These notes refer to the Banking Act 2009 (c.1)
which received Royal Assent on 12 February 2009

BANKING ACT 2009

EXPLANATORY NOTES

SUMMARY AND OVERVIEW OF THE STRUCTURE

6. In October 2007 the Authorities published a discussion paper *Banking reform – protecting depositors,* which explored ways to strengthen the existing framework for financial stability and depositor protection. In three subsequent consultation documents, in January and July 2008, the Government developed its proposals for reform and announced its intention to bring forward legislation on the following:

Part 1: Special resolution regime (SRR)

7. Before 2008, the United Kingdom did not have a permanent statutory regime for dealing with failing banks. The Banking (Special Provisions) Act 2008, passed in February of that year, provided the Treasury with powers to facilitate an orderly resolution to maintain financial stability or protect the public interest. However the substantive powers provided by the Act were temporary and lapsed on 20 February 2009, a year after the Act was passed.

8. The Banking Act establishes a permanent special resolution regime (SRR), providing the Authorities with tools to deal with banks that get into financial difficulties. Part 1 describes the special resolution objectives and how the SRR is triggered. It sets out the three stabilisation options of the SRR (transfer to a private sector purchaser, transfer to a bridge bank and transfer to temporary public sector ownership). The stabilisation options are exercised through the stabilisation powers, which are the powers to effect the transfer of shares and other securities or property, rights and liabilities, by operation of law. Part 1 also covers the arrangements for assessing such compensation as may be payable to transferors for the shares or other property transferred and for other (third) parties affected by a transfer. Part 1 also includes a power to take bank holding companies into temporary public ownership if certain conditions are met. The application of the SRR to building societies is also set out along with a power to apply the SRR to credit unions.

Part 2: Bank insolvency

9. This Part establishes a new bank insolvency procedure, based on existing liquidation provisions, to provide for the orderly winding up of a failed bank and to facilitate rapid FSCS payments to eligible claimants or a transfer of such accounts to another financial institution. There are also powers to extend the procedure to building societies and credit unions.

Part 3: Bank administration

10. This Part establishes a new bank administration procedure for use where there has been a partial transfer of business from a failing bank. A bank administrator may be appointed by the court to administer the affairs of an insolvent residual bank created where part of a bank has been transferred to a private sector purchaser or to a bridge bank under the SRR. There are also powers to extend the procedure to building societies or credit unions.

Part 4: Financial Services Compensation Scheme

11. The FSCS operates under powers conferred by Part 15 of the Financial Services and Markets Act 2000. Under these provisions, the Financial Services Authority has the power to set the rules for the scheme, including rules which determine the eligibility for compensation under the scheme and the amounts of compensation payable. These powers are extensive and the majority of changes to the scheme that are being considered may be implemented by the Financial Services Authority under these existing powers. Part 4 of the Act therefore largely amends the Financial Services and Markets Act 2000 to enable changes to the scheme to be made, which fall outside the scope of the existing powers.

12. However, it also makes possible three more substantial changes, including powers for the Treasury to make detailed provision by regulations in relation to:

- the introduction of pre-funding;
- the use of the Financial Services Compensation Scheme to contribute to the costs of the use of the special resolution regime (see Part 1); and
- the use of the National Loans Fund to make loans to the Financial Services Compensation Scheme.

Part 5: Inter-bank payment systems

13. Payment systems are networks involving sets of rules, procedures and arrangements for the electronic transfer of money or credit between participating members of the systems. In some cases, payment systems are embedded in clearing and settlement systems for transferring securities and these involve payments in relation to the securities.

14. Payment systems are important for the functioning of financial markets and the economy. The inter-linkages between payment systems, banks and other financial intermediaries mean that problems with payment systems have the potential to spread through the financial system, ultimately affecting businesses and consumers.

15. The Bank of England performs a non-statutory role of the oversight of inter-bank payment systems, in particular promoting the robustness and resilience of key UK payment systems. However, this Part confers formal powers of oversight of "recognised" inter-bank payment systems. The FSA has, and will continue to have following the commencement of this Part, statutory responsibility for the regulation of recognised clearing houses and investment exchanges, which may contain embedded payment systems.

16. This Part formalises the Bank of England's role in the oversight of payment systems, whilst providing that the Bank of England may continue to oversee inter-bank payment systems on an informal basis where it considers it appropriate.

Part 6: Banknotes: Scotland and Northern Ireland

17. Pursuant to the Bank Notes (Scotland) Act 1845, the Bankers (Ireland) Act 1845 and the Bankers (Northern Ireland) Act 1928, as amended (together, "the 1845 legislation"), a limited number of commercial banks retain the right to issue their own banknotes in Scotland and Northern Ireland[1].

18. The government stands behind notes issued by the Bank of England, as the UK's central bank, but does not guarantee notes issued by commercial banks. Such notes are liabilities of the issuing banks themselves.

19. This part:

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1 The relevant banks in Scotland are: Bank of Scotland, Clydesdale Bank and Royal Bank of Scotland. The relevant banks in Northern Ireland are: Bank of Ireland, First Trust Bank, Northern Bank and Ulster Bank.

- Repeals the 1845 legislation insofar as it relates to the issue of banknotes in Scotland and Northern Ireland, and makes consequential legislative amendments and repeals.
- Prohibits the issue of banknotes in Scotland and Northern Ireland other than by the Bank of England and those commercial banks that, immediately before the coming into force of this Part, were authorised under the 1845 legislation to issue banknotes.
- Provides that, if an issuing bank chooses to discontinue the business of issuing its own banknotes, its note-issuing privilege cannot thereafter be revived.
- Empowers the Treasury to make banknote regulations. In particular, these regulations may include provision protecting noteholders in the event a commercial issuing bank encounters financial difficulties. The regulations:
    - must require commercial issuing banks to maintain backing assets;
    - may define the purpose and status of the backing assets in connection with the insolvency of a commercial issuing bank; and
    - may require or permit the Bank of England to make banknote rules.
- Make further provision for specific matters in relation to the issue of banknotes by the authorized commercial banks.

Part 7: Miscellaneous

20. Sections 228 to 231 make provision in relation to the giving of financial assistance to banks and other financial institutions.

21. Sections 232 to 236 allow the Government to introduce if needed, via secondary legislation, a new insolvency regime for investment banks. Any such regulations will be subject to a review within a period of two years after coming into force and will be designed to secure the expeditious return of client assets following the failure of an investment banking institution.

22. Section 237 clarifies the interpretation of delegated powers in the Banking (Special Provisions) Act 2008 in regard to powers that the Treasury may confer on an independent valuer.

23. This part also includes provisions relating to the governance of the Bank of England, including a new statutory financial stability objective and the establishment of a Financial Stability Committee (FSC) as a subcommittee of a smaller court of directors of the Bank. As part of the measures to permit short-term nondisclosure of the provision of emergency liquidity, the requirement for the Bank to publish a weekly return is removed. This part also covers greater information sharing between the Authorities and repeals the “funds attached” rule concerning Scottish cheques. Measures to widen the disapplication of the prohibition of building societies granting floating charges to central banks and arrangements regarding financial collateral are also covered in this section.