

BANKING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Bank Insolvency

Miscellaneous Provisions

Section 123: Role of FSCS

299. This section makes provision for the funding of compensation payments to eligible depositors or a transfer of accounts, requires the bank liquidator to provide information to the FSCS and allows the FSCS to participate in court proceedings relating to a bank insolvency order.
300. *Subsection (1)* specifies that compensation payments may be made or arranged by the FSCS, rather than being funded from the assets of the failed bank. Alternatively, where a transfer of accounts to another financial institution is possible so that depositors have continued access to their funds and banking services generally, the FSCS can make monies available to fund that transfer.
301. *Subsection (2)* allows the FSCS to make provision about expenditure in respect of compensation payments or a transfer of accounts and also explains how Part 2 relates to the provisions of Part XV of the Financial Services and Markets Act 2000.
302. *Subsection (4)* mirrors section 215(4) of the Financial Services and Markets Act 2000 and gives the FSCS the same rights as those enjoyed by the FSA under section 371 of that Act to be heard at any court hearing concerning any matters arising during the course of the bank insolvency procedure.
303. *Subsection (5)* provides for a bank liquidator to be obliged to supply information to the FSCS in support of achieving objective 1 of the bank insolvency procedure.
304. *Subsection (6)* makes it clear that the FSCS can delegate functions to the bank liquidator under its power in section 221A of the Financial Services and Markets Act 2000.
305. *Subsection (7)* provides that for the purposes of section 213(9) of the Financial Services and Markets Act 2000, an eligible depositor can still collect their payment of compensation from the FSCS even if the bank in question has had its authorisation as a deposit taker withdrawn by the FSCS.

Section 124: Transfer of accounts

306. Where the bank liquidator, acting on advice from the liquidation committee, comes to a contractual arrangement for a bulk transfer of the accounts of eligible depositors to another financial institution (that is, objective 1(a) is achieved), this section allows such arrangements to override other contractual provisions or legislation. This will allow transfer arrangements (where feasible) to be put into place quickly for the benefit of all eligible depositors. For example, there will be no need for the bank liquidator to seek consent from all relevant customers agreeing to such a transfer. As

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

a safeguard for depositors, in coming to an agreement for the bulk transfer of accounts the bank liquidator should seek to ensure (by agreement with the institution accepting the accounts) that depositors will be able to access their accounts within a reasonable timescale following the transfer. This will provide continuity of banking services and allow customers to switch their funds to another institution should they wish to do so.

Section 125: Rules

307. This section amends section 411 of the Insolvency Act 1986 to allow secondary legislation (Rules) to be made to give effect to the bank insolvency procedure. The first set of Rules will be consulted on with an appropriate panel of experts rather than the Insolvency Rules Committee.

Sections 126-129: Miscellaneous

308. These sections deal with miscellaneous matters such as the fixing of insolvency fees, the admissibility of statements of affairs as evidence, and co-operation between courts in different jurisdictions.
309. They are all based on existing insolvency provisions and modifications are made where necessary.
310. [Section 127](#) provides that as in any other compulsory liquidation in England and Wales, proceeds from the realisation of assets in the bank insolvency procedure must be paid into the Insolvency Services Account. For consistency of approach, this will also be a requirement for the bank liquidator of a Scottish bank.

Section 130: Building societies

311. The Treasury is given a power to apply the bank insolvency procedure to building societies (with any necessary modifications) and that will be achieved by secondary legislation, subject to the affirmative procedure, or in the first instance the 28 day procedure, as provided by section 259.

Section 131: Credit unions

312. As with building societies, the Treasury will have the power to apply the bank insolvency procedure (with any necessary modifications) to credit unions by secondary legislation, subject to the affirmative procedure.

Section 132: Partnerships

313. This allows the Lord Chancellor, with the agreement of the Secretary of State and Lord Chief Justice, to modify the provisions of the bank insolvency procedure for banks that are partnerships rather than limited companies. This reflects existing powers under section 420 of the Insolvency Act 1986.

Section 133: Scottish partnerships

314. The Secretary of State may modify the bank insolvency procedure in its application to Scottish Partnerships.

Section 134 Northern Ireland

315. This section makes specific provisions in the application of the bank insolvency procedure to banks registered in Northern Ireland.

Section 135: Consequential provisions

316. The Treasury may, by secondary legislation, make any consequential provisions required to legislation required as a result of the creation of the bank insolvency

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

procedure. Any order is subject to the affirmative procedure, or in the first instance the 28 day procedure, as provided by section 259.