued Objective 2(a) in section 140 and believes that it has been achieved.
- [<sup>F433</sup>(2) The bank administrator shall make an application under paragraph 79 of Schedule B1 to the Insolvency Act 1986 (court ending administration on achievement of objectives).
- (3) A bank administrator who makes an application in accordance with subsection (2) must send a copy to the [<sup>F434</sup>PRA and the FCA].]
- (4) Failure without reasonable excuse to comply with subsection (3) is an offence.

#### Textual Amendments

- F433** S. 153(2)(3) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 21\(7\)](#), [26\(1\)\(f\)](#)  
**F434** Words in s. 153(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 17 para. 48](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

#### Commencement Information

- I205** S. 153 in force at 21.2.2009 by [S.I. 2009/296](#), [art. 3](#), [Sch. para. 3](#)

### 154 Winding-up or voluntary arrangement

- (1) This section applies if—
  - (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator pursues Objective 2(b) in section 140.
- (2) The bank administrator may—
  - (a) give a notice under paragraph 84 of Schedule B1 to the Insolvency Act 1986 (no more assets for distribution), or
  - (b) make a proposal in accordance with section 1 of that Act (company voluntary arrangement).
- (3) Part 1 of that Act shall apply to a proposal made by a bank administrator, with the following modifications.
- (4) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (5) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank administration order.
- (6) On the termination of a company voluntary arrangement the bank administrator may apply to the court to lift the suspension of the bank administration order.
- (7) The bank administrator may not act under subsection (2) above unless satisfied that the bank has received any funds it is likely to receive from any scheme under a resolution fund order under section 52.

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**Commencement Information**

**I206** S. 154 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

*Miscellaneous*

**155 Disqualification of directors**

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act—
  - (a) a reference to liquidation includes a reference to bank administration,
  - (b) a reference to winding up includes a reference to making or being subject to a bank administration order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank administration order, and
  - (d) a reference to a liquidator includes a reference to a bank administrator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank administration order, the responsible office-holder is the bank administrator.
- (4) After section 21A of the Disqualification Act (bank insolvency—inserted by section 121 above) insert—

**“21B Bank administration**

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.”

**Commencement Information**

**I207** S. 155 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

**156 Application of other law**

- (1) The Secretary of State and the Treasury may by order made jointly—
  - (a) provide for an enactment about insolvency or administration to apply to bank administration (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency or administration in consequence of this Part.
- (2) An order under subsection (1)—
  - (a) shall 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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#### Commencement Information

- I208** S. 156 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3  
**I209** S. 156 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

### 157 Other processes

- (1) [<sup>F435</sup>Before the PRA or the FCA exercises an insolvency power in respect of a residual bank, whichever of them is exercising the power] must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.
- (2) In subsection (1)—
- (a) “residual bank” means a bank all or part of whose business has been transferred to a commercial purchaser in accordance with section 11 or to a bridge bank in accordance with section 12, and
- (b) “insolvency power” means—
- (i) section 359 of the Financial Services and Markets Act 2000 (application for administration order), and
- (ii) section 367 of that Act (winding-up petition).

#### Textual Amendments

- F435** Words in s. 157(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 49](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Commencement Information

- I210** S. 157 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### [<sup>F436</sup>157A] Banks not regulated by PRA

- (1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.
- (2) In this section “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.

#### TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 147	The bank administrator must send the statement to the FCA (and need not send a copy of it to the PRA).
Section 153	Ignore the reference to the PRA in subsection (3).
Section 157	Ignore the reference to the PRA in subsection (1).]

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### Textual Amendments

**F436** S. 157A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 50](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

## 158 Building societies

- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
  - (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, a provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (3) An order—
  - (a) shall 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) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies.

### Commencement Information

**I211** S. 158 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

**I212** S. 158 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

## 159 Credit unions

- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
  - (a) amend the Credit Union Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, a provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.
- (3) An order—
  - (a) shall be made by statutory instrument, and

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- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.

#### Commencement Information

- I213** S. 159 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3
- I214** S. 159 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

### [<sup>F437</sup>159A] Application to investment firms

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

#### Textual Amendments

- F437** S. 159A inserted (1.8.2014) by [Financial Services Act 2012](#) (c. 21), [ss. 101\(6\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1847](#), art. 2

## 160 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1A) (inserted by section 125 above) insert—
  - “(1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made—
    - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
      - (i) the Treasury, and
      - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
    - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2), after “(1A)” (inserted by section 125 above) insert “ or (1B) ”.
- (4) After subsection (2C) (inserted by section 125 above) insert—
  - “(2D) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2009.”
- (5) In subsection (3)—
  - (a) after “bank liquidator” (inserted by section 125 above) insert “ or administrator ”, and
  - (b) after “Part 2” (inserted by section 125 above) insert “ or 3 ”.

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- (6) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

**Commencement Information**

**I215** S. 160 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

**161 Fees**

After section 414(8A) of the Insolvency Act 1986 (fees orders—inserted by section 126 above) insert—

“(8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.”

**Commencement Information**

**I216** S. 161 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

**162 Evidence**

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (aa) (inserted by section 128 above) insert (before the “and”)—

“(ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration),”.

**Commencement Information**

**I217** S. 162 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

**163 Partnerships**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

**Modifications etc. (not altering text)**

**C19** S. 163(1): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 17 para. 23](#) (with arts. 28-31)

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#### Commencement Information

**I218** S. 163 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

### 164 Scottish partnerships

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I219** S. 164 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

**I220** S. 164 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

### 165 Co-operation between courts

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).
- (2) At the end of that section (after the subsection added by section 129) add—

“(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.”

#### Commencement Information

**I221** S. 165 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

### 166 Interpretation: general

- (1) In this Part “the court” means—
  - (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.
- [<sup>F438</sup>(2) In this Part—

“the FCA” means the Financial Conduct Authority, and  
“the PRA” means the Prudential Regulation Authority.]
- (3) For the purposes of a reference in this Part to inability to pay debts—
  - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
  - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and

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for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.

- (4) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (5) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (6) A reference in this Part to action includes a reference to inaction.

#### Textual Amendments

**F438** S. 166(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 51](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Commencement Information

**I222** S. 166 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

## 167 Northern Ireland

In the application of this Part to Northern Ireland—

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) the reference in section 159 to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985, and
- (d) in section 163—
  - (i) the reference to the Secretary of State is to be treated as a reference to the Department for Enterprise, Trade and Investment, and
  - (ii) the reference to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

#### Modifications etc. (not altering text)

**C20** S. 167 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, [Sch. 1 para. 4](#)

#### Commencement Information

**I223** S. 167 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

## 168 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part.



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- (3) An order—
- (a) shall 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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**Commencement Information**

- I224** S. 168 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3  
**I225** S. 168 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

## PART 4

### FINANCIAL SERVICES COMPENSATION SCHEME

#### 169 Overview

This Part makes a number of amendments in connection with the Financial Services Compensation Scheme provided for by Part 15 of the Financial Services and Markets Act 2000.

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**Commencement Information**

- I226** S. 169 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

PROSPECTIVE

#### 170 Contingency funding

- (1) After section 214 of the Financial Services and Markets Act 2000 (compensation scheme: general) insert—

**“214A Contingency funding**

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.
- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—
  - (a) the number and size of funds;
  - (b) the circumstances and timing of their establishment;
  - (c) the classes of person from whom contributions to the funds may be levied;
  - (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);

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- (e) refunds;
  - (f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
  - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
  - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.”
- (2) At the end of section 213(7) (compensation scheme: further provision) add “ (except where limitations are expressly stated) ”.
- (3) In section 218 (compensation scheme: annual report)—
- (a) in subsection (1) after “to the Authority” insert “ and the Treasury ”, and
  - (b) at the end of subsection (2)(b) add “ or in contingency fund regulations. ”

#### <sup>F439</sup> 171 Special resolution regime

.....

##### Textual Amendments

**F439** S. 171 omitted (8.4.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), s. 26(1)(l), [Sch. 2 para. 43](#)

##### Commencement Information

**I227** S. 171 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

PROSPECTIVE

#### 172 Investing in National Loans Fund

After section 223 of the Financial Services and Markets Act 2000 (management expenses) insert—

##### “223A Investing in National Loans Fund

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).

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- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).”

### 173 Borrowing from National Loans Fund

After section 223A of the Financial Services and Markets Act 2000 (investing in National Loans Fund—inserted by section 172 above) insert—

#### “223B Borrowing from National Loans Fund

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine—
  - (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) The Treasury may make regulations—
  - (a) about the amounts that may be borrowed under this section;
  - (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);
  - (c) about the classes of person on whom those levies may be imposed;
  - (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.”

#### Commencement Information

I228 S. 173 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 4

### 174 Procedure for claims

- (1) After section 214(1) of the Financial Services and Markets Act 2000 (the compensation scheme: powers) insert—

“(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so.

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(1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).

(1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.”

(2) In section 417(1) (definitions) at the appropriate place insert—

““claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);”.

**Commencement Information**

**I229** S. 174 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

## 175 Rights in insolvency

(1) This section amends section 215 of the Financial Services and Markets Act 2000 (rights of scheme following insolvency).

(2) For section 215(1) substitute—

“(1) The compensation scheme may make provision—

- (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
- (b) giving the scheme manager a right of recovery in respect of those rights or obligations.”

(3) In section 215(2) for “the relevant person's insolvency” substitute “ a person's insolvency ”.

(4) The heading of section 215 becomes “”. “ Rights of the scheme in insolvency ”

**Commencement Information**

**I230** S. 175 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

## 176 Information

(1) Before section 219 of the Financial Services and Markets Act 2000 (scheme manager's power to require information) insert—

**“218A Authority's power to require information**

- (1) The Authority may make rules enabling the Authority to require authorised persons to provide information, which may then be made available to the scheme manager by the Authority.

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- (2) A requirement may be imposed only if the Authority thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.
  - (3) A requirement under this section may apply—
    - (a) to authorised persons generally or only to specified persons or classes of person;
    - (b) to the provision of information at specified periods, in connection with specified events or in other ways.
  - (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the Authority thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.
  - (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the Authority's general rules.”
- (2) Section 219 is amended as follows.
  - (3) In subsection (1) for “given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person” substitute “require a person ”.
  - (4) After subsection (1) insert—
    - “(1A) A requirement may be imposed only—
      - (a) on a person (P) against whom a claim has been made under the scheme,
      - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
      - (c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or
      - (d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
    - (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular—
      - (a) apply or replicate, with or without modifications, a provision of an enactment;
      - (b) confer discretion on a specified person).”
  - (5) In subsection (3) for paragraphs (a) and (b) substitute “ to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P ”.
  - (6) After subsection (3) insert—
    - “(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, the scheme manager may by notice in

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writing require the bank or the Bank of England to provide information that the scheme manager requires for the purpose of applying regulations under section 214B(3) above.”

- (7) In subsection (6) for “the relevant person” substitute “ P ”.
- (8) Omit subsection (8).
- (9) Omit subsection (10).

**Commencement Information**

**I231** S. 176 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

**177 Payments in error**

After section 223B of the Financial Services and Markets Act 2000 (borrowing from National Loans Fund—inserted by section 173 above) insert—

**“223C Payments in error**

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.”

**Commencement Information**

**I232** S. 177 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

**178 Regulations**

In section 429(2) of the Financial Services and Markets Act 2000 (parliamentary control of subordinate legislation: affirmative resolution) after “90B” insert “ , 214A, 214B ”.

**Commencement Information**

**I233** S. 178 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

**179 Delegation of functions**

- (1) Before section 222 of the Financial Services and Markets Act 2000 (scheme manager: statutory immunity) insert—

**“221A Delegation of functions**

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).

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- (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—
- (a) is competent to discharge the function, and
  - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.
- (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager).”

(2) In section 222(1) of that Act after “officer” insert “, scheme agent”.

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**Commencement Information**

**I234** S. 179 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

## 180 Functions under this Act

At the end of Part 15 of the Financial Services and Markets Act 2000 add—

### “224A Functions under the Banking Act 2009

A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.”

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**Commencement Information**

**I235** S. 180 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 4](#)

## PART 5

### INTER-BANK PAYMENT SYSTEMS

#### *Introduction*

## 181 Overview

This Part enables the Bank of England to oversee certain systems for payments between financial institutions.

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**Commencement Information**

**I236** S. 181 in force at 4.8.2009 by [S.I. 2009/2038](#), art. 2, [Sch. para. 1](#)

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## 182 Interpretation: “inter-bank payment system”

- (1) In this Part “inter-bank payment system” means arrangements designed to facilitate or control the transfer of money between financial institutions who participate in the arrangements.
- (2) The fact that persons other than financial institutions can participate does not prevent arrangements from being an inter-bank payment system.
- (3) In subsection (1) “financial institutions” means—
  - (a) banks, and
  - (b) building societies.
- (4) In subsection (1) “money” includes credit.
- (5) A system is an inter-bank payment system for the purposes of this Part whether or not it operates wholly or partly in relation to persons or places outside the United Kingdom.

### Commencement Information

**I237** S. 182 in force at 4.8.2009 by [S.I. 2009/2038](#), art. 2, [Sch. para. 2](#)

## 183 Interpretation: other expressions

In this Part—

- (a) a reference to the “operator” of an inter-bank payment system is a reference to any person with responsibility under the system for managing or operating it,
- (b) a reference to the operation of a system includes a reference to its management,
- (c) “the UK financial system” has the meaning given <sup>F440</sup>... by [<sup>F441</sup>section 11] of the Financial Services and Markets Act 2000 <sup>F442</sup>...,
- (d) a reference to the Bank of England's role as a monetary authority is to be construed in accordance with section 244(2)(c),
- <sup>F443</sup>(e) the FCA” means the Financial Conduct Authority,
- (f) “Part 4A permission” has the meaning given by section 55A of the Financial Services and Markets Act 2000,
- (g) “the PRA” means the Prudential Regulation Authority,
- (h) “PRA-regulated activity” has the meaning given by section 22A of the Financial Services and Markets Act 2000, and
- (i) “recognised investment exchange” has the meaning given by section 285 of that Act.]

### Textual Amendments

- F440** Words in s. 183(c) omitted (8.4.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), s. 26(1)(l), [Sch. 2 para. 44](#)
- F441** Words in s. 183(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 53\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F442** Words in s. 183(c) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 53\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)



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**F443** S. 183(e)-(i) substituted for s. 183(e) (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 53\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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**Commencement Information**

**I238** S. 183 in force at 4.8.2009 by [S.I. 2009/2038, art. 2, Sch. para. 2](#)

### *Recognised systems*

#### **184 Recognition order**

- (1) The Treasury may by order (“recognition order”) specify an inter-bank payment system as a recognised system for the purposes of this Part.
- (2) A recognition order must specify in as much detail as is reasonably practicable the arrangements which constitute the inter-bank payment system.
- (3) The Treasury may not specify an inter-bank system operated solely by the Bank of England.

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**Commencement Information**

**I239** S. 184 in force at 4.8.2009 by [S.I. 2009/2038, art. 2, Sch. para. 3](#)

#### **185 Recognition criteria**

- (1) The Treasury may make a recognition order in respect of an inter-bank payment system only if satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely—
  - (a) to threaten the stability of, or confidence in, the UK financial system, or
  - (b) to have serious consequences for business or other interests throughout the United Kingdom.
- (2) In considering whether to specify a system the Treasury must have regard to—
  - (a) the number and value of the transactions that the system presently processes or is likely to process in the future,
  - (b) the nature of the transactions that the system processes,
  - (c) whether those transactions or their equivalent could be handled by other systems,
  - (d) the relationship between the system and other systems, and
  - (e) whether the system is used by the Bank of England in the course of its role as a monetary authority.

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**Commencement Information**

**I240** S. 185 in force at 4.8.2009 by [S.I. 2009/2038, art. 2, Sch. para. 3](#)

#### **186 Procedure**

- (1) Before making a recognition order in respect of a payment system the Treasury must—

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- (a) consult the Bank of England,
- (b) notify the operator of the system, and
- (c) consider any representations made.

[<sup>F444</sup>(2) In addition, the Treasury—

- (a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—
  - (i) is, or has applied to become, a recognised investment exchange, or
  - (ii) has, or has applied for, a Part 4A permission, and
- (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.]

(3) In considering whether to make a recognition order in respect of a payment system the Treasury may rely on information provided by the Bank of England<sup>[F445]</sup>, the FCA or the PRA].

#### Textual Amendments

**F444** S. 186(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 104\(4\)\(a\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F445** Words in s. 186(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 104\(4\)\(b\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

**I241** S. 186 in force at 4.8.2009 by [S.I. 2009/2038, art. 2, Sch. para. 3](#)

#### [<sup>F446</sup>186A] Amendment of recognition order

- (1) The Treasury may amend a recognition order.
- (2) Before amending a recognition order the Treasury must—
  - (a) consult the Bank of England,
  - (b) notify the operator of the recognised inter-bank payment system, and
  - (c) consider any representations made.
- (3) In addition, the Treasury—
  - (a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—
    - (i) is, or has applied to become, a recognised investment exchange, or
    - (ii) has, or has applied for, a Part 4A permission, and
  - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.
- (4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order.]

#### Textual Amendments

**F446** S. 186A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 104\(2\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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## 187 De-recognition

- (1) The Treasury may revoke a recognition order.
- (2) The Treasury must revoke a recognition order if not satisfied that the criteria in section 185 are met in respect of the recognised inter-bank payment system.
- (3) Before revoking a recognition order the Treasury must—
  - (a) consult the Bank of England,
  - (b) notify the operator of the recognised inter-bank payment system, and
  - (c) consider any representations made.
- [<sup>F447</sup>(4) In addition, the Treasury—
  - (a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—
    - (i) is, or has applied to become, a recognised investment exchange, or
    - (ii) has, or has applied for, a Part 4A permission, and
  - (b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.]
- (5) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the revocation of its recognition order.

### Textual Amendments

**F447** S. 187(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(5)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

### Commencement Information

**I242** S. 187 in force at 4.8.2009 by [S.I. 2009/2038](#), [art. 2](#), [Sch. para. 3](#)

## Regulation

## 188 Principles

- (1) The Bank of England may publish principles to which operators of recognised inter-bank payment systems are to have regard in operating the systems.
- (2) Before publishing principles the Bank must obtain the approval of the Treasury.

### Commencement Information

**I243** S. 188 in force at 31.12.2009 by [S.I. 2009/3000](#), [art. 4](#), [Sch. para. 1](#)

## 189 Codes of practice

The Bank of England may publish codes of practice about the operation of recognised inter-bank payment systems.

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#### Commencement Information

**I244** S. 189 in force at 12.11.2009 for specified purposes and 31.12.2009 in so far as not already in force by S.I. 2009/3000, art. 4, Sch. para. 1

## 190 System rules

- (1) The Bank of England may require the operator of a recognised inter-bank payment system—
  - (a) to establish rules for the operation of the system;
  - (b) to change the rules in a specified way or so as to achieve a specified purpose;
  - (c) to notify the Bank of any proposed change to the rules;
  - (d) not to change the rules without the approval of the Bank.
- (2) A requirement under subsection (1)(c) or (d) may be general or specific.

#### Commencement Information

**I245** S. 190 in force at 31.12.2009 by S.I. 2009/3000, art. 4, Sch. para. 1

## <sup>F448</sup>191 Directions

- (1) The Bank of England may give directions in writing to the operator of a recognised inter-bank [<sup>F449</sup>payment] system.
- (2) A direction may—
  - (a) require or prohibit the taking of specified action in the operation of the system;
  - (b) set standards to be met in the operation of the system.
- (3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.
- (4) A direction given for the purpose mentioned in subsection (3) must—
  - (a) include a statement that it is given for that purpose, and
  - (b) inform the operator of the effect of that subsection.
- (5) The Treasury may by order confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction (including a direction given for the purpose mentioned in subsection (3)).
- (6) An order—
  - (a) is to be made by statutory instrument, and
  - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) An immunity conferred by or under this section does not extend to action or inaction—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.]

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#### Textual Amendments

- F448** S. 191 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(3)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F449** Word in s. 191(1) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 10 para. 8**; [S.I. 2014/377](#), [art. 2\(1\)\(a\)](#), [Sch. Pt. 1](#)

## 192 Role of [<sup>F450</sup>FCA and PRA]

(1) In exercising powers under this Part the Bank of England shall have regard to any action that [<sup>F451</sup>the FCA or the PRA] has taken or could take.

[<sup>F452</sup>(2) The Bank of England—

- (a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and
- (b) must consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).]

(3) If [<sup>F453</sup>the FCA or the PRA] gives the Bank of England notice that [<sup>F454</sup>it] is considering taking action in respect of the operator of a recognised inter-bank payment system who satisfies [<sup>F455</sup>section 186(2)(a) or (b)], the Bank may not take action under this Part in respect of the operator unless—

- (a) [<sup>F456</sup>the FCA or (as the case may be) the PRA] consents, or
- (b) the notice is withdrawn.

#### Textual Amendments

- F450** Words in s. 192 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(d)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F451** Words in s. 192(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F452** S. 192(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F453** Words in s. 192(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(c)(i)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F454** Word in s. 192(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(c)(ii)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F455** Words in s. 192(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(c)(iii)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F456** Words in s. 192(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(6)(c)(iv)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

#### Commencement Information

- I246** S. 192 in force at 12.11.2009 for specified purposes and 31.12.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 4](#), **Sch. para. 1**

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## *Enforcement*

### **193 Inspection**

- (1) The Bank of England may appoint one or more persons to inspect the operation of a recognised inter-bank payment system.
- (2) The operator of a recognised inter-bank payment system must—
  - (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the system is operated, and
  - (b) otherwise co-operate with an inspector.

#### **Commencement Information**

**I247** S. 193 in force at 31.12.2009 by [S.I. 2009/3000](#), art. 4, [Sch. para. 2](#)

### **194 Inspection: warrant**

- (1) A justice of the peace may on the application of an inspector issue a warrant entitling an inspector or a constable to enter premises if—
  - (a) any part of the management or operation of a recognised inter-bank payment system is conducted on the premises (whether by an operator of the system or by someone providing services used by an operator), and
  - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—
  - (a) a requirement under section 204 in connection with the payment system has not been complied with, and
  - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 204 were imposed in connection with the payment system in respect of information on the premises—
  - (a) the requirement would not be complied with, and
  - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
  - (a) gave reasonable notice of a wish to enter the premises, and
  - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
  - (a) permits an inspector or a constable to enter the premises,
  - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
  - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.

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- (8) In the application of this section to Scotland—
- (a) the reference to a justice of the peace includes a reference to a sheriff, and
  - (b) ignore subsection (7).
- (9) In the application of this section to Northern Ireland—
- (a) the reference to a justice of the peace is a reference to a lay magistrate, and
  - (b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.

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**Commencement Information**

**I248** S. 194 in force at 31.12.2009 by S.I. 2009/3000, art. 4, [Sch. para. 2](#)

## 195 Independent report

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.
- (2) The Bank may impose a requirement only if it thinks—
- (a) the operator is not taking sufficient account of principles published by the Bank under section 188,
  - (b) the operator is failing to comply with a code of practice under section 189, or
  - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.
- (3) The Bank may impose requirements about—
- (a) the nature of the expert to be appointed;
  - (b) the content of the report;
  - (c) treatment of the report (including disclosure and publication);
  - (d) timing.

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**Commencement Information**

**I249** S. 195 in force at 31.12.2009 by S.I. 2009/3000, art. 4, [Sch. para. 2](#)

## 196 Compliance failure

In this Part “compliance failure” means a failure by the operator of a recognised inter-bank payment system to—

- (a) comply with a code of practice under section 189,
- (b) comply with a requirement under section 190,
- (c) comply with a direction under section 191, or
- (d) ensure compliance with a requirement under section 195.

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**Commencement Information**

**I250** S. 196 in force at 31.12.2009 by S.I. 2009/3000, art. 4, [Sch. para. 2](#)

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## 197 Publication

- (1) The Bank of England may publish details of a compliance failure by the operator of a recognised inter-bank payment system.
- (2) The Bank may publish details of a sanction imposed under sections 198 to 200.

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### Commencement Information

**I251** S. 197 in force at 31.12.2009 by S.I. 2009/3000, art. 4, Sch. para. 2

## 198 Penalty

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty—
  - (a) must be paid to the Bank of England, and
  - (b) may be enforced by the Bank as a debt.
- (3) The Bank must prepare a statement of the principles which it will apply in determining—
  - (a) whether to impose a penalty, and
  - (b) the amount of a penalty.
- (4) The Bank must—
  - (a) publish the statement on its internet website,
  - (b) send a copy to the Treasury,
  - (c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and
  - (d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

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### Commencement Information

**I252** S. 198 in force at 31.12.2009 by S.I. 2009/3000, art. 4, Sch. para. 2

## 199 Closure

- (1) This section applies if the Bank of England thinks that a compliance failure—
  - (a) threatens the stability of, or confidence in, the UK financial system, or
  - (b) has serious consequences for business or other interests throughout the United Kingdom.
- (2) The Bank may give the operator of the inter-bank payment system concerned an order to stop operating the system (a “closure order”)—
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) A closure order may apply to—



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- (a) all activities of the payment system, or
  - (b) specified activities.
- (4) An operator who fails to comply with a closure order commits an offence.
- (5) A person guilty of an offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

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**Commencement Information**

**I253** S. 199 in force at 31.12.2009 by S.I. 2009/3000, art. 4, Sch. para. 2

## 200 Management disqualification

- (1) The Bank of England may by order prohibit a specified person from being an operator of a recognised inter-bank payment system—
- (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (2) The Bank may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised inter-bank payment system—
- (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) A person who breaches a prohibition under subsection (1) or (2) commits an offence.
- (4) A person guilty of an offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

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**Commencement Information**

**I254** S. 200 in force at 12.11.2009 for specified purposes and 31.12.2009 in so far as not already in force by S.I. 2009/3000, arts. 2, 4, Sch. para. 2

## 201 Warning

- (1) Before imposing a sanction on the operator of an inter-bank payment system or on another person the Bank of England must—
- (a) give the operator or other person a notice (a “warning notice”),
  - (b) give the operator or other person at least 21 days to make representations,
  - (c) consider any representations made, and
  - (d) as soon as is reasonably practicable, give the operator or other person a notice stating whether or not the Bank intends to impose the sanction.
- (2) In subsection (1) “imposing a sanction” means—

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- (a) publishing details under section 197(1),
  - (b) requiring the payment of a penalty under section 198,
  - (c) giving a closure order under section 199, or
  - (d) making an order under section 200.
- (3) Despite subsection (1), if satisfied that it is necessary the Bank may without notice—
- (a) give a closure order under section 199, or
  - (b) make an order under section 200.

#### Commencement Information

**I255** S. 201 in force at 12.11.2009 for specified purposes and 31.12.2009 in so far as not already in force by S.I. 2009/3000, arts. 2, 4, **Sch. para. 2**

## 202 Appeal

- (1) Where the Bank of England notifies a person under section 201(1)(d) that the Bank intends to impose a sanction, the person may appeal to the [<sup>F457</sup>Upper Tribunal].
- (2) Where the Bank of England imposes a sanction on a person without notice in reliance on section 201(3), the person may appeal to the [<sup>F458</sup>Upper Tribunal].
- [<sup>F459</sup>(3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.]

#### Textual Amendments

- F457** Words in s. 202(1) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 151(a)** (with Sch. 5)
- F458** Words in s. 202(2) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 151(a)** (with Sch. 5)
- F459** S. 202(3) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), **Sch. 2 para. 151(b)** (with Sch. 5)

#### Commencement Information

**I256** S. 202 in force at 31.12.2009 by S.I. 2009/3000, art. 4, **Sch. para. 2**

## [<sup>F460</sup>202] Injunctions

- (1) If, on the application of the Bank of England, the court is satisfied—
- (a) that there is a reasonable likelihood that there will be a compliance failure, or
  - (b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,
- the court may make an order restraining the conduct constituting the failure.
- (2) If, on the application of the Bank of England, the court is satisfied—
- (a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and
  - (b) that there are steps which could be taken for remedying the failure,

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the court may make an order requiring the operator, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.

- (3) If, on the application of the Bank of England, the court is satisfied—
  - (a) that there may have been a compliance failure by the operator of a recognised inter-bank payment system, or
  - (b) that a person may have been knowingly concerned in a compliance failure,the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.
- (4) The jurisdiction conferred by this section is exercisable—
  - (a) in England and Wales and Northern Ireland, by the High Court, and
  - (b) in Scotland, by the Court of Session.
- (5) In this section—
  - (a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,
  - (b) references to remedying a failure include mitigating its effect, and
  - (c) references to dealing with assets include disposing of them.]

#### Textual Amendments

**F460** S. 20A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 104\(7\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

### Miscellaneous

#### 203 Fees

- (1) The Bank of England may require operators of recognised inter-bank payment systems to pay fees.
- (2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.
- (3) Regulations under subsection (2)—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A requirement under subsection (1) may be enforced by the Bank as a debt.

#### Commencement Information

**I257** S. 203 in force at 12.11.2009 for specified purposes and 31.12.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 4](#), [Sch. para. 3](#)

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## [<sup>F461</sup>203A] Records

- (1) The Bank of England must maintain satisfactory arrangements for—
  - (a) recording decisions made in the exercise of its functions under this Part, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.
- (2) The duty in subsection (1) does not apply to a decision to issue a notice under section 204(1).

### Textual Amendments

**F461** Ss. 203A, 203B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(8), 122(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

## 203B Annual report

- (1) At least once a year the Bank of England must make a report to the Treasury on—
  - (a) the discharge of its functions under this Part,
  - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
  - (c) such other matters as the Treasury may from time to time direct.
- (2) Subsection (1) does not require the inclusion in the report of any information whose publication would in the opinion of the Bank of England be against the public interest.
- (3) The Treasury must lay before Parliament a copy of each report received by them under this section.]

### Textual Amendments

**F461** Ss. 203A, 203B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(8), 122(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

## 204 Information

- (1) The Bank of England may by notice in writing require a person to provide information—
  - (a) which the Bank thinks will help the Treasury in determining whether to make a recognition order [<sup>F462</sup>or an order under section 206A], or
  - (b) which the Bank otherwise requires in connection with its functions under this Part.

[<sup>F463</sup>(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.]

- (2) In particular, a notice [<sup>F464</sup>under subsection (1) or (1A)] may require the operator of a recognised inter-bank payment system to notify the Bank if events of a specified kind occur.
- (3) A notice [<sup>F465</sup>under subsection (1) or (1A)] may require information to be provided—

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- (a) in a specified form or manner;
  - (b) at a specified time;
  - (c) in respect of a specified period.
- (4) The Bank may disclose information obtained by virtue of this section to—
- (a) the Treasury;
  - [<sup>F466</sup>(b) the FCA;
  - (ba) the PRA;]
  - (c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England<sup>F467</sup>, the FCA or the PRA] in relation to inter-bank payment systems;
  - (d) the European Central Bank;
  - (e) the Bank for International Settlements.
- (5) Subsection (4)—
- (a) overrides a contractual or other requirement to keep information in confidence, and
  - (b) is without prejudice to any other power to disclose information.
- (6) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.
- (7) The Bank may publish information obtained by virtue of this section.
- (8) The Treasury may make regulations about the manner and extent of publication under subsection (7).
- (9) Regulations under this section—
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) It is an offence—
- (a) to fail without reasonable excuse to comply with a requirement under this section;
  - (b) knowingly or recklessly to give false information in pursuance of this section.
- (11) A person guilty of an offence is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

#### Textual Amendments

**F462** Words in s. 204(1)(a) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), s. 26(1)(l), **Sch. 2 para. 45**

**F463** S. 204(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(9)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F464** Words in s. 204(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(9)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F465** Words in s. 204(3) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(9)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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**F466** S. 204(4)(b)(ba) substituted for s. 204(4)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 104\(9\)\(c\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

**F467** Words in s. 204(4)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 104\(9\)\(d\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

#### Commencement Information

**I258** S. 204(1)(a)(2)(3)(4)(a)(b)(5)(6)(8)-(11) in force at 4.8.2009 by [S.I. 2009/2038](#), [art. 2](#), [Sch. para. 4](#)

**I259** S. 204(1)(b)(4)(c)(4)(d)(4)(e)(7) in force at 31.12.2009 by [S.I. 2009/3000](#), [art. 4](#), [Sch. para. 4](#)

## 205 Pretending to be recognised

- (1) It is an offence for the operator of a non-recognised inter-bank payment system—
  - (a) to assert that the system is recognised, or
  - (b) to do anything which suggests that the system is recognised.
- (2) A person guilty of an offence is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

#### Commencement Information

**I260** S. 205 in force at 4.8.2009 by [S.I. 2009/2038](#), [art. 2](#), [Sch. para. 5](#)

## 206 Saving for informal oversight

- (1) Nothing in this Part prevents the Bank of England from having dealings with the operators of payment systems to which this Part does not apply.
- (2) Nothing in this Part prevents the Bank from having dealings, other than through the provisions of this Part, with the operators of payment systems to which this Part does apply.

#### Commencement Information

**I261** S. 206 in force at 31.12.2009 by [S.I. 2009/3000](#), [art. 4](#), [Sch. para. 5](#)

## <sup>F468</sup>206A Services forming part of recognised inter-bank payment systems

- (1) The Treasury may by order make provision applying any provision of this Part to persons who are service providers in relation to a recognised inter-bank payment system.
- (2) A person is a service provider in relation to a recognised inter-bank payment system if—
  - (a) the person provides services that form part of the arrangements constituting the system, and
  - (b) the person is specified as a person within paragraph (a) by the Treasury in the recognition order made in respect of the system.

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- (3) Telecommunication or information technology services are examples of the kind of services that may fall within subsection (2)(a).
- (4) Before specifying persons under subsection (2)(b), the Treasury must—
  - (a) consult the Bank of England<sup>[F469]</sup>, the FCA and the PRA],
  - (b) notify the operator of the system and the persons whom the Treasury proposes to specify, and
  - (c) consider any representations made.
- (5) The Treasury may not specify the Bank of England under subsection (2)(b).
- (6) Before making an order under subsection (1), the Treasury must consult—
  - (a) the Bank of England,
  - <sup>[F470]</sup>(b) the FCA,
  - (ba) the PRA, and]
  - (c) such other persons as the Treasury consider appropriate.
- (7) An order under subsection (1)—
  - (a) may modify any provision of this Part in its application to persons who are service providers in relation to a recognised inter-bank payment system;
  - (b) may (but need not) take the form of textual amendment.
- (8) An order under subsection (1)—
  - (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.]

#### Textual Amendments

**F468** S. 206A inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 20**, 26(1)(f)

**F469** Words in s. 206A(4)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(10)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F470** S. 206A(6)(b)(ba) substituted for s. 206A(6)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 104(10)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### <sup>[F471]</sup>**206B International obligations**

- (1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.
- (2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.
- (3) A direction under this section—
  - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and

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- (b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.]

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**Textual Amendments**

**F471** S. 206B inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 105**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), **art. 3**, [Sch.](#)

## PART 6

### BANKNOTES: SCOTLAND AND NORTHERN IRELAND

#### *Introduction*

#### 207 Overview

This Part—

- (a) repeals existing provisions about permission to issue banknotes in Scotland and Northern Ireland, and
- (b) replaces the provisions, but only for banks which already have permission to issue banknotes.

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**Commencement Information**

**I262** S. 207 in force at 23.11.2009 by [S.I. 2009/3000](#), **art. 3**

#### *Key terms*

#### 208 “Banknote”

In this Part “banknote” means a promissory note, bill of exchange or other document which—

- (a) records an engagement to pay money,
- (b) is payable to the bearer on demand, and
- (c) is designed to circulate as money.

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**Commencement Information**

**I263** S. 208 in force at 23.11.2009 by [S.I. 2009/3000](#), **art. 3**

#### 209 “Issue”

(1) For the purposes of this Part a banknote is issued when it passes—

- (a) from a person who holds it not as bearer but as a person carrying on the business of banking (“the issuing bank”), and



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- (b) to a person taking as bearer (“the bearer”).
- (2) In subsection (1)(a) the reference to a banknote passing from the issuing bank includes a reference to it passing—
- (a) from the issuing bank's agent, or
  - (b) from a person printing or preparing the banknote for, or taking it to, the issuing bank or its agent.
- (3) For the purposes of subsection (1)(b) it does not matter whether the bearer also holds the banknote for use in the business of banking.

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**Commencement Information**

**I264** S. 209 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

**210 “Authorised bank”**

In this Part “authorised bank” means a bank which immediately before commencement was authorised to issue banknotes in Scotland or Northern Ireland.

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**Commencement Information**

**I265** S. 210 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

**211 “Commencement”**

In this Part “commencement” means the date set for the coming into force of section 212 (under the commencement power in section 263).

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**Commencement Information**

**I266** S. 211 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

*Authorisation to issue*

**212 Repeal of old authorising enactments**

The following shall cease to have effect—

- (a) section 1 of the Bank Notes (Scotland) Act 1845 (authorisation to issue banknotes), and
- (b) section 8 of the Bankers (Ireland) Act 1845 (authorisation to issue banknotes).

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**Commencement Information**

**I267** S. 212 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

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### 213 Saving for existing issuers

An authorised bank may continue to issue banknotes after commencement, but only—

- (a) in accordance with the provisions of this Part, and
- (b) in the part of the United Kingdom in which it was authorised to issue banknotes before commencement.

#### Commencement Information

**I268** S. 213 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

### 214 Consequential repeals and amendments

- (1) In the Bankers (Ireland) Act 1845—
  - (a) sections 9 to 23 cease to have effect,
  - (b) in section 26 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “ except banknotes issued in reliance on section 213 of the Banking Act 2009 ”,
  - (c) section 28 ceases to have effect, and
  - (d) Schedules A and B cease to have effect.
- (2) In the Bank Notes (Scotland) Act 1845—
  - (a) every section ceases to have effect except for sections 16, 18, 21 and 22, and
  - (b) in section 18 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “ except banknotes issued in reliance on section 213 of the Banking Act 2009 ”.
- (3) The following cease to have effect—
  - (a) section 12 of the Bank Charter Act 1844,
  - (b) section 9 of the Currency and Bank Notes Act 1928,
  - (c) sections 1 and 3 of, and the Schedule to, the Bankers (Northern Ireland) Act 1928, and
  - (d) in the Coinage Act 1971—
    - (i) section 12(4)(b) and (c), and
    - (ii) in Schedule 2 the entries relating to—
      - (a) the Bankers (Ireland) Act 1845,
      - (b) the Bank Notes (Scotland) Act 1845, and
      - (c) section 3 of the Bankers (Northern Ireland) Act 1928.

#### Commencement Information

**I269** S. 214 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

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### *Regulations and rules*

#### **215 Banknote regulations**

- (1) The Treasury shall make regulations about the treatment, holding and issuing of banknotes by authorised banks (“banknote regulations”).
- (2) Banknote regulations—
  - (a) shall 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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#### **Commencement Information**

**I270** S. 215 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 3](#)

#### **216 Banknote rules**

- (1) Banknote regulations may require or permit the Bank of England to make rules (“banknote rules”) about any aspect of the treatment, holding or issuing of banknotes by authorised banks.
- (2) In particular, banknote regulations may require or permit banknote rules to do anything which banknote regulations may do.
- (3) Banknote rules—
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

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#### **Commencement Information**

**I271** S. 216 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 3](#)

### *Specific issues*

#### **217 Backing assets**

- (1) Banknote regulations must require authorised banks to have backing assets.
- (2) “Backing assets” means assets of a kind specified by banknote regulations; and the regulations may, in particular, specify—
  - (a) banknotes issued by the Bank of England,
  - (b) current coins of the United Kingdom, and
  - (c) funds in a specified kind of account held with the Bank of England or with another specified institution or class of institution.
- (3) The regulations must—

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- (a) require banknote rules to include provision for determining the value of backing assets to be held,
  - (b) require backing assets in the form of banknotes to be held either—
    - (i) by the Bank of England, or
    - (ii) at one or more locations approved by the Bank of England, and
  - (c) require backing assets held in the form of coins to be held at one or more locations approved by the Bank of England.
- (4) The regulations may make other provision about backing assets; including, in particular—
- (a) provision requiring a proportion of a bank's backing assets to consist of assets of a specified kind;
  - (b) provision about the manner in which backing assets may or must be held;
  - (c) provision about ownership of and interests in backing assets;
  - (d) provision permitting backing assets to be held by an agent of an authorised bank.
- (5) Banknote regulations may make provision about the treatment of backing assets in relation to insolvency; in particular, the regulations may—
- (a) modify or disapply a provision or rule of law about insolvency;
  - (b) protect backing assets from being treated in the same way as other assets of the bank;
  - (c) provide for banknotes to be exchanged by bearers within a specified period;
  - (d) allow the Treasury to extend the period for exchange;
  - (e) provide for exchange to be funded from backing assets;
  - (f) provide for the Bank of England to acquire or control a bank's backing assets for the purpose of administering arrangements for exchange.
- (6) In subsection (5) a reference to “insolvency” includes a reference to—
- (a) liquidation,
  - (b) bank insolvency,
  - (c) administration,
  - (d) bank administration,
  - (e) receivership,
  - (f) a composition between a bank and its creditors,
  - (g) a scheme of arrangement of a bank's affairs, and
  - (h) a process under the law of a country or territory outside the United Kingdom which the Treasury identify, in banknote regulations, as serving a similar purpose to any of the processes listed in paragraphs (a) to (g).

#### **Commencement Information**

**I272** S. 217 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by S.I. 2009/3000, arts. 2, 3

## **218 Information**

- (1) Banknote regulations or rules may make provision about—

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- (a) reports to be made by an authorised bank in respect of the treatment, holding or issue of banknotes or in respect of compliance with banknote regulations or rules, and
  - (b) information to be given by an authorised bank or an agent of an authorised bank.
- (2) Banknote regulations may make provision enabling the publication or disclosure of—
- (a) information provided in accordance with banknote regulations or rules;
  - (b) details of anything done in contravention of this Part or banknote regulations or rules;
  - (c) details of action taken under sections 221 to 224 (which may include details of the reason for the action and its result).
- (3) Her Majesty's Revenue and Customs shall transfer to the Bank of England any information acquired or held in connection with functions in respect of the issue of banknotes in Scotland or Northern Ireland.
- (4) The Bank of England may use information received in accordance with subsection (3) only for the purposes of its functions under or by virtue of this Part.

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**Commencement Information**

**I273** S. 218 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 3](#)

## 219 Ceasing the business of issuing notes

- (1) If an authorised bank at any time after commencement stops issuing banknotes, it may not resume issuing banknotes in reliance on section 213.
- (2) Banknote regulations or rules—
  - (a) may specify procedures to be followed by an authorised bank that intends to stop issuing banknotes, and
  - (b) may apply to an authorised bank for two years after it stops issuing banknotes.

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**Commencement Information**

**I274** S. 219 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000](#), [arts. 2, 3](#)

## 220 Insolvency, &c.

- (1) Banknote regulations may make provision in connection with the application to an authorised bank of—
  - (a) the special resolution regime (under Parts 1 to 3), or
  - (b) a provision about insolvency within the meaning of section 217(6).
- (2) The regulations may, in particular—
  - (a) provide for the destruction of banknotes which have not been issued;
  - (b) provide for the destruction of banknotes which have been exchanged in accordance with section 217(5)(c);

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- (c) extinguish a claim to or interest in un-issued or exchanged banknotes.
- (3) A right to rely on section 213 cannot be transferred by or acquired from an authorised bank (and, in particular, cannot be acquired by virtue of or in connection with anything done under Part 1).
- (4) The fact that an authorised bank is taken into temporary public ownership in accordance with section 13 does not itself prevent the bank from relying on section 213.
- [<sup>F472</sup>(4A) The fact that ownership of an authorised bank is transferred or otherwise changed as a result of a resolution instrument (or an instrument treated as a resolution instrument) does not itself prevent the bank from relying on section 213.]
- (5) If an authorised bank enters insolvency (within the meaning of section 217(6)) it loses the right to rely on section 213.
- (6) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case.
- (7) A reference in this section to the special resolution regime includes a reference to any provision of the law of a country or territory outside the United Kingdom which the Treasury identifies, in banknote regulations, as serving a similar purpose.

#### Textual Amendments

**F472** S. 220(4A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 30](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

**I275** S. 220 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000, arts. 2, 3](#)

### *Enforcement*

#### **221 Offence: unlawful issue**

- (1) A person who issues banknotes in Scotland or Northern Ireland otherwise than in reliance on section 213 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) An offence under subsection (1) committed by a body corporate is also committed by an officer of the body (“O”) if the offence—
  - (a) is committed with O's consent or connivance, or
  - (b) is attributable to O's negligence.

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- (4) In subsection (3) “officer” means—
  - (a) a director,
  - (b) a manager,
  - (c) a secretary or similar officer, and
  - (d) a person purporting to act as an officer within paragraphs (a) to (c).
- (5) Subsection (3) applies to a partnership constituted under the law of Scotland as to a body corporate; for which purpose “officer” means—
  - (a) a partner, or
  - (b) a person purporting to act as a partner.
- (6) Proceedings for an offence under subsection (1) may be instituted—
  - (a) in England and Wales, only by the Director of Public Prosecutions, and
  - (b) in Northern Ireland, only by the Director of Public Prosecutions for Northern Ireland.

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**Commencement Information**

**I276** S. 221 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)

## **222 Financial penalty**

- (1) Banknote regulations may enable the Bank of England to impose a penalty on an authorised bank that fails to comply with banknote regulations or rules.
- (2) A penalty—
  - (a) shall be paid to the Bank of England, and
  - (b) is enforceable by the Bank of England as a debt.
- (3) Banknote regulations must establish a method for determining the maximum amount of a penalty.

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**Commencement Information**

**I277** S. 222 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000, arts. 2, 3](#)

## **223 Termination of right to issue**

- (1) The Treasury may determine—
  - (a) that an authorised bank has failed to comply with banknote regulations or banknote rules, and
  - (b) that, having regard to the nature of the failure, the authorised bank should no longer be permitted to issue banknotes in reliance on section 213.
- (2) Before making a determination the Treasury must consult the Bank of England.
- (3) On making a determination the Treasury shall notify the authorised bank.
- (4) Upon receipt of the notice the authorised bank loses the right to rely on section 213.

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- (5) If an authorised bank ceases to have permission under [F473Part 4A] of the Financial Services and Markets Act 2000 (regulated activities) to carry on the regulated activity of accepting deposits, it loses the right to rely on section 213 above.
- (6) The reference in subsection (5) to [F474Part 4A] of the Financial Services and Markets Act 2000 includes a reference to any provision of the law of another country which the Treasury identify, in banknote regulations, as serving a similar purpose.
- (7) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case.

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#### Textual Amendments

- F473** Words in s. 223(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 54](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F474** Words in s. 223(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 54](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
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#### Commencement Information

- I278** S. 223 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000, arts. 2, 3](#)

## 224 Application to court

Banknote regulations may enable the Bank of England to apply to the High Court or Court of Session for—

- (a) relief in respect of failure to comply with banknote regulations or rules, or
- (b) any order designed to ensure, or facilitate monitoring of, compliance with a provision of banknote regulations or rules.

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#### Commencement Information

- I279** S. 224 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by [S.I. 2009/3000, arts. 2, 3](#)

### *Bank of England*

## 225 Organisation

Expenses incurred and sums received by the Bank of England in connection with its functions under this Part are to be treated as expenses and receipts of the Issue Department.

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#### Commencement Information

- I280** S. 225 in force at 23.11.2009 by [S.I. 2009/3000, art. 3](#)



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## 226 Discretionary functions

- (1) Banknote regulations may confer a discretionary function on the Bank of England.
- (2) In particular, banknote regulations—
  - (a) may require compliance with conditions to be imposed (whether generally or only for specified cases or circumstances) by the Bank of England, and
  - (b) may make a permission or option subject to the approval of the Bank of England (which may be general or only for specified cases or circumstances).
- (3) Subsection (2) is in addition to express references in this Part to Bank of England approval.

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### Commencement Information

**I281** S. 226 in force at 12.11.2009 for specified purposes and 23.11.2009 in so far as not already in force by S.I. 2009/3000, arts. 2, 3

## 227 Exemption

Section 221(1) does not prohibit the issue of banknotes by the Bank of England.

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### Commencement Information

**I282** S. 227 in force at 23.11.2009 by S.I. 2009/3000, art. 3

## PART 7

### MISCELLANEOUS

#### *Treasury support for banks*

## 228 Consolidated Fund

- (1) There shall be paid out of money provided by Parliament expenditure incurred—
  - (a) by the Treasury for any purpose in connection with Parts 1 to 3 of this Act,
  - (b) by the Treasury, or by the Secretary of State with the consent of the Treasury, in respect of, or in connection with giving, financial assistance to or in respect of a bank or other financial institution (other than in respect of loans made in accordance with section 229), or
  - (c) by the Treasury in respect of financial assistance to the Bank of England.
- (2) For the purpose of subsection (1)(b) expenditure is incurred in respect of financial assistance in respect of banks or other financial institutions if it is incurred in respect of an activity, transaction or arrangement, or class of activity, transaction or arrangement, which is expected to facilitate any part of the business of one or more banks or other financial institutions; and for that purpose it does not matter—
  - (a) whether or not that is the sole or principal expected effect of the activity, transaction or arrangement, or

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- (b) whether the sole or principal motive for the activity, transaction or arrangement is (i) its effect on banks or other financial institutions, (ii) its effect on the economy as a whole, (iii) its effect on a particular industry or sector of the economy, or (iv) its effect on actual or potential customers of banks or other financial institutions.
- (3) In this section “financial assistance” has the meaning given by section 257 (and an order under that section may restrict or expand the effect of subsection (2)).
- (4) This section has effect in relation to expenditure whether incurred—
  - (a) before or after Royal Assent, and
  - (b) in pursuance of obligations entered into before or after Royal Assent.
- (5) Expenditure which could be paid out of money provided by Parliament under subsection (1) shall be charged on and paid out of the Consolidated Fund if the Treasury are satisfied that the need for the expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament.
- (6) Where money is paid in reliance on subsection (5) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

#### **Commencement Information**

**I283** S. 228 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 5](#)

## **229 National Loans Fund**

- (1) Where the Treasury propose to make a loan to or in respect of a bank or other financial institution, they may arrange for money to be paid out of the National Loans Fund.
- (2) The Treasury may make arrangements under subsection (1) only where they think it necessary to make the loan urgently in order to protect the stability of the financial systems of the United Kingdom.
- (3) The Treasury shall determine—
  - (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) Sums received by the Treasury in respect of loans by virtue of this section shall be paid into the National Loans Fund.
- (5) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this section.
- (6) Where money is paid in reliance on subsection (1) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

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**Commencement Information**

**I284** S. 229 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 5](#)

**230 “Financial institution”**

- (1) The Treasury may by order provide that a specified institution, or an institution of a specified class, is or is not to be treated as a financial institution for the purposes of section 228 or 229.
- (2) An order—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**Commencement Information**

**I285** S. 230 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 5](#)

**I286** S. 230 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 5](#)

**231 Reports**

- (1) The Treasury shall prepare reports about any arrangements entered into which involve or may require reliance on section 228(1).
- (2) A report must be prepared in respect of—
  - (a) the period beginning with 1st April 2009 and ending with 30th September 2009, and
  - (b) each successive period of 6 months;but no report is required for a period in respect of which there is nothing to record.
- (3) The Treasury shall lay each report before the House of Commons as soon as is reasonably practicable.
- (4) A report must not—
  - (a) specify individual arrangements, or
  - (b) identify, or enable the identification of, individual beneficiaries.
- (5) The Treasury must aim to give as much information as possible in a report, subject to subsection (4) and other considerations of public interest.

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**Commencement Information**

**I287** S. 231 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 5](#)

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### *Investment banks*

#### **232 Definition**

- (1) In this group of sections “investment bank” means an institution which satisfies the following conditions.
  - (2) Condition 1 is that the institution has permission under [<sup>F475</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on the regulated activity of—
    - (a) safeguarding and administering investments,
    - (b) dealing in investments as principal, or
    - (c) dealing in investments as agent.
  - (3) Condition 2 is that the institution holds client assets.
  - (4) In this group of sections “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).
  - (5) Condition 3 is that the institution is incorporated in, or formed under the law of any part of, the United Kingdom.
- [<sup>F476</sup>(5A) In subsection (4), “assets”—
- (a) includes money, but
  - (b) does not include anything which an institution holds for the purposes of carrying on an insurance mediation activity unless—
    - (i) the activity arises in the course of carrying on an investment activity, or
    - (ii) the institution has elected, in relation to the thing, to comply with rules that would apply in relation to it if the activity were not an insurance mediation activity.
- (5B) In this section—
- “rules” means general rules (within the meaning of the Financial Services and Markets Act 2000) made by virtue of [<sup>F477</sup>section 137B(1)] of that Act;
- “insurance mediation activity” has the meaning given by paragraph 2(5) of Schedule 6 to that Act (read as mentioned in paragraph 2(6) of that Schedule); and
- “investment activity” means—
- (a) anything that falls within the definition of “investment services and activities” in section 417(1) of that Act; or
  - (b) anything that is “designated investment business” within the meaning of the [<sup>F478</sup>Financial Conduct Authority Handbook or the Prudential Regulation Authority Handbook].]
- (6) The Treasury may by order—
    - (a) provide that a specified class of institution, which has a permission under [<sup>F479</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on a regulated activity, is to be treated as an investment bank for the purpose of this group of sections;
    - (b) provide that a specified class of institution is not to be treated as an investment bank for the purpose of this group of sections;

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- (c) provide that assets of a specified kind, or held in specified circumstances, are to be or not to be treated as client assets for the purpose of this group of sections;
- (d) amend a provision of this section in consequence of provision under paragraph (a), (b) or (c).

[<sup>F480</sup>(7) The Treasury may by order amend the definition of “investment activity” in subsection (5B), including by defining that term by reference to rules or guidance made by the PRA or the FCA under the Financial Services and Markets Act 2000.]

#### Textual Amendments

- F475** Words in s. 232(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 55\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F476** S. 232(5A)(5B) inserted (8.2.2011) by [The Investment Bank \(Amendment of Definition\) Order 2011 \(S.I. 2011/239\)](#), arts. 1(1), **3(2)**
- F477** Words in s. 232(5B) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 55\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F478** Words in s. 232(5B) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 10**
- F479** Words in s. 232(6)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 55\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F480** S. 232(7) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 55\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- I288** S. 232 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 6**

## 233 Insolvency regulations

- (1) The Treasury may by regulations (“investment bank insolvency regulations”)—
- (a) modify the law of insolvency in its application to investment banks;
  - (b) establish a new procedure for investment banks where—
    - (i) they are unable, or are likely to become unable, to pay their debts (within the meaning of section 93(4)), or
    - (ii) their winding up would be fair (within the meaning of section 93(8)).
- (2) Investment bank insolvency regulations may, in particular—
- (a) apply or replicate (with or without modifications) or make provision similar to provision made by or under the Insolvency Act 1986 or Part 2 or 3 of this Act;
  - (b) establish a new procedure either (i) to operate for investment banks in place of liquidation or administration (under the Insolvency Act 1986), or (ii) to operate alongside liquidation or administration in respect of a particular part of the business or affairs of investment banks.
- (3) In making investment bank insolvency regulations the Treasury shall have regard to the desirability of—
- (a) identifying, protecting, and facilitating the return of, client assets,
  - (b) protecting creditors' rights,
  - (c) ensuring certainty for investment banks, creditors, clients, liquidators and administrators,

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- (d) minimising the disruption of business and markets, and
  - (e) maximising the efficiency and effectiveness of the financial services industry in the United Kingdom.
- (4) A reference to returning client assets includes a reference to—
- (a) transferring assets to another institution, and
  - (b) returning or transferring assets equivalent to those which an institution undertook to hold for clients.

#### Commencement Information

**I289** S. 233 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 6

**I290** S. 233 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

### 234 Regulations: details

- (1) Investment bank insolvency regulations may provide for a procedure to be instituted—
- (a) by a court, or
  - (b) by the action of one or more specified classes of person.
- (2) Investment bank insolvency regulations may—
- (a) confer functions on persons appointed in accordance with the regulations (which may, in particular, (i) be similar to the functions of a liquidator or administrator under the Insolvency Act 1986, or (ii) involve acting as a trustee of client assets), and
  - (b) specify objectives to be pursued by a person appointed in accordance with the regulations.
- (3) Investment bank insolvency regulations may make the application of a provision depend—
- (a) on whether an investment bank is, or is likely to become, unable to pay its debts,
  - (b) on whether the winding up of an investment bank would be fair, or
  - (c) partly on those and partly on other considerations.
- (4) Investment bank insolvency regulations may make provision about the relationship between a procedure established by the regulations and—
- (a) liquidation or administration under the Insolvency Act 1986,
  - (b) bank insolvency or bank administration under Part 2 or 3 of this Act, and
  - (c) provision made by or under any other enactment in connection with insolvency.
- (5) Regulations by virtue of subsection (4) may, in particular—
- (a) include provision for temporary or permanent moratoria;
  - (b) amend an enactment.
- (6) Investment bank insolvency regulations may include provision—
- (a) establishing a mechanism for determining which assets are client assets (subject to section 232);
  - (b) establishing a mechanism for determining that assets are to be, or not to be, treated as client assets (subject to section 232);

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- (c) about the treatment of client assets;
  - (d) about the treatment of unsettled transactions (and related collateral);
  - (e) for the transfer to another financial institution of assets or transactions;
  - (f) for the creation or enforcement of rights (including rights that take preference over creditors' rights) in respect of client assets or other assets;
  - (g) indemnifying a person who is exercising or purporting to exercise functions under or by virtue of the regulations;
  - (h) for recovery of assets transferred in error.
- (7) Provision may be included under subsection (6)(f) only to the extent that the Treasury think it necessary having regard to the desirability of protecting both—
- (a) client assets, and
  - (b) creditors' rights.
- (8) Investment bank insolvency regulations may confer functions on—
- (a) a court or tribunal,
  - [<sup>F481</sup>(b) the Prudential Regulation Authority,
  - (ba) the Financial Conduct Authority,]
  - (c) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000),
  - (d) the scheme manager of that Scheme, and
  - (e) any other specified person.
- (9) Investment bank insolvency regulations may include provision about institutions that are or were group undertakings (within the meaning of section 1161(5) of the Companies Act 2006) of an investment bank.
- (10) Investment bank insolvency regulations may replicate or apply, with or without modifications, a power to make procedural rules.
- (11) Investment bank insolvency regulations may include provision for assigning or apportioning responsibility for the cost of the application of a procedure established or modified by the regulations.

#### Textual Amendments

**F481** S. 234(8)(b)(ba) substituted for s. 234(8)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 56](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Commencement Information

**I291** S. 234 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 6

**I292** S. 234 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

## 235 Regulations: procedure

- (1) Investment bank insolvency regulations shall be made by statutory instrument.
- (2) Investment bank insolvency regulations may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) The Treasury must consult before laying draft investment bank insolvency regulations before Parliament.

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- (4) If the power to make investment bank insolvency regulations has not been exercised before the end of the period of 2 years beginning with the date on which this Act is passed, it lapses.
- (5) An order under section 232(6)—
- (a) shall 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.
- [<sup>F482</sup>(6) An order under section 232(7)—
- (a) is to be made by statutory instrument, and
  - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F482** S. 235(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 57](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Commencement Information

**I293** S. 235 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

**I294** S. 235 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

## 236 Review

- (1) The Treasury shall arrange for a review of the effect of any investment bank insolvency regulations.
- (2) The review must be completed during the period of 2 years beginning with the date on which the regulations come into force.
- (3) The Treasury shall appoint one or more persons to conduct the review; and a person appointed must have expertise in connection with the law of insolvency or financial services.
- (4) The review must consider, in particular—
  - (a) how far the regulations are achieving the objectives specified in section 233(3), and
  - (b) whether the regulations should continue to have effect.
- (5) The review must result in a report to the Treasury.
- (6) The Treasury shall lay a copy of the report before Parliament.
- (7) If a review recommends further reviews—
  - (a) the Treasury may arrange for the further reviews, and
  - (b) subsections (3) to (6) (and this subsection) shall apply to them.

#### Commencement Information

**I295** S. 236 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 6](#)



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## *Banking (Special Provisions) Act 2008*

### **237 Compensation: valuer**

Without prejudice to the generality of section 12 of the Banking (Special Provisions) Act 2008 (consequential and supplementary provision), it is declared that the power under section 9 of that Act to make provision for the appointment of a valuer includes power to replicate, or to make provision of a kind that may be made under, section 55(1) to (3) of this Act.

#### **Commencement Information**

**I296** S. 237 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 7](#)

## *Bank of England*

### **238 UK financial stability**

- (1) After section 2 of the Bank of England Act 1998 (functions of court of directors) insert—

#### **“2A Financial Stability Objective**

- (1) An objective of the Bank shall be to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom (the “Financial Stability Objective”).
- (2) In pursuing the Financial Stability Objective the Bank shall aim to work with other relevant bodies (including the Treasury and the Financial Services Authority).
- (3) The court of directors shall, consulting the Treasury, determine and review the Bank's strategy in relation to the Financial Stability Objective.

#### **2B Financial Stability Committee**

- (1) There shall be a sub-committee of the court of directors of the Bank (the “Financial Stability Committee”) consisting of—
  - (a) the Governor of the Bank, who shall chair the Committee (when present),
  - (b) the Deputy Governors of the Bank, and
  - (c) 4 directors of the Bank, appointed by the chair of the court of directors (designated under paragraph 13 of Schedule 1).
- (2) The Committee shall have the following functions—
  - (a) to make recommendations to the court of directors, which they shall consider, about the nature and implementation of the Bank's strategy in relation to the Financial Stability Objective,
  - (b) to give advice about whether and how the Bank should act in respect of an institution, where the issue appears to the Committee to be relevant to the Financial Stability Objective,

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- (c) in particular, to give advice about whether and how the Bank should use stabilisation powers under Part 1 of the Banking Act 2009 in particular cases,
  - (d) to monitor the Bank's use of the stabilisation powers,
  - (e) to monitor the Bank's exercise of its functions under Part 5 of the Banking Act 2009 (inter-bank payment systems), and
  - (f) any other functions delegated to the Committee by the court of directors for the purpose of pursuing the Financial Stability Objective.
- (3) The Treasury may appoint a person to represent the Treasury at meetings of the Committee; and the Treasury's representative—
- (a) may not vote in proceedings of the Committee,
  - (b) shall in all other respects be a member of the Committee, and
  - (c) may be replaced by the Treasury.
- (4) The Committee may co-opt other non-voting members.
- (5) The chair of the court of directors may replace members of the Committee appointed under subsection (1)(c).

### **2C Financial Stability Committee: supplemental**

- (1) The Committee shall determine its own procedure (including quorum).
- (2) If a member of the Committee has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—
- (a) he shall disclose his interest to the Committee when it considers the dealing or business, and
  - (b) he shall have no vote in proceedings of the Committee in relation to any question arising from its consideration of the dealing or business, unless the Committee has resolved that the interest does not give rise to a conflict of interest.
- (3) The Committee may delegate a function under section 2B(2)(b) to (e) to two or more of its members, excluding—
- (a) the Treasury representative, and
  - (b) co-opted non-voting members.”
- (2) At the end of section 2 of the Bank of England Act 1998 add—
- “(5) Sections 2A and 11 set objectives for the Bank in relation to financial stability and monetary policy; and subsections (2) to (4) above are subject to those sections.”

#### **Commencement Information**

**I297** S. 238 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 1](#)

### **239 Number of directors**

- (1) Section 1 of the Bank of England Act 1998 (court of directors) is amended as follows.

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- (2) In subsection (2) omit “16”.
- (3) After subsection (2) insert—
  - “(2A) The number of directors must not exceed 9.”
- (4) The directors immediately before the day on which this section comes into force shall vacate office on that day (without prejudice to re-appointment).

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**Commencement Information**

**I298** S. 239 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 2](#)

## 240 Meetings

- (1) Paragraph 12 of Schedule 1 to the Bank of England 1998 (court of directors: meetings) is amended as follows.
- (2) In sub-paragraph (1) for “once a month” substitute “ 7 times in each calendar year ”.
- (3) For sub-paragraph (2) substitute—
  - “(2) Either of the following may summon a meeting at any time on giving such notice as the circumstances appear to require—
    - (a) the Governor of the Bank (or in his absence a Deputy Governor), and
    - (b) the chair of the court.”

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**Commencement Information**

**I299** S. 240 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 3](#)

## 241 Chair of court

- (1) For paragraph 13(3) of Schedule 1 to the Bank of England Act 1998 (court of directors: chairing meetings) substitute—
  - “(3) The Chancellor of the Exchequer may designate—
    - (a) a member of the court to chair its meetings (“the chair of the court”), and
    - (b) one or more members of the court as deputies to chair its meetings in the absence of the chair of the court.”
- (2) For section 3(4) of that Act (sub-committee: chair) substitute—
  - “(4) The chair of the court (designated under paragraph 13 of Schedule 1) shall chair meetings of the sub-committee (when present).”

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**Commencement Information**

**I300** S. 241 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 4](#)

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## 242 Quorum

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 3 (functions delegated to sub-committee)—
  - (a) omit subsection (3),
  - (b) in subsection (7) for “(3)” substitute “ (4) ”, and
  - (c) at the end of subsection (7) add “ (including quorum) ”.
- (3) In paragraph 13 of Schedule 1 (court of directors: proceedings)—
  - (a) omit sub-paragraph (2),
  - (b) in sub-paragraph (6) for “(2)” substitute “ (3) ”, and
  - (c) at the end of sub-paragraph (6) add “ (including quorum) ”.

### Commencement Information

**I301** S. 242 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 5](#)

## 243 Tenure

- (1) At the end of paragraph 1 of Schedule 1 to the Bank of England Act 1998 (Governor and Deputies: appointment) add—
  - “(3) A person may not be appointed as Governor more than twice.
  - (4) A person may not be appointed as Deputy Governor more than twice.”
- (2) At the end of paragraph 6 of that Schedule (re-appointment) insert “ (subject to paragraph 1(3) and (4)) ”.
- (3) After paragraphs 1 and 2 of Schedule 3 to that Act (Monetary Policy Committee: appointment) insert—
  - “2A A person may not be appointed as a member of the Committee under section 13(2)(c) more than twice.”
- (4) At the end of paragraph 6 of that Schedule (re-appointment) insert “ (subject to paragraph 2A) ”.

### Commencement Information

**I302** S. 243 in force at 1.6.2009 by [S.I. 2009/1296](#), art. 2, [Sch. para. 6](#)

## 244 Immunity

- (1) The Bank of England has immunity in its capacity as a monetary authority.
- (2) In this section—
  - (a) a reference to the Bank of England is a reference to the Bank and anyone who acts or purports to act as a director, officer, [<sup>F483</sup>employee] or agent of the Bank,

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- (b) “immunity” means immunity from liability in damages in respect of action or inaction, and
- (c) a reference to the Bank's capacity as a monetary authority includes a reference to [<sup>F484</sup>the exercise or purported exercise of the Bank's functions under the Financial Services and Markets Act 2000]<sup>F485</sup>, of its functions under or in connection with this Act or as a resolution authority for the purposes of the recovery and resolution directive], of its other regulatory functions or of functions undertaken] by the Bank for the purpose of or in connection with—
  - (i) acting as the central bank of the United Kingdom, or
  - (ii) protecting or enhancing the stability of the financial systems of the United Kingdom.

[<sup>F486</sup>(2A) The Bank's functions under the Financial Services and Markets Act 2000 are to be taken to include any functions that it may exercise as a result of an appointment under any of sections 97, 166 to 169 and 284 of that Act.]

- (3) The immunity does not extend to action or inaction—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.

#### Textual Amendments

- F483** Word in s. 244(2)(a) substituted (19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 2 para. 3\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(2\), Sch. Pt. 4](#); [S.I. 2013/423, art. 3, Sch.](#)
- F484** Words in s. 244(2)(c) substituted (19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 2 para. 3\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(2\), Sch. Pt. 4](#); [S.I. 2013/423, art. 3, Sch.](#)
- F485** Words in s. 244(2)(c) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 108](#)
- F486** S. 244(2A) inserted (19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 2 para. 3\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(2\), Sch. Pt. 4](#); [S.I. 2013/423, art. 3, Sch.](#)

#### Commencement Information

- I303** S. 244 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 8](#)

## 245 Weekly return

Section 6 of the Bank Charter Act 1844 (Bank to produce weekly account) shall cease to have effect.

#### Commencement Information

- I304** S. 245 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 8](#)

## 246 Information

- (1) The Bank of England may disclose information that it thinks relevant to the financial stability of—

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- (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) Information about the business or other affairs of a specified or identifiable person may be disclosed under subsection (1) only to—
- (a) the Treasury;
  - [<sup>F487</sup>(b) the Prudential Regulation Authority;
  - (ba) the Financial Conduct Authority;]
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);
  - [<sup>F488</sup>(ca) the Payment Systems Regulator (established under section 40 of the Financial Services (Banking Reform) Act 2013);]
  - (d) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England[<sup>F489</sup>, the Prudential Regulation Authority or the Financial Conduct Authority] in relation to financial stability;
  - (e) the European Central Bank.
- (3) This section—
- (a) overrides a contractual or other requirement to keep information in confidence, and
  - (b) is without prejudice to any other power to disclose information.

#### Textual Amendments

- F487** S. 246(2)(b)(ba) substituted for s. 246(2)(b) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 58\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F488** S. 246(2)(ca) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 95](#), 148(5); S.I. 2014/377, art. 2(1)(a), [Sch. Pt. 1](#)
- F489** Words in s. 246(2)(d) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 58\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

#### Commencement Information

- I305** S. 246 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 8](#)

## 247 Bank of England Act 1946

Nothing in this Act affects the generality of section 4 of the Bank of England Act 1946 (directions and relations with other banks).

#### Commencement Information

- I306** S. 247 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 8](#)

*Financial Services Authority*

## <sup>F490</sup>248 Variation of permission

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### Textual Amendments

**F490** S. 248 omitted (8.6.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), s. 26(2)(e), [Sch. 2 para. 46](#)

### Commencement Information

**I307** S. 248 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 9](#)

## 249 Functions

- (1) A reference in an enactment to functions conferred on the [<sup>F491</sup>Prudential Regulation Authority or the Financial Conduct Authority] by or under the Financial Services and Markets Act 2000 (or any part of it) includes a reference to functions conferred on [<sup>F492</sup>that authority] by or under this Act.
- (2) A reference in an enactment to functions of the [<sup>F493</sup>Prudential Regulation Authority or the Financial Conduct Authority] includes a reference to functions conferred by or under this Act (irrespective of whether the enactment was passed or made before or after the commencement of this Act).

<sup>F494</sup>(3) .....

<sup>F495</sup>(4) .....

### Textual Amendments

**F491** Words in s. 249(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 59\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F492** Words in s. 249(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 59\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F493** Words in s. 249(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 59\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F494** S. 249(3) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 59\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F495** S. 249(4) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### Commencement Information

**I308** S. 249 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 9](#)

**I309** S. 249 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 9](#)

## 250 Information

- (1) The [<sup>F496</sup>Prudential Regulation Authority] shall collect information that it thinks is or may be relevant to the stability of—
  - (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) The Authority may perform its function under subsection (1) by the exercise of the power in section 165 [<sup>F497</sup>or 165A] of the Financial Services and Markets Act 2000 (power to require information—as qualified [<sup>F498</sup>, in the case of the section 165 power,] by section 249 above) or in any other way.



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### Textual Amendments

- F496** Words in s. 250(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 60](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F497** Words in s. 250(2) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), s. 26(2)(e), [Sch. 2 para. 47\(a\)](#)
- F498** Words in s. 250(2) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), s. 26(2)(e), [Sch. 2 para. 47\(b\)](#)

### Commencement Information

- I310** S. 250 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 9](#)

## Central banks

### 251 Financial assistance to building societies

- (1) The Treasury may by order modify the Building Societies Act 1986 for the purpose of facilitating, or in connection with, the provision of financial assistance to building societies by—
  - (a) the Treasury,
  - (b) the Bank of England,
  - (c) another central bank of a Member State of the European Economic Area, or
  - (d) the European Central Bank.
- (2) An order may affect any provision of the Building Societies Act 1986 which appears to the Treasury otherwise capable of preventing, impeding or affecting the provision of financial assistance; including, in particular, provision—
  - (a) about the establishment, constitution or powers of building societies,
  - (b) restricting or otherwise dealing with raising funds or borrowing,
  - (c) restricting or otherwise dealing with what may be done by or in relation to building societies,
  - (d) about security, or
  - (e) about the application of insolvency law or other legislation relating to companies.
- (3) An order—
  - (a) may disapply or modify a provision;
  - (b) may (but need not) take the form of textual amendment.
- (4) Incidental provision of an order (included in reliance on section 259(1)(c)) may, in particular—
  - (a) impose conditions, limits or other restrictions on what may be done in reliance on a provision of the order;
  - (b) confer a discretion on the Treasury, the Bank of England or another person or class of person.
- (5) Incidental or consequential provision of an order (included in reliance on section 259(1)(c)) may disapply or modify an enactment, whether by textual amendment or otherwise.



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- (6) An order—
- (a) shall 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.
- (7) The Treasury may by order create exceptions to or otherwise modify the effect of section 9B of the Building Societies Act 1986 (restriction on creation of floating charges); and—
- (a) the Treasury may make an order only if they think it is likely to help building societies to use, give effect to or take advantage of financial assistance of the kind specified in subsection (1),
  - (b) an order may have effect in relation to transactions between building societies and persons not listed in subsection (1),
  - (c) an order shall be made by statutory instrument, and
  - (d) an order may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (8) In this section, “financial assistance” has the meaning given by section 257.

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**Commencement Information**

**I311** S. 251 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 10

**I312** S. 251 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 10](#)

## 252 Registration of charges

- (1) Part 25 of the Companies Act 2006 (registration of charges) does not apply to a charge if the person interested in it is—
- (a) the Bank of England,
  - (b) the central bank of a country or territory outside the United Kingdom, or
  - (c) the European Central Bank.
- (2) The reference in subsection (1) to Part 25 of the Companies Act 2006 includes a reference to—
- (a) Part 12 of the Companies Act 1985 (which has effect until the commencement of Part 25 of the 2006 Act),
  - (b) Part 13 of the Companies (Northern Ireland) Order 1986 (which has effect until the commencement of Part 25 of the 2006 Act), and
  - (c) any provision about registration of charges made under section 1052 of the Companies Act 2006 (overseas companies).

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**Commencement Information**

**I313** S. 252 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 11](#)

## 253 Registration of charges: Scotland

- (1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

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- (2) In section 38 (creation of floating charges)—
- (a) in subsection (3), after “to” insert “ subsection (3A) and ”, and
  - (b) after that subsection insert—
 

“(3A) If a floating charge is granted in favour of a central institution, it is created only when the document granting the floating charge is executed by the company granting the charge.”
- (3) In section 39 (advance notice of floating charges), after subsection (3) add—
- “(4) This section does not apply where a company proposes to grant a floating charge in favour of a central institution.”
- (4) In section 42 (assignment of floating charges), after subsection (3) add—
- “(4) This section does not apply where a floating charge is assigned (whether in whole or to a specified extent) to or by a central institution.”
- (5) In section 43 (alteration of floating charges)—
- (a) in subsection (4), for “But paragraph” substitute “ Paragraph ”, and
  - (b) after that subsection insert—
 

“(4A) Paragraph (b) of subsection (3) above does not apply in respect of an alteration if—

    - (a) the holder of the floating charge is a central institution, or
    - (b) the holder of the floating charge is not a central institution but the alteration is to be made in connection with a floating charge which is held (or which has been or is to be held) by a central institution.”
- (6) In section 44 (discharge of floating charges), after subsection (3) add—
- “(4) This section does not apply where the floating charge to be discharged (whether in whole or to a specified extent) is or has been held by a central institution.”
- (7) In section 47 (interpretation), after “Part—” insert—
- ““central institution” means—
- (a) the Bank of England,
  - (b) the central bank of a country or territory outside the United Kingdom, or
  - (c) the European Central Bank;”

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**Commencement Information**

**I314** S. 253 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 11](#)

*Funds attached rule (Scotland)*

**254 Abolition for cheques**

- (1) A reference to the “funds attached” rule is a reference to the rule of law in Scotland by virtue of which a bill of exchange, when presented to the drawee for payment, operates

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- as an assignation of the sum for which it is drawn (or, if the drawee holds insufficient funds, of those funds) in favour of the holder of the bill.
- (2) The “funds attached” rule is abolished for cheques presented for payment after the commencement of this section.
  - (3) Expressions used in this section have the same meaning as in the Bills of Exchange Act 1882.
  - (4) In that Act—
    - (a) in section 53(2) (funds in hands of drawee: Scotland)—
      - (i) the words “Subject to section 75A of this Act,” cease to have effect, and
      - (ii) after “drawee of a bill” insert “ other than a cheque ”, and
    - (b) section 75A(countermanded cheques) ceases to have effect.
  - (5) Section 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (countermanded cheques) ceases to have effect.

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**Commencement Information**

**I315** S. 254 in force at 12.4.2009, see s. 263(2)

VALID FROM 25/05/2016

*Financial collateral arrangements*

**255 Regulations**

- (1) The Treasury may make regulations about financial collateral arrangements.
- (2) “Financial collateral arrangements” are arrangements under which financial collateral is used as security in respect of a loan or other liability; and for that purpose—
  - (a) collateral may be in cash, securities or any other form,
  - (b) use as security may involve transfer of the collateral or the creation or transfer of any kind of right, interest or charge (fixed or floating) in respect of it, and
  - (c) in particular, use as security can include use under arrangements of a kind described commercially as “title transfer financial collateral arrangements”.
- (3) The regulations—
  - (a) may make any provision that the Treasury think necessary or desirable for the purpose of, or in connection with, implementation of the Financial Collateral Arrangements Directive (2002/47/EC) (or any replacement), but
  - (b) are not restricted to provision required in connection with the Directive, and may make any provision that the Treasury think necessary or desirable for the purpose of enabling financial collateral arrangements, whether or not with an international element, to be commercially useful and effective.
- (4) The regulations may, in particular—

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- (a) disapply or modify an enactment or rule of law about formalities or evidence,
  - (b) disapply or modify an enactment about insolvency, administration, receivership or any similar procedure,
  - (c) disapply or modify an enactment about property law,
  - (d) disapply or modify an enactment about companies or other commercial entities or groupings,
  - (e) provide for provisions of financial collateral arrangements to have effect despite a reorganisation, winding-up or other process affecting a party to the arrangements,
  - (f) make provision for the enforcement of financial collateral arrangements (which may include, in particular, provision—
    - (i) about sale, appropriation and set-off,
    - (ii) about the use of collateral while subject to the arrangements,
    - (iii) about “close out netting arrangements”, under which obligations under a number of contracts may be set off against each other in the event of default under a specified contract,
    - (iv) permitting a person to foreclose or exercise another right under the arrangements with or without an order of a court,
    - (v) permitting or requiring the disclosure of information, and
    - (vi) for enforcement after the commencement of, and despite, reorganisation, winding-up or another process),
  - (g) make provision for the choice of law according to which, or under which, matters arising under financial collateral arrangements are to be determined, and
  - (h) apply to persons whether or not provisions of the Directive apply to them.
- (5) The regulations may, in particular—
- (a) do anything done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003,
  - (b) provide for those regulations, or a specified provision, to be treated as having had effect despite any lack of vires,
  - (c) provide for anything done under or in reliance on those regulations to be treated as having had effect despite any lack of vires, and
  - (d) make any provision which the Treasury think necessary or desirable to achieve or restore certainty and stability in connection with the matters to which those regulations relate.

## 256 Supplemental

- (1) Regulations under section 255—
- (a) shall be made by statutory instrument, and
  - (b) shall lapse 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 regulations are made.
- (2) The lapse of regulations under subsection (1)(b)—
- (a) does not invalidate anything done under or in reliance on the regulations before the lapse and at a time when neither House has declined to approve the regulations, and

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(b) does not prevent the making of new regulations (in new terms).

### <sup>F499</sup>State aid

#### Textual Amendments

**F499** S. 256A and cross-heading inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 11](#); S.I. 2014/3160, art. 2(1)(b)

## 256A State aid

- (1) This section applies where—
  - (a) the Treasury are of the opinion that anything done, or proposed to be done, in connection with [<sup>F500</sup>the making of a mandatory reduction instrument or] the exercise in relation to an institution of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies (“State aid”), and
  - (b) section 145A (power to direct bank administrator) does not apply.
- (2) The Treasury may, in writing, direct any [<sup>F501</sup>resolution administrator], or any director of the institution, to take specified action to enable the United Kingdom to pursue any of the purposes specified in subsection (3) of section 145A (read with subsection (9) of that section).
- (3) Before giving a direction under this section the Treasury must consult the person to whom the direction is to be given.
- (4) The person must comply with the direction within the period of time specified in the direction, or, if no period of time is specified, as soon as is reasonably practicable.
- (5) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) A direction under this section may specify circumstances in which the person given the direction is immune from liability in damages.
- (7) Immunity by virtue of subsection (6) does not extend to action—
  - (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (8) Where a direction under this section is given to a director of the institution, the director is not to be regarded as failing to comply with any duty owed to any person (for example, a shareholder, creditor or employee of the institution) by virtue of any action in compliance with the direction.]

#### Textual Amendments

**F500** Words in s. 256A(1)(a) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014](#) (S.I. 2014/3329), arts. 1(2), [109\(a\)](#)

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**F501** Words in s. 256A(2) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **109(b)**

## PART 8

### GENERAL

#### 257 “Financial assistance”

- (1) In this Act “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (2) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Act; and subsection (1) is subject to this subsection.
- (3) An order—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

- I316** S. 257 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 12  
**I317** S. 257 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 12](#)

#### 258 “Enactment”

In this Act “enactment” includes—

- (a) subordinate legislation,
- (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and
- (c) Northern Ireland legislation.

#### Commencement Information

- I318** S. 258 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 13](#)

#### [<sup>F502</sup>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 [<sup>F503</sup>Regulation (EU) No. 575/2013 of the European Parliament and of the Council.]
- (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

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- (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.
- (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.]

#### Textual Amendments

- F502** S. 258A inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 101(7)**, 122(3) (with [Sch. 20](#)); [S.I. 2014/1447](#), art. 2(f); [S.I. 2014/1847](#), art. 2
- F503** Words in s. 258A(1) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 45(3)**

## 259 Statutory instruments

- (1) A statutory instrument under this Act—
  - (a) may make provision that applies generally or only for specified purposes, cases or circumstances,
  - (b) may make different provision for different purposes, cases or circumstances, and
  - (c) may include incidental, consequential or transitional provision.
- (2) No statutory instrument under this Act shall be treated as a hybrid instrument under Standing Orders of either House of Parliament.
- (3) The Table lists the powers to make statutory instruments under this Act and the arrangements for Parliamentary scrutiny in each case (which are subject to subsections (4) to (6)).

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<b>Section</b>	<b>Topic</b>	<b>Parliamentary scrutiny</b>
PART 1—Special resolution regime		
2	Meaning of “bank”	Draft affirmative resolution
25	Share transfer orders	Negative resolution
47	Partial transfers	Draft affirmative resolution
48	Protection of interests	Draft affirmative resolution
[ <sup>F504</sup> 48F(1) and (2)]	[ <sup>F504</sup> Power to amend definition of “excluded liabilities”]	[ <sup>F504</sup> Draft affirmative resolution]
[ <sup>F504</sup> 48G]	[ <sup>F504</sup> Insolvency treatment principles]	[ <sup>F504</sup> Draft affirmative resolution]
[ <sup>F504</sup> 48P]	[ <sup>F504</sup> Safeguarding of certain financial arrangements]	[ <sup>F504</sup> Draft affirmative resolution]
[ <sup>F504</sup> 52A]	[ <sup>F504</sup> Bail-in compensation orders]	[ <sup>F504</sup> Draft affirmative resolution]
55	Independent valuer	Negative resolution
56	Independent valuer: money	Negative resolution
60	[ <sup>F505</sup> Third party compensation: partial property transfers]	Draft affirmative resolution
[ <sup>F504</sup> 60A]	[ <sup>F504</sup> Third party compensation: instruments containing special bail-in provision]	[ <sup>F504</sup> Draft affirmative resolution]
62	Compensation orders	Draft affirmative resolution
69	Continuity obligations: consideration and terms	Negative resolution
<sup>F506</sup>	<sup>F506</sup>	<sup>F506</sup>
...	...	...
74	Tax	Draft affirmative resolution (Commons only)
75	Power to change law	Draft affirmative resolution (except for urgent cases)



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78	Public funds	Negative resolution (Commons only)
[ <sup>F507</sup> 81D]	[ <sup>F507</sup> Meaning of “banking group company”]	[ <sup>F507</sup> Draft affirmative resolution (except for urgent cases)]
[ <sup>F508</sup> 83ZY]	[ <sup>F508</sup> Enforcement of share transfer orders]	[ <sup>F508</sup> Negative resolution]
85	Building societies: orders	Negative resolution
86	Building societies: assets	(As for orders under section 90B of the Building Societies Act 1986)
88	Building societies: consequential	Draft affirmative resolution
89	Credit unions	Draft affirmative resolution
[ <sup>F509</sup> 89F]	[ <sup>F509</sup> [ <sup>F510</sup> Recognised central counterparty] compensation orders]	[ <sup>F509</sup> Draft affirmative resolution]
PART 2–Bank insolvency		
91	Meaning of “bank”	Draft affirmative resolution
122	Application of insolvency law	Draft affirmative resolution
125	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
130	Building societies	Draft affirmative resolution
131	Credit unions	Draft affirmative resolution
132	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
133	Scottish partnerships	Negative resolution
135	Consequential provision	Draft affirmative resolution
PART 3–Bank administration		
148	Sharing information	Negative resolution
149	Multiple original transfers	Draft affirmative resolution

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152	Transfer from temporary public ownership	Draft affirmative resolution
[ <sup>F511</sup> 152A]	[ <sup>F511</sup> Property transfer from transferred institution]	[ <sup>F511</sup> Draft affirmative resolution]
156	Application of other law	Draft affirmative resolution
158	Building societies	Draft affirmative resolution
159	Credit unions	Draft affirmative resolution
160	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)
163	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)
164	Scottish partnerships	Negative resolution
168	Consequential provision	Draft affirmative resolution
PART 4—Financial Services Compensation Scheme		
170	Contingency funding	Draft affirmative resolution
<sup>F512</sup>	<sup>F512</sup>	<sup>F512</sup>
...	...	...
173	Borrowing from National Loans Fund	Negative resolution
PART 5—Inter-bank payment systems		
191	Bank of England directions: immunity	Negative resolution
203	Fees regulations	Negative resolution
204	Information	Negative resolution
[ <sup>F513</sup> 206A]	Services forming part of recognised inter-bank payment systems	Draft affirmative resolution]
PART 6—Banknotes: Scotland and Northern Ireland		
215	Banknote regulations	Draft affirmative resolution
PART 7—Miscellaneous		
230	Financial institution	Negative resolution
[ <sup>F514</sup> 232(6)]	Investment banks: definition	Draft affirmative resolution

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[ <sup>F515</sup> 232(7)]	Investment banks: definition of investment activity	Negative resolution]
233	Investment banks: insolvency	Draft affirmative resolution
249	[ <sup>F516</sup> PRA or FCA—] functions	Draft affirmative resolution
251	Central banks: assistance to building societies	Draft affirmative resolution
255	Financial collateral arrangements	Affirmative resolution
PART 8—General		
257	Financial assistance	Negative resolution
[ <sup>F517</sup> 258A]	[ <sup>F517</sup> Meaning of “investment firm”]	[ <sup>F517</sup> Draft affirmative resolution (except for urgent cases)]
262	Repeal of Banking (Special Provisions) Act 2008	None
263	Commencement	None

- (4) A power listed in subsection (5) may be exercised without a draft being laid before and approved by resolution of each House of Parliament if—
- (a) the power is being exercised for the first time, and
  - (b) the person exercising it is satisfied that it is necessary to exercise it without laying a draft for approval.
- (5) The powers are those in—
- (a) section 2 (special resolution regime: meaning of “bank”),
  - (b) section 47 (special resolution regime: partial transfers),
  - (c) section 48 (special resolution regime: protection of interests),
  - (d) section 60 (special resolution regime: third party compensation),
  - [<sup>F518</sup>(da) section 60A (special resolution regime: instruments containing special bail-in provision),]
  - (e) section 88 (special resolution regime: building societies: consequential),
  - (f) section 91 (bank insolvency: meaning of “bank”),
  - (g) section 122 (bank insolvency: application of insolvency law),
  - (h) section 130 (bank insolvency: building societies),
  - (i) section 135 (bank insolvency: consequential provision),
  - (j) section 149 (bank administration: multiple original transfers),
  - (k) section 152 (bank administration: transfer from temporary public ownership),
  - [<sup>F519</sup>(ka) section 152A (bank administration: property transfer from transferred institution),]
  - (l) section 156 (bank administration: application of other law),
  - (m) section 158 (bank administration: building societies),

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- (n) section 168 (bank administration: consequential provision), <sup>F520</sup> ...
- <sup>F520</sup>(o) .....
- (6) Where an instrument is made in reliance on subsection (5)—
- (a) it shall lapse 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 instrument is made,
  - (b) the lapse of an instrument under paragraph (a) does not invalidate anything done under or in reliance on it before its lapse and at a time when neither House has declined to approve it, and
  - (c) the lapse of an instrument under paragraph (a) does not prevent the making of a new one (in new terms).

### Textual Amendments

- F504** Words in s. 259(3) Table inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 31\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F505** Words in s. 259(3) Table substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 31\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F506** Words in s. 259(3) Table omitted (1.1.2015) by virtue of [The Bank Recovery and Resolution Order 2014](#) (S.I. 2014/3329), arts. 1(2), [110\(2\)](#)
- F507** Words in s. 259(3) Table inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012](#) (c. 21), [ss. 100\(6\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/1447, art. 2(c); S.I. 2014/1847, art. 2
- F508** Words in s. 259(3) Table inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014](#) (S.I. 2014/3329), arts. 1(2), [110\(3\)](#)
- F509** Words in s. 259(3) Table inserted (1.8.2014) by [Financial Services Act 2012](#) (c. 21), [ss. 102\(7\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/1847, art. 2
- F510** Words in s. 259(3) Table substituted (1.4.2013) by [The Financial Services and Markets Act 2000](#) (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 25(3) (with regs. 52-58)
- F511** Words in s. 259(3) Table inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 31\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F512** Words in s. 259(3) Table omitted (8.4.2010) by virtue of [Financial Services Act 2010](#) (c. 28), s. 26(1)(l), [Sch. 2 para. 48\(2\)](#)
- F513** Words in s. 259(3) Table inserted (8.4.2010) by [Financial Services Act 2010](#) (c. 28), s. 26(1)(l), [Sch. 2 para. 48\(3\)](#)
- F514** Word in s. 259(3) Table substituted (1.4.2013) by [Financial Services Act 2012](#) (c. 21), s. 122(3), [Sch. 17 para. 61\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch. 17 para. 61\(2\)](#)
- F515** Words in s. 259(3) Table inserted (1.4.2013) by [Financial Services Act 2012](#) (c. 21), s. 122(3), [Sch. 17 para. 61\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch. 17 para. 61\(3\)](#)
- F516** Words in s. 259(3) Table substituted (1.4.2013) by [Financial Services Act 2012](#) (c. 21), s. 122(3), [Sch. 17 para. 61\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch. 17 para. 61\(4\)](#)
- F517** Words in s. 259(3) Table inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012](#) (c. 21), [ss. 101\(8\)](#), 122(3) (with [Sch. 20](#)); S.I. 2014/1447, art. 2(f); S.I. 2014/1847, art. 2
- F518** S. 259(5)(da) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 31\(d\)](#); S.I. 2014/3160, art. 2(1)(b)
- F519** S. 259(5)(ka) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 31\(e\)](#); S.I. 2014/3160, art. 2(1)(b)

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**F520** S. 259(5)(o) and word omitted (8.4.2010) by virtue of [Financial Services Act 2010 \(c. 28\), s. 26\(1\)\(l\), Sch. 2 para. 48\(4\)](#)

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**Commencement Information**

**I319** S. 259 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 14](#)

## 260 Money

Expenditure of the Treasury under, by virtue of or in connection with a provision of this Act shall be paid out of money provided by Parliament.

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**Commencement Information**

**I320** S. 260 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 15](#)

## 261 Index of defined terms

The Table sets out expressions defined in this Act for general purposes.

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<i>Expression</i>	<i>Section</i>
Action	93 and 166
[ <sup>F521</sup> Additional Tier 1 instruments (in Part 1)]	[ <sup>F521</sup> 3]
[ <sup>F522</sup> Bail-in compensation order]	[ <sup>F522</sup> 49]
Bank (Part 1)	2
Bank (Part 2)	91
Bank administration	136
Bank administration order	141
Bank insolvency	90
Bank insolvency order	94
[ <sup>F523</sup> Banking group company]	[ <sup>F523</sup> 81D]
Bridge bank	12
Bridge bank reverse share transfer instrument	31
Bridge bank share transfer instrument	30
[ <sup>F521</sup> the capital requirements regulation (in Part 1)]	[ <sup>F521</sup> 3]
F524	F524
...	...
[ <sup>F525</sup> Client assets (Part 1)]	[ <sup>F525</sup> 3]
[ <sup>F521</sup> Common Equity Tier 1 instruments (in Part 1)]	[ <sup>F521</sup> 3]

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Compensation scheme order	49
The court (Part 2)	92
The court (Part 3)	166
[ <sup>F521</sup> critical functions (in Part 1)]	[ <sup>F521</sup> 3]
Eligible depositors	93
[ <sup>F521</sup> eligible liabilities]	[ <sup>F521</sup> 3]
Enactment	258
[ <sup>F521</sup> extraordinary public financial support (in Part 1)]	[ <sup>F521</sup> 3]
[ <sup>F526</sup> FCA]	[ <sup>F526</sup> 3, 93, 166 & 183]
<sup>F527</sup>	<sup>F527</sup>
...	...
FSCS	93
Fair	93
Financial assistance	257
Financial institution	230
Full payment resolution	100
Independent valuer	54
Inter-bank payment system	182
[ <sup>F528</sup> Investment firm]	[ <sup>F528</sup> 258A]
Liquidation committee	100
[ <sup>F521</sup> mandatory reduction instrument]	[ <sup>F521</sup> 6B]
Objective 1 Achievement Notice	139
Onward bridge bank	12
Onward property transfer instrument	43
Onward share transfer order	28
[ <sup>F521</sup> own funds (in Part 1)]	[ <sup>F521</sup> 3]
[ <sup>F521</sup> own funds requirements (in Part 1)]	[ <sup>F521</sup> 3]
Partial property transfer	47
[ <sup>F529</sup> PRA-authorized person]	[ <sup>F529</sup> 89G]
[ <sup>F530</sup> PRA]	[ <sup>F530</sup> 3, 93, 166 & 183]
[ <sup>F531</sup> Private sector reverse property transfer instrument]	[ <sup>F531</sup> 42A]
[ <sup>F531</sup> Private sector reverse share transfer instrument]	[ <sup>F531</sup> 26A]
Property transfer instrument	33

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Property transfer order	45
[ <sup>F532</sup> recognised central counterparty]	[ <sup>F532</sup> 89G]
[ <sup>F521</sup> the recovery and resolution directive (in Part 1)]	[ <sup>F521</sup> 3]
[ <sup>F521</sup> relevant capital instruments (in Part 1)]	[ <sup>F521</sup> 3]
[ <sup>F521</sup> resolution company]	[ <sup>F521</sup> 29A]
Resolution fund order	49
[ <sup>F522</sup> Resolution instrument]	[ <sup>F522</sup> 12A]
Reverse property transfer instrument	44
Reverse property transfer order	46
Reverse share transfer order	29
Securities	14
Share transfer instrument	15
Share transfer order	16
[ <sup>F522</sup> Special bail-in provision]	[ <sup>F522</sup> 48B]
Special resolution regime	1
Special resolution objectives	4
Stabilisation options	1
Stabilisation powers	1
Supplemental property transfer instrument	42
Supplemental share transfer instrument or order	26 & 27
[ <sup>F521</sup> third-country instrument]	[ <sup>F521</sup> 89I]
Third party compensation order	49 & 59
[ <sup>F521</sup> Tier 2 instruments (in Part 1)]	[ <sup>F521</sup> 3]
Unable to pay debts	93 & 166
F533	F533
...	...

### Textual Amendments

- F521** Words in s. 261 inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **111**
- F522** Words in s. 261 inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 32**; S.I. 2014/3160, art. 2(1)(b)
- F523** Words in s. 261 inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 100(7), 122(3)** (with Sch. 20); S.I. 2014/1447, art. 2(c); S.I. 2014/1847, art. 2

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- F524** Words in s. 261 omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **25(6)(a)** (with regs. 52-58)
- F525** Words in s. 261 inserted (1.1.2015) by Financial Services Act 2012 (c. 21), **ss. 96(6)**, 122(3) (with Sch. 20); S.I. 2014/3323, art. 2
- F526** Words in s. 261 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 62(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F527** Words in s. 261 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 62(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F528** Words in s. 261 inserted (5.6.2014 for specified purposes, 1.8.2014 in so far as not already in force) by Financial Services Act 2012 (c. 21), **ss. 101(9)**, 122(3) (with Sch. 20); S.I. 2014/1447, art. 2(f); S.I. 2014/1847, art. 2
- F529** Words in s. 261 inserted (1.8.2014) by Financial Services Act 2012 (c. 21), **ss. 102(8)(b)**, 122(3) (with Sch. 20); S.I. 2014/1847, art. 2
- F530** Words in s. 261 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 17 para. 62(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F531** Words in s. 261 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 97(11)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F532** Words in s. 261 inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **25(6)(b)** (with regs. 52-58)
- F533** Words in s. 261 omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **25(6)(c)** (with regs. 52-58)

#### Commencement Information

**I321** S. 261 in force at 21.2.2009 by S.I. 2009/296, art. 3, **Sch. para. 16**

## 262 Repeal

- (1) The Treasury may by order repeal the Banking (Special Provisions) Act 2008.
- (2) An order—
  - (a) may include savings, and
  - (b) shall be made by statutory instrument.
- (3) Subsection (2)(a) is without prejudice to the generality of, or the application to this section of, section 259.

#### Commencement Information

**I322** S. 262 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 17

**I323** S. 262 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, **Sch. para. 17**

## 263 Commencement

- (1) The preceding provisions of this Act shall come into force in accordance with provision made by the Treasury by order.
- (2) Subsection (1) does not apply to section 254, which comes into force at the end of the period of 2 months beginning with the date of Royal Assent.



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- (3) An order under subsection (1)—
  - (a) may make provision generally or only in relation to specific provisions or purposes,
  - (b) may make different provision for different provisions or purposes,
  - (c) may include incidental or transitional provision (including savings), and
  - (d) shall be made by statutory instrument.
- (4) Where the Treasury or another authority are required to consult or take other action before exercising a power or fulfilling a duty to make legislation or to do any other thing under, by virtue of or in connection with this Act, the Treasury or other authority may rely on consultation or other action carried out before the commencement of the relevant provision of this Act.

## 264 Extent

- (1) This Act extends to—
  - (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
- (2) But—
  - (a) sections 253 and 254 extend to Scotland only, and
  - (b) an amendment of an enactment has the same extent as the enactment (or the relevant part).

## 265 Short title

This Act may be cited as the Banking Act 2009.

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