

*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 6: Banknotes: Scotland And Northern Ireland

Introduction

Section 207: Overview

459. This Part repeals certain existing provisions about permission to issue banknotes in Scotland and Northern Ireland, and replaces them (but only for banks which already have permission to issue banknotes).

Key terms

Section 208: “Banknote”

460. This section defines what is meant in Part 6 by the term “banknote”.

Section 209: “Issue”

461. This section defines, for the purposes of this Part, when a banknote is “issued”. The definition ensures that a banknote is regarded as issued once it enters circulation, even if it enters circulation in error or as the result of theft.

Section 210: “Authorised bank”

462. This section defines what is meant in Part 6 by the term “authorised bank”. An “authorised bank” is a bank that, immediately before the coming into force of this Part, was authorised to issue banknotes in Scotland or Northern Ireland. References to “authorised bank” in this part of the explanatory notes have the same meaning.

Section 211 “Commencement”

463. This section defines what is meant in Part 6 by the term “commencement”. “Commencement” means the date set in an order made by the Treasury under section 263 for the coming into force of section 212.

Authorisation to issue

Section 212: Repeal of old authorising enactments

464. Authorised banks were given permission to issue banknotes by certain provisions of the Bank Notes (Scotland) Act 1845 and the Bankers (Ireland) Act 1845, as subsequently amended. This section repeals those provisions.

Section 213: Saving for existing issuers

465. This section ensures that authorised banks may still continue to issue banknotes, provided that they meet the requirements set out in this Part. No other banks may start issuing banknotes in Scotland or Northern Ireland. Authorised banks may issue banknotes only in the part of the United Kingdom in which they were authorised to do so before commencement of this Act as enacted.

Section 214: Consequential repeals and amendments

466. This section sets out the further legislative repeals and amendments that are required as a result of the provisions of section 212.

Regulations and rules

Section 215: Banknote regulations

467. *Subsections (1) and (2)* require the Treasury to set out in secondary legislation provisions concerning the treatment, holding and issuing of banknotes by authorised banks. This secondary legislation is referred to as the “banknote regulations” in Part 6 and also in these explanatory notes. The banknote regulations are subject to the affirmative resolution procedure.
468. By virtue of section 259, the banknote regulations may make provision generally or only for specified cases or circumstances. Where they do make provision for specified cases or circumstances, they may make different provision for different cases or circumstances.

Section 216: Banknote rules

469. *Subsections (1) and (2)* provide that the banknote regulations may require or permit the Bank of England to make rules about any aspect of the treatment, holding or issuing of banknotes by authorised banks.
470. The banknote rules may make provision generally or only for specified cases or circumstances. Where they do make provision for specified cases or circumstances, they may make different provision for different cases or circumstances.

Specific issues

Section 217: Backing assets

471. *Subsection (1)* provides that the banknote regulations must require authorised banks to have backing assets.
472. *Subsection (2)* defines “backing assets”. The term means those assets of a kind specified in the banknote regulations. This may include Bank of England banknotes, UK coins, or funds held in a specified bank account at the Bank of England or another institution or class of institution.
473. *Subsection (3)(a)* requires the banknote rules to include provision for determining the value of backing assets to be held.
474. *Subsections (3)(b) and (3)(c)* provide that the banknote regulations must require certain backing assets to be held at certain prescribed locations. Bank of England notes may be held only by the Bank of England or at locations approved by the Bank of England. UK coin may be held only at locations approved by the Bank of England. Approval will be subject to compliance with conditions determined by the Bank of England pursuant to section 226.

475. *Subsection (4)* provides a broad power for the Treasury to make further provisions in the banknote regulations about backing assets, in particular for the purposes set out in paragraphs (a) to (d).
476. *Subsection (5)* provides that the banknote regulations may make provision about the treatment of backing assets in relation to insolvency (as defined in *subsection (6)*). In particular, the banknote regulations may modify insolvency law to ensure that the backing assets are “ring-fenced” and are available only to noteholders for a certain specified period. The regulations may allow the Treasury to extend this period if required. The regulations may also make provision for a note exchange programme, in which noteholders would exchange their notes for Bank of England notes and coins, or for funds paid directly into their bank account.

Section 218: Information

477. *Subsection (1)* permits the banknote regulations or rules to make provision about certain information to be provided by the authorised banks to the Bank of England. This power may be exercised to require authorised banks to submit reports to the Bank of England about the treatment, holding or issue of banknotes, or in respect of compliance with the banknote regulations or rules. It may also be used to require information to be given by the authorised bank or its agent more generally.
478. *Subsection (2)* permits the banknote regulations to make provision enabling the publication or disclosure of information provided to the Bank of England. Such information may include the value of authorised banks’ notes in circulation, notes with the potential to enter circulation and backing assets held, and any action taken by the Bank of England in connection with non-compliance with the regulations or rules.
479. *Subsection (3)* requires Her Majesty’s Revenue and Customs (HMRC) to transfer to the Bank of England all information held by HMRC in connection with HMRC’s functions under the 1845 legislation (as defined in paragraph 1717 above). *Subsection (4)* limits the use of that information by the Bank of England to purposes in connection with the performance of its regulatory responsibility for commercial bank issuance of banknotes.

Section 219: Ceasing the business of issuing notes

480. *Subsection (1)* provides that, if an authorised bank discontinues the issue of banknotes, its note-issuing privilege cannot thereafter be revived.
481. *Subsection (2)(a)* provides for the banknote regulations or rules to prescribe the procedures to be followed in connection with an authorised bank’s voluntary discontinuation of note issuance. *Subsection (2)(b)* provides that the banknote regulations or rules may apply to an authorised bank for two years after it stops issuing bank notes. This ensures, in particular, that authorised banks maintain sufficient backing assets until their notes leave circulation.

Section 220: Insolvency, &c

482. *Subsection (1)* provides that the regulations may make provision in connection with the application of the special resolution regime to an authorised bank, or a provision about insolvency (as defined in section 217(6)).
483. *Subsection (2)* provides that the banknote regulations may make provision for the destruction of un-issued and exchanged banknotes, and for the extinction of any claim to or interest in such banknotes.
484. *Subsection (3)* provides that the issuing rights of an authorised bank (as provided for in section 213) cannot be transferred or acquired, particularly in connection with anything done under Part 1 of this Act. This is consistent with the prohibition in this Part preventing any new commercial banks from issuing banknotes.

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485. *Subsection (4)* is included to provide clarity concerning a bank taken into temporary public ownership. It ensures that, where an authorised bank is taken into temporary public ownership, that does not of itself deprive the bank from issuing notes. (However, if the bank is insolvent, then *subsection (5)* will deprive it of the right to issue notes).
486. *Subsection (5)* provides that an authorised bank that enters insolvency (within the meaning of section 217(6)) will lose the right to issue notes.
487. *Subsection (6)* provides that transitional provision in the banknote regulations may include provision for a case where a bank loses the right to issue notes.
488. *Subsection (7)* provides that a reference in this section to the “special resolution regime” includes a reference to any law of another country that the Treasury identifies in banknote regulations as serving a similar purpose.

Enforcement

Section 221: Offence: unlawful issue

489. *Subsection (1)* makes it a criminal offence to issue banknotes in Scotland or Northern Ireland otherwise than in reliance on section 213.
490. *Subsection (2)* sets out the penalties applicable to a person convicted of the unlawful issue of banknotes in Scotland or Northern Ireland.
491. *Subsections (3) to (5)* provide that the officers of an authorised bank may also be guilty of a criminal offence if the bank issues banknotes otherwise than in reliance on section 213. “Officer” is defined in *subsections (4) and (5)*, and the circumstances in which they may commit a criminal offence are set out in *subsection (3)*.
492. *Subsection (6)* specifies the authorities in England and Wales, and Northern Ireland, who may prosecute an offence under this section. No provision is necessary for Scotland because, in Scotland, responsibility for the prosecution of crime resides solely with the Lord Advocate (Ministerial Head of the Crown Office and Procurator Fiscal Service).

Section 222: Financial penalty

493. *Subsection (1)* provides that the banknote regulations may enable the Bank of England to impose a financial penalty on an authorised bank where the bank has breached the banknote regulations or rules.
494. *Subsection (2)* provides that financial penalties imposed by the Bank of England shall be paid to the Bank of England and are enforceable as a debt.
495. *Subsection (3)* provides that the banknote regulations must establish a method for determining the maximum amount of a penalty imposed under this section.

Section 223: Termination of right to issue

496. *Subsections (1) to (4)* confer a power on the Treasury, following consultation with the Bank of England, to terminate an authorised bank’s note-issuing rights if:
- the bank has failed to comply with the banknote regulations or rules; and
 - having regard to the nature of that failure, the bank should no longer be permitted to issue banknotes.
497. *Subsection (5)* provides that an authorised bank loses the right to issue notes if it ceases to have permission under Part 4 of the Financial Services and Markets Act 2000 to carry out the regulated activity of accepting deposits.

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498. *Subsection (6)* provides that the reference in subsection (5) to Part IV of the Financial Services and Markets Act 2000 includes a reference to a law of a foreign country that the Treasury may identify in banknote regulations as serving a similar purpose.
499. *Subsection (7)* provides that transitional provision in the banknote regulations may include provision for a case where a bank loses the right to issue notes.

Section 224: Application to court

500. This section provides that the banknote regulations may permit the Bank of England to apply to the High Court or, in Scotland the Court of Session, for relief in respect of a failure to comply with the banknote regulations or rules, or for any order designed to ensure, or facilitate monitoring of, compliance with a provision of the banknote regulations or rules.

Bank of England

Section 225: Organisation

501. This section provides that costs incurred, and sums received (for example, from financial penalties), by the Bank of England in the course of carrying out its functions under this Part constitute expenses and receipts of the Bank's Issue Department.

Section 226: Discretionary functions

502. This section provides that banknote regulations may confer a discretionary power on the Bank of England. In particular, the regulations may require compliance with conditions imposed by the Bank of England, or make a permission or option subject to the approval of the Bank of England. By way of example, matters in which such a discretion may be exercised could include the approval of locations for the holding of un-issued banknotes or backing assets by the authorised banks.

Section 227: Exemption

503. This section provides that section 221(1), which prohibits the unauthorised issue of banknotes in Scotland and Northern Ireland, does not affect the Bank of England's entitlement to put its own notes into circulation in Scotland and Northern Ireland.