

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

BANKING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Bank Administration Procedure

Process

Section 141: Bank Administration Order

331. To ensure compatibility with human rights legislation, a bank administration may commence only by an order of the court and the making of such an order will be subject to the satisfaction of notice requirements to be specified in secondary legislation.
332. *Subsections (2) and (3)* ensure that only a qualified insolvency practitioner, who is willing to accept the position, may be appointed as a bank administrator.

Section 142: Application

333. Entry into bank administration is by virtue of an application to court. *Subsection (3)* provides that notice of the application must be given in accordance with the rules made under section 411 of the Insolvency Act 1986.

Section 143: Grounds for applying

334. Only the Bank of England, as the authority responsible for administering the SRR, will be able to apply to the court for a bank administration order.
335. An application may be made only where a partial transfer has been effected by virtue of *subsection (3)*, where the residual banking company is left as an insolvent entity; that is, it is unable, or is likely to become unable, to pay its debts.
336. By the application of paragraphs 44(1)(a) and 44(5) of Schedule B1 to the Insolvency Act 1986 in section 145, as in an ordinary administration, on the making of the application an interim moratorium will take effect so that creditors will not be able to enforce their security over the residual company's property and no legal proceedings may be taken against the company (except with the leave of the court).

Section 144: Grounds for making

337. The court may grant the Bank's application, adjourn it or dismiss it.

Section 145: General powers, duties and effect

338. This section is based largely on existing insolvency law and practice, with Table 1 drawing on the existing administration provisions of Schedule B1 to the Insolvency Act 1986.¹

¹ Inserted by the Enterprise Act 2002.

339. A bank administrator will have powers and duties similar to those of an ordinary administrator, but modifications have been made where necessary to ensure that the unique statutory objectives of the bank administration procedure can be achieved. Many of these modifications also reflect the supervisory role that the Bank of England will have in the initial stages of the procedure in place of a creditors' committee up until the point that the primary objective has been achieved.
340. The provisions of Schedule B1 to the Insolvency Act 1986 relating to a meeting of creditors and the functions of a creditors' committee will not apply until an Objective 1 Achievement Notice has been served. Once an Objective 1 Achievement Notice has been issued by the Bank of England, the procedure will continue in much the same way as an ordinary administration; a meeting of creditors should be called to consider the administrator's proposals for the progression of the administration and at this stage the creditors will be able, among other resolutions, to form a creditors' committee. The need for the bank administrator to obtain the consent of the Bank of England to take certain actions will therefore also lapse at this point.
341. Other relevant provisions of the Insolvency Act 1986 are also applied by Table 2 and these largely mirror provisions also applied to the bank insolvency procedure by section 103. It should be noted that section 145(4)(f) provides that where Insolvency Act provisions have been applied with modifications to both Part 2 and Part 3 of the Banking Act, the modifications in section 103 in Part 2 should be read across to the applied provisions in Part 3, with references to bank administration rather than to bank insolvency.
342. Some of the powers that only a liquidator currently has have been applied to the bank administration procedure to create a flexible, stand-alone, procedure to maximise returns to creditors. The Bank Administrator is therefore given powers to disclaim onerous property (see the entry in table 2 for section 178, (and related sections 179 to 182)), subject to requiring consent from the Bank of England to do so until objective 1 has been achieved, and to bring action before the court in respect of fraudulent or wrongful trading (see table 2 entries for sections 213 and 214 of the Insolvency Act 1986).
343. Through the application, with modifications, of section 135 of the Insolvency Act 1986, the court will be able to appoint a provisional bank administrator in the period between the submission of an application for a bank administration order and the court hearing for the making of that order. The powers of a provisional bank administrator will be determined by the court but will be limited to functions required to achieve objective 1 as set out in section 138.
344. Once an Objective 1 Achievement Notice has been issued by the Bank of England, the bank administrator will be able to pay dividends, where possible, to unsecured creditors without requiring permission from the court to do so.

Section 146: Status of bank administrator

345. A bank administration can only be commenced by an order of the court and this section specifies that as in an ordinary administration (see paragraph 4 of Schedule B1 to the Insolvency Act 1986) the bank administrator is an officer of the court.

Section 147: Administrator's proposals

346. *Subsections (1) to (4)* provide that, prior to the achievement of objective 1, a bank administrator must agree with the Bank of England a statement of proposals for achieving the objectives of the bank administration and (under *subsection (5)*) any matters of disagreement on the content of that statement may be referred to the court. As in an ordinary administration, under *subsection (7)*, those proposals may subsequently be revised.

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

347. *Subsection (8)* provides that, except for the differences specified in this section, the proposals should generally be dealt with in the same way as in an ordinary administration and copies of the document must therefore also be circulated to creditors and members of the company and a copy filed at Companies House. *Subsection (6)* stipulates that the FSA should also be sent a copy of the proposals.
348. Once objective 1 has been achieved, as for a normal administration, the bank administrator will then produce a statement of proposals for the achievement of objective 2 of the bank administration which should be circulated to creditors for their consideration at a meeting of creditors and filed at Companies House in the usual way.

Section 148: Sharing information

349. Where a partial transfer is effected to a bridge bank, this section provides for the sharing of information between the bank administrator, the Bank of England and also the bridge bank.
350. *Subsection (2)* requires the Bank of England to provide the bank administrator with details of the financial situation of both the residual bank and the bridge bank. This provision ensures that the Bank of England's acquired knowledge in effecting a partial transfer is supplied to the bank administrator so that he or she can produce an appropriate statement of proposals to the Bank of England.
351. Given the linkages between a bridge bank and the residual company, and because the resolution of the bridge bank will impact on the timing and amount of any distribution to creditors of the failed bank, *subsection (3)* obliges the bridge bank to supply information to the bank administrator.
352. *Subsection (4)* similarly obliges a bank administrator to provide information to the Bank of England and the bridge bank on the financial position of the residual company.
353. *Subsections (5) and (6)* require the Treasury to specify by secondary legislation what sort of information and class of record will be relevant in a particular case. The regulations are subject to the negative procedure.