



Banking Act 2009

2009 CHAPTER 1

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

Introduction

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 three stabilisation options,
 - (b) the bank insolvency procedure (provided by Part 2), and
 - (c) the bank administration procedure (provided by Part 3).
- (3) The three “stabilisation options” are—
 - (a) transfer to a private sector purchaser (section 11),
 - (b) transfer to a bridge bank (section 12), and
 - (c) transfer to temporary public ownership (section 13).
- (4) Each of the three stabilisation options is achieved through the exercise of one or more of the “stabilisation powers”, which are—
 - (a) the share transfer powers (sections 15, 16, 26 to 31 and 85), and
 - (b) the property transfer powers (sections 33 and 42 to 46).

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Each of the following has a role in the operation of the special resolution regime—
- (a) the Bank of England,
 - (b) the Treasury, and
 - (c) the Financial Services Authority.
- (6) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
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Textual Amendments

F1 Word in s. 1(6) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\), s. 26\(1\)\(l\), Sch. 2 para. 40](#)

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 Part 4 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.

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- (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.

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

In this Part—

“the FSA” means the Financial Services Authority, and

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

Commencement Information

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

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,
 - (b) the FSA, and
 - (c) the Bank of England.
- (4) Objective 1 is to protect and enhance the stability of the financial systems of the United Kingdom.
- (5) Objective 2 is to protect and enhance public confidence in the stability of the banking systems of the United Kingdom.

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- (6) Objective 3 is to protect depositors.
- (7) Objective 4 is to protect public funds.
- (8) Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).
- (9) In subsection (4), the reference to the stability of the financial systems of the United Kingdom includes, in particular, a reference to the continuity of banking services.
- (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.

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

- (1) The Treasury shall issue a code of practice about the use of—
 - (a) the stabilisation powers,
 - (b) the bank insolvency procedure, and
 - (c) 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 the test for the use of stabilisation powers in section 8 is satisfied,
 - (g) sections 63 and 66, and
 - (h) compensation.
- (3) Sections 12 and 13 require the inclusion in the code of certain matters about bridge banks 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,
 - (b) the FSA, and
 - (c) the Bank of England.

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

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6 Code of practice: procedure

- (1) Before issuing the code of practice the Treasury must consult—
 - (a) the FSA,
 - (b) the Bank of England, and
 - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).
- (2) As soon as is reasonably practicable after issuing the code of practice the Treasury shall lay a copy before Parliament.
- (3) The Treasury may revise and re-issue the code of practice.
- (4) Subsections (1) and (2) apply to re-issue as to the first issue.

Commencement Information

- 18** S. 6 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- 19** 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](#)

Exercise of powers: general

7 General conditions

- (1) A stabilisation power may be exercised in respect of a bank only if the FSA is satisfied that the following conditions are met.
- (2) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the threshold conditions (within the meaning of section 41(1) of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)).
- (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 enable the bank to satisfy the threshold conditions.
- (4) The FSA shall treat Conditions 1 and 2 as met if satisfied that they 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).
- (5) Before determining whether or not Condition 2 is met the FSA must consult—
 - (a) the Bank of England, and
 - (b) 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.

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Commencement Information

I10 S. 7 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

8 Specific conditions: private sector purchaser and bridge bank

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 11(2) or 12(2) only if satisfied that Condition A is met.
- (2) Condition A is that the exercise of the power is necessary, having regard to the public interest in—
 - (a) the stability of the financial systems of the United Kingdom,
 - (b) the maintenance of public confidence in the stability of the banking systems of the United Kingdom, or
 - (c) the protection of depositors.
- (3) Before determining whether Condition A is met, and if so how to react, the Bank of England must consult—
 - (a) the FSA, and
 - (b) the Treasury.
- (4) 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, the Bank may exercise a stabilisation power in respect of the bank in accordance with section 11(2) or 12(2) only if satisfied that Condition B is met (instead of Condition A).
- (5) Condition B is that—
 - (a) the Treasury have recommended the Bank of England to exercise the stabilisation power on the grounds that it is necessary to protect the public interest, and
 - (b) in the Bank's opinion, exercise of the stabilisation power is an appropriate way to provide that protection.
- (6) The conditions in this section are in addition to the conditions in section 7.

Commencement Information

I11 S. 8 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

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.

Status: Point in time view as at 08/04/2010.

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- (4) Before determining whether a condition is met the Treasury must consult—
 - (a) the FSA, and
 - (b) the Bank of England.
- (5) The conditions in this section are in addition to the conditions in section 7.

Commencement Information

I12 S. 9 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

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,
 - (c) a member appointed by the FSA,
 - (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.

Commencement Information

I13 S. 10 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

I14 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

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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.

Commencement Information

I15 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 is wholly owned by the Bank of England (a “bridge bank”).
- (2) For that purpose the Bank of England may make 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.
- (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 is wholly owned by the Bank of England, that other company is an “onward bridge bank”.
- (5) An onward bridge bank—
 - (a) is a bridge bank for the purposes of—
 - (i) subsection (3),
 - (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).

Commencement Information

I16 S. 12 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

Status: Point in time view as at 08/04/2010.

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I17 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](#)

13 Temporary public ownership

- (1) The third 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.

Commencement Information

I18 S. 13 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I19 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 section 1 of Chapter 2 of Title V of Directive [2006/48/EC](#) (on the taking up and pursuit of the business of credit institutions).

Commencement Information

I20 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—

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

Commencement Information

I21 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

I22 S. 16 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

I23 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.
- (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 may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).

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- (6) A share transfer instrument or order may extinguish rights to acquire securities falling within Class 1 or 2 in section 14.

Commencement Information

- I24** S. 17 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I25 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.

Commencement Information

- I26** S. 18 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I27 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.

Commencement Information

- I28** S. 19 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I29 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

- (1) A share transfer instrument may enable the Bank of England—

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- (a) to remove a director of a specified bank;
 - (b) to vary the service contract of a director of a specified bank;
 - (c) to terminate the service contract of a director of a specified bank;
 - (d) to appoint a director of a specified bank.
- (2) A share transfer order may enable the Treasury—
- (a) to remove a director of a specified bank;
 - (b) to vary the service contract of a director of a specified bank;
 - (c) to terminate the service contract of a director of a specified bank;
 - (d) to appoint a director 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.

Commencement Information

I30 S. 20 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I31 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.
- (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

I32 S. 21 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I33 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](#)

22 Termination rights, &c.

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).

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- (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) A share transfer instrument or order may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies except in so far as the instrument or order provides otherwise.
- (8) In subsections (6) and (7) a reference to the share transfer instrument or 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.
- (9) Provision under subsection (5) may apply subsection (6) or (7)—
 - (a) generally or only for specified purposes, cases or circumstances;
 - (b) differently for different purposes, cases or circumstances.

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (10) A thing is not done by virtue of an instrument or order for the purposes of subsection (8)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument or order.

Commencement Information

- I34** S. 22 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I35 S. 22 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](#)

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

- I36** S. 23 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I37 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,
 - (c) the FSA, 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, and
 - (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.
- (3) Where the Treasury receive a copy of a share transfer instrument under subsection (1) they shall lay a copy before Parliament.

Commencement Information

- I38** S. 24 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)
I39 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](#)

Status: Point in time view as at 08/04/2010.

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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,
 - (c) the FSA, 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, and
 - (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.

Commencement Information

I40 S. 25 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I41 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) (“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—
 - (a) the FSA, 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) (and not in reliance on subsection (2) above).

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I42 S. 26 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

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—
 - (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—
 - (a) the FSA, 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).

Commencement Information

I43 S. 27 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

I44 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;

Status: Point in time view as at 08/04/2010.

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- (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).
- (6) Before making an onward share transfer order the Treasury must consult—
 - (a) the FSA, and
 - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made an onward share transfer order.

Commencement Information

I45 S. 28 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I46 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 securities—
 - (a) issued by the bank, and
 - (b) held by a transferee under the onward share transfer order of any of the following kinds—
 - (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.
- (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).
- (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).

Status: Point in time view as at 08/04/2010.

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- (6) Before making a reverse share transfer order the Treasury must consult—
- (a) the FSA, and
 - (b) the Bank of England.
- (7) Section 27 applies where the Treasury have made a reverse share transfer order.

Commencement Information

I47 S. 29 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I48 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](#)

30 Bridge bank: share transfers

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 12(2) (“the original instrument”).
- (2) The Bank of England may make one or more bridge bank share transfer instruments.
- (3) A bridge bank share transfer instrument is a share transfer instrument which—
- (a) provides for securities issued by the bridge bank to be transferred;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bridge bank (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) Sections 7 and 8 do not apply to a bridge bank 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 bridge bank share transfer instrument the Bank of England must consult—
- (a) the FSA, and
 - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a bridge bank share transfer instrument.

Commencement Information

I49 [S. 30](#) in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

31 Bridge bank: reverse share transfer

- (1) This section applies where the Bank of England has made a bridge bank share transfer instrument in accordance with section 30(2) (“the original instrument”) providing for the transfer of securities to—
- (a) a company wholly owned by the Bank of England,
 - (b) a company wholly owned by the Treasury, or
 - (c) a nominee of the Treasury.

Status: Point in time view as at 08/04/2010.

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- (2) The Bank of England may make one or more bridge bank reverse share transfer instruments in respect of securities issued by the bridge bank and held by a person within subsection (1)(a) to (c).
- (3) A bridge bank 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) Sections 7, 8 and 51 do not apply to a bridge bank 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 bridge bank reverse share transfer instrument the Bank of England must consult—
 - (a) the FSA, and
 - (b) the Treasury.
- (6) Section 26 applies where the Bank of England has made a bridge bank reverse share transfer instrument.

Commencement Information

I50 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

I51 [S. 32](#) in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

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—

Status: Point in time view as at 08/04/2010.

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- (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.

Commencement Information

I52 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—
 - (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 (which provision may remove or alter the terms of the trust), 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.

Commencement Information

I53 S. 34 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

Status: Point in time view as at 08/04/2010.

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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).

Commencement Information

I54 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—

Status: Point in time view as at 08/04/2010.

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- (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

I55 S. 36 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

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

I56 S. 37 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 1](#)

38 Termination rights, &c.

- (1) In this section “default event provision” means a Type 1 or Type 2 default event provision as defined in subsections (2) and (3).
- (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,

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- (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) A property transfer instrument may provide for subsection (6) or (7) to apply (but need not apply either).
- (6) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies.
- (7) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies except in so far as the instrument provides otherwise.
- (8) In subsections (6) and (7) a reference to the property transfer instrument is a reference to—
- (a) the making of the instrument,
 - (b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, 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.
- (9) Provision under subsection (5) may apply subsection (6) or (7)—
- (a) generally or only for specified purposes, cases or circumstances;
 - (b) differently for different purposes, cases or circumstances.
- (10) A thing is not done by virtue of an instrument for the purposes of subsection (8) (b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been transferred by the instrument.

Commencement Information

I57 S. 38 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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—

Status: Point in time view as at 08/04/2010.

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- (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.
- (5) The transferee must meet any expenses of the transferor 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.

Commencement Information

I58 S. 39 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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.

Commencement Information

I59 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,
 - (c) the FSA, 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, and
 - (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.

Status: Point in time view as at 08/04/2010.

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- (3) Where the Treasury receive a copy of a property transfer instrument under subsection (1) they shall lay a copy before Parliament.

Commencement Information

I60 S. 41 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I61 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](#)

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 12(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 and 8 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—
- (a) the FSA, 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 accordance with section 11(2) or 12(2) (and not in reliance on subsection (2) above).

Commencement Information

I62 S. 42 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

43 Onward transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 12(2) (“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—

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) provides for property, rights or liabilities of the bridge bank 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 bridge bank (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 bridge bank 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 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—
- (a) the FSA, and
 - (b) the Treasury.
- (8) Section 42 applies where the Bank of England has made an onward property transfer instrument.

Commencement Information

I63 S. 43 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

44 Reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 12(2) (“the original instrument”) providing for the transfer of property, rights or liabilities to a bridge bank.
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the bridge bank.
- (3) If the Bank of England makes an onward property transfer instrument under section 43 the Bank may make one or more reverse property transfer instruments in respect of property, rights or liabilities of a transferee of any of the following kinds under the onward property transfer instrument—
- (a) a company wholly owned by the Bank of England,
 - (b) a company wholly owned by the Treasury, or
 - (c) a company wholly owned by a nominee of the Treasury.
- (4) A reverse property transfer instrument is a property transfer instrument which—
- (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
 - (b) provides for transfer to the bridge bank (where subsection (3) applies);
 - (c) 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

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transferred under paragraph (a) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).

- (5) Sections 7, 8 and 52 do not apply to a 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 reverse property transfer instrument the Bank of England must consult—
 - (a) the FSA, and
 - (b) the Treasury.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument.

Commencement Information

I64 S. 44 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

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).
- (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—
 - (a) the FSA, and
 - (b) the Bank of England.

Commencement Information

I65 S. 45 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

Status: Point in time view as at 08/04/2010.

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I66 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](#)

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”) providing for the transfer of property, rights or liabilities to a company wholly owned by—
 - (a) the Bank of England,
 - (b) the Treasury, or
 - (c) a nominee of the Treasury.
- (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.
- (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).
- (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—
 - (a) the FSA, and
 - (b) the Bank of England.
- (8) Section 42 applies where the Treasury have made a reverse property transfer order.

Commencement Information

I67 S. 46 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I68 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.
- (2) The Treasury may by order—
 - (a) restrict the making of partial property transfers;
 - (b) impose conditions on the making of partial property transfers;

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- (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).
- (3) Provision under subsection (2) may, in particular, refer to particular classes of deposit.
- (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.

Commencement Information

169 S. 47 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

170 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](#)

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;

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

Commencement Information

I71 S. 48 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I72 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](#)

[^{F2}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), 43(3)(b), 44(4)(c), 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

F2 S. 48A inserted (8.4.2010) by [Financial Services Act 2010](#) (c. 28), [ss. 21\(2\), 26\(1\)\(f\)](#)

Status: Point in time view as at 08/04/2010.

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Compensation

49 Orders

- (1) This Part provides three methods of protecting the financial interests of transferors and others in connection with share transfer instruments and orders and property transfer 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.
- (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—
 - (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.

Commencement Information

I73 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

I74 S. 50 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I75 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.

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- (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.

Commencement Information

I76 S. 51 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I77 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 bridge bank

- (1) This section applies if the Bank of England makes a property transfer instrument in accordance with section 12(2).
- (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 specified classes of creditor, 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.

Commencement Information

I78 S. 52 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I79 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](#)

53 Onward and reverse transfers

- (1) This section applies where—
- (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 bridge bank share transfer instrument under section 30,
 - (d) the Bank of England makes a bridge bank reverse share transfer instrument under section 31,
 - (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,
 - (g) the Treasury make a property transfer order under section 45, or

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- (h) the Treasury make a reverse property transfer order under section 46.
- (2) The Treasury may make—
 - (a) a compensation scheme order;
 - (b) a third party compensation order.

Commencement Information

I80 S. 53 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I81 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

- (1) A compensation scheme 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.
- (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).

Commencement Information

I82 S. 54 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I83 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;

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- (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
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [^{F3}(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

F3 S. 55(10) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **21(3)**, 26(1)(f)

Commencement Information

I84 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,
 - [^{F4}(ca) persons mentioned in section 54(4)(b),] and
 - (d) monitors.
- (2) An order—

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- (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 or third party 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.
- [^{F5}(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.]

Textual Amendments

F4 S. 56(1)(ca) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(a)**, 26(1)(f)

F5 S. 56(6) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(b)**, 26(1)(f)

Commencement Information

I85 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 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).

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- (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 Part 4 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.

Commencement Information

186 S. 57 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, **Sch. para. 1**

187 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**

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 bridge bank 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

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- (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.

Commencement Information

I88 S. 58 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I89 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

I90 S. 59 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I91 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 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,

Status: Point in time view as at 08/04/2010.

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- (b) “pre-transfer creditor” means a person who—
 - (i) 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;
 - (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 disappplied, 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.

Commencement Information

I92 S. 60 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I93 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](#)

61 Sources of compensation

- (1) This section applies to—
- (a) compensation scheme orders,
 - (b) resolution fund orders,
 - (c) third party compensation orders, and
 - (d) regulations under section 60.

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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, [^{F6}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

F6 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

I94 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, and
 - (c) third party compensation orders.
- (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.

Commencement Information

I95 S. 62 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I96 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](#)

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) or 12(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 bridge bank to whom all or part of the transferred business has been transferred.

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (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.

Commencement Information

I97 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 a group company (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 a group company (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 a group company;
 - (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—
 - (a) provision for reasonable consideration, and
 - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.
- (4) The power under subsection (2)—

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) may be exercised only in so far as the Bank of England thinks it necessary 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,
- (b) may be exercised only with the consent of the Treasury, and
- (c) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

Commencement Information

198 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) (an “original transferee”), or
 - (ii) a bank, securities issued by which were earlier transferred by 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—
 - (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—

Status: Point in time view as at 08/04/2010.

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- (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.

Commencement Information

199 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—
- (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 11(2)(a) or 13(2),
 - (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), and
 - (ii) the Treasury, where ownership was transferred in accordance with section 13(2).
- (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.
- (4) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.
- (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;
 - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.

Status: Point in time view as at 08/04/2010.

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- (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.

Commencement Information

I100 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 a former group company;
 - (b) modify the terms of a contract or other arrangement between the transferred bank and a former group company;
 - (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.
- (4) The power under subsection (2)—
 - (a) may be exercised only in so far as the continuity authority thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferred bank to operate effectively,
 - (b) may be exercised by the Bank of England only with the consent of the Treasury, and
 - (c) must be exercised by way of provision in a share transfer instrument or order (or supplemental instrument or order).

Commencement Information

I101 S. 67 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

I102 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 share transfer order under section 13(2), or

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- (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,
 - (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.

Commencement Information

I103 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.

Status: Point in time view as at 08/04/2010.

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- (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.

Commencement Information

I104 S. 69 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I105 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

I106 [S. 70](#) in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

71 Pensions

- (1) This section applies to—
 - (a) share transfer orders,
 - (b) share transfer instruments, and
 - (c) property transfer 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).

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

Commencement Information

I107 S. 71 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I108 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](#)

72 Enforcement

- (1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under—
 - (a) a share transfer order,
 - (b) a share transfer instrument, or
 - (c) a property transfer instrument.
- (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 or instrument only if applied by the order or instrument.
- (3) Regulations—
 - (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

I109 S. 72 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I110 S. 72 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](#)

73 Disputes

- (1) This section applies to—
 - (a) share transfer orders,
 - (b) share transfer instruments, and

Status: Point in time view as at 08/04/2010.

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- (c) property transfer 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.

Commencement Information

I111 S. 73 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)

I112 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](#)

74 Tax

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of 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 a stabilisation power in respect of things done—
 - (a) during the period of three months before the date on which the stabilisation power is exercised, or
 - (b) on or after that date.

Status: Point in time view as at 08/04/2010.

Changes to legislation: Banking Act 2009, Part 1 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) In relation to the exercise of a supplemental or onward instrument or order under section 26, 27, 28, 30, 42, 43 or 45, 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
 - (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.

Commencement Information

I113 S. 74 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I114 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), or
 - (d) to any combination.
- (6) Specific powers under this Part are without prejudice to the generality of this section.
- (7) An order—

Status: Point in time view as at 08/04/2010.

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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.
- (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).

Commencement Information

I115 S. 75 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I116 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 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
 - (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 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.

Commencement Information

I117 S. 76 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 1](#)

77 International obligation notice: bridge bank

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a bridge bank.

Status: Point in time view as at 08/04/2010.

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- (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 bridge bank, or
 - (b) not to take specified action under this Part in respect of the bridge bank.
- (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.

Commencement Information

I118 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 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 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.

Commencement Information

I119 S. 78 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1

I120 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

Status: Point in time view as at 08/04/2010.

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79 Public funds: bridge bank

- (1) This section applies where the Bank of England has transferred all or part of a bank's business to a bridge bank.
- (2) The Bank of England may not take action in respect of the bridge bank 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.

Commencement Information

I121 S. 79 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

80 Bridge bank: report

- (1) Where the Bank of England transfers all or part of a bank's business to a bridge bank, the Bank must report to the Chancellor of the Exchequer about the activities of the bridge 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 transfer to the bridge bank.
- (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 bridge bank.
- (6) A request under subsection (5) may include provision about—
 - (a) the content of the report;
 - (b) timing.

Commencement Information

I122 S. 80 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

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—

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- (a) a company wholly owned by the Treasury, or
- (b) a nominee of the Treasury.

Commencement Information

I123 S. 81 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 1

Holding companies

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.
- (2) Condition 1 is that the FSA are 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—
 - (a) the FSA, and
 - (b) the Bank of England.
- (6) Expressions used in this section have the same meaning as in the Companies Act 2006.

Commencement Information

I124 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),
 - (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,

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- (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),
 - (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),
 - (iv) may be made under section 29 only in respect of securities held by a person of a kind listed in section 29(3)(b), and
 - (v) is not (otherwise) subject to section 29(3),
 - (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^{F7}...), 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.

Status: Point in time view as at 08/04/2010.

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Textual Amendments

- F7** 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](#)

Commencement Information

- I125** 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](#)

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.

<i>Section</i>	<i>Topic</i>	<i>Modification or note</i>
11	Private sector purchaser	A share transfer instrument may not be made.
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

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33 and 36	Property transfer instrument: continuity	liabilities in relation to a transferee bank). 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 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— (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).
45	Temporary public ownership: property transfer	(a) Section 45 applies following an order under section 85 as following a share transfer order. (b) A property transfer order in respect of a building society may cancel shares in the building society.
49 to 62	Compensation	(a) A reference to a share transfer

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		order includes a reference to an order under section 85.
		(b) A resolution fund order may not be made under section 51(2)(b).
		(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 [^{F8} 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

F8 Words in s. 84 inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(5)**, 26(1)(f)

Commencement Information

I126 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 third 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;

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- (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—
- (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, 22, 23, 25, 71, 72 and 73.

Commencement Information

I127 S. 85 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I128 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.
- (3) “Surplus” means remaining after the satisfaction of liabilities to creditors and shareholders.

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- (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.

Commencement Information

I129 S. 86 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I130 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.

Commencement Information

I131 S. 87 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I132 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.

Commencement Information

I133 S. 88 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I134 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

I135 S. 89 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)

I136 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](#)

Status:

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