



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

#### [<sup>F1</sup>CHAPTER 3

#### SPECIAL RESOLUTION ACTION]

#### *Compensation*

#### 49 Orders

- (1) This Part provides [<sup>F1</sup>four] methods of protecting the financial interests of transferors and others in connection with share transfer instruments and orders[<sup>F1</sup>, property transfer instruments and orders and resolution 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.
- [<sup>F2</sup>(2A) A “bail-in compensation order” is an order establishing a scheme for determining, in accordance with section 52A, whether any transferors or others should be paid 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.

*Changes to legislation: Banking Act 2009, Cross Heading: Compensation is up to date with all changes known to be in force on or before 25 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) View outstanding changes*

#### Textual Amendments

- F1** Words in s. 49(1) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(1\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F2** S. 49(2A) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(1\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I1** 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

- I2** S. 50 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I3** 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.
- (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

- I4** S. 51 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 1](#)
- I5** 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](#)

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## 52 Transfer to [<sup>F3</sup>resolution company]

- [<sup>F4</sup>(1) This section applies if the Bank of England makes—
- (a) a share transfer instrument or a property transfer instrument under section 12(2), or
  - (b) a property transfer instrument under section 12ZA(3).]
- (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 [<sup>F5</sup>persons of a specified description,] 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.

### Textual Amendments

- F3** Words in s. 52 heading substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **63(2)**
- F4** S. 52(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **63(1)**
- F5** Words in s. 52(3)(b) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(2)**; S.I. 2014/3160, art. 2(1)(b)

### Commencement Information

- I6** S. 52 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I7** 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**

## [<sup>F6</sup>52A Bail-in option

- (1) Subsection (2) applies if the Bank of England makes—
- (a) a resolution instrument under section 12A(2), or
  - (b) a property transfer instrument under section 41A(2).
- (2) The Treasury must make a bail-in compensation order (see section 49(2A)).
- (3) A bail-in compensation order may include provision for—
- (a) an independent valuer (in which case sections 54 to 56 are to apply);
  - (b) valuation principles (in which case section 57(2) to (5) is to apply).]

### Textual Amendments

- F6** S. 52A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(3)**; S.I. 2014/3160, art. 2(1)(b)

## 53 Onward and reverse transfers [<sup>F7</sup>etc]

- (1) This section applies where—

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- [<sup>F8</sup>(zza) the Bank of England makes a supplemental share transfer instrument under section 26,]
  - [<sup>F9</sup>(zzb) the Bank of England makes an onward share transfer instrument under section 26ZA,]
  - [<sup>F10</sup>(za) the Bank of England makes a <sup>F11</sup>... reverse share transfer instrument under section 26A,]
  - [<sup>F12</sup>(zb) the Treasury makes a supplemental share transfer order under section 27,]
    - (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 [<sup>F13</sup>resolution company] share transfer instrument under section 30,
    - (d) the Bank of England makes a [<sup>F14</sup>resolution company] reverse share transfer instrument under section 31,
  - [<sup>F15</sup>(dza) the Bank of England makes a supplemental property transfer instrument under section 42,]
  - [<sup>F16</sup>(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,]
    - (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,
  - [<sup>F17</sup>(fa) the Bank of England makes a reverse property transfer instrument under section 44A(2),]
  - [<sup>F18</sup>(fb) the Bank of England makes a bridge bank supplemental property transfer instrument under section 44D,]
    - (fc) the Bank of England makes a bridge bank supplemental reverse property transfer instrument under section 44E,]
    - (g) the Treasury make a property transfer order under section 45, <sup>F19</sup>...
    - (h) the Treasury make a reverse property transfer order under section 46.
  - [<sup>F20</sup>(i) the Bank of England makes a supplemental resolution instrument under section 48U,]
    - (j) the Bank of England makes an onward transfer resolution instrument under section 48V(2), or
    - (k) the Bank of England makes a reverse transfer resolution instrument under section 48W(2) or (3).]
- (2) The Treasury may make—
- (a) a compensation scheme order;
  - (b) a third party compensation order.

#### Textual Amendments

- F7** Word in s. 53 heading inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 6\(4\)\(g\)](#); S.I. 2014/3160, art. 2(1)(b)
- F8** S. 53(1)(zza) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 6\(4\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F9** S. 53(1)(zzb) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [16\(a\)](#)

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- F10** S. 53(1)(za) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 97(9)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F11** Words in s. 53(1)(za) omitted (16.12.2016) by virtue of The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 16(b)
- F12** S. 53(1)(zb) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 2 para. 6(4)(b); S.I. 2014/3160, art. 2(1)(b)
- F13** Words in s. 53(1)(c) substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 64
- F14** Words in s. 53(1)(d) substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 64
- F15** S. 53(1)(dza) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 2 para. 6(4)(c); S.I. 2014/3160, art. 2(1)(b)
- F16** S. 53(1)(da) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 97(9)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F17** S. 53(1)(fa) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 2 para. 6(4)(d); S.I. 2014/3160, art. 2(1)(b)
- F18** S. 53(1)(fb)(fc) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 16(c)
- F19** Word in s. 53(1) omitted (31.12.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 2 para. 6(4)(e); S.I. 2014/3160, art. 2(1)(b)
- F20** S. 53(1)(i)-(k) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 2 para. 6(4)(f); S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I8** S. 53 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 1
- I9** 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<sup>F21</sup>: compensation scheme order or bail-in compensation order

- (1) A compensation scheme order [<sup>F22</sup>or bail-in compensation 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—
- 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
  - 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—
- on the grounds of incapacity or serious misconduct, and
  - by a person specified by the Treasury in accordance with the compensation scheme order [<sup>F23</sup>or bail-in compensation 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).

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#### Textual Amendments

- F21** Words in s. 54 heading inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **65**
- F22** Words in s. 54(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(5)(a)**; S.I. 2014/3160, art. 2(1)(b)
- F23** Words in s. 54(4)(b) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(5)(b)**; S.I. 2014/3160, art. 2(1)(b)

#### Commencement Information

- I10** S. 54 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I11** 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;
  - (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

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- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F24</sup>(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

**F24** S. 55(10) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. **21(3)**, 26(1)(f)

#### Commencement Information

**I12** 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,
  - [<sup>F25</sup>(ca) persons mentioned in section 54(4)(b),] and
  - (d) monitors.
- (2) An order—
- (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 [<sup>F26</sup>, third party compensation order or bail-in 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.

[<sup>F27</sup>(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.]



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#### Textual Amendments

- F25** S. 56(1)(ca) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(a)**, 26(1)(f)  
**F26** Words in s. 56(2)(b) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(6)**; S.I. 2014/3160, art. 2(1)(b)  
**F27** S. 56(6) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(4)(b)**, 26(1)(f)

#### Commencement Information

- I13** 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 [<sup>F28</sup>or bail-in compensation 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).
- (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 [<sup>F29</sup>Part 4A] 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.

#### Textual Amendments

- F28** Words in s. 57(1) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 6(7)**; S.I. 2014/3160, art. 2(1)(b)  
**F29** Words in s. 57(4)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 26** (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

#### Commencement Information

- I14** S. 57 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)  
**I15** 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**



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## 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 [<sup>F30</sup>resolution company] 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
  - (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.

### Textual Amendments

**F30** Words in s. 58(6) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), 66

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#### Commencement Information

- I16** S. 58 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)  
**I17** 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

- I18** S. 59 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 1](#)  
**I19** 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 [<sup>F31</sup>shareholders or] 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,
  - (b) “pre-transfer [<sup>F32</sup>shareholder or] creditor” means a person who—
    - (i) [<sup>F33</sup>holds securities issued by, or 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;

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- (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 disapplied, 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.

#### Textual Amendments

- F31** Words in s. 60(2) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(2)**
- F32** Words in s. 60(3)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(3)(a)**
- F33** Words in s. 60(3)(b)(i) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **67(3)(b)**

#### Commencement Information

- I20** S. 60 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I21** 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**

### <sup>F34</sup>60A Further mandatory provision: bail-in provision

- (1) The Treasury may make regulations about compensation arrangements in the case of—
- (a) resolution instruments under section 12A(2) and supplemental resolution instruments under section 48U(2), and
  - (b) instruments (made under any provision) that include special bail-in provision.
- (2) Regulations may—
- (a) require a resolution fund order, a compensation scheme order, a third party compensation order or a bail-in compensation order to include provision of a specified kind or to specified effect;
  - (b) make provision that is to be treated as forming part of any such order (whether (i) generally, (ii) only if applied, (iii) unless disapplied, or (iv) subject to express modification).

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*Changes to legislation: Banking Act 2009, Cross Heading: Compensation is up to date with all changes known to be in force on or before 25 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) View outstanding changes*

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- (3) 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 bail-in compensation order.
- (4) Regulations may make provision about payment including, in particular, provision for payments—
  - (a) on account subject to terms and conditions;
  - (b) by instalment.
- (5) Regulations—
  - (a) are to 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.

#### **Textual Amendments**

**F34** Ss. 60A, 60B inserted (1.3.2014 for specified purposes, 31.12.2014 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(8\)](#); S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2; S.I. 2014/3160, art. 2(1)(b)

### **60B Principle of no less favourable treatment**

- (1) In making regulations under section 60A the Treasury must, in particular, have regard to the desirability of ensuring that pre-resolution shareholders and creditors of a bank do not receive less favourable treatment than they would have received had the bank entered insolvency immediately before the coming into effect of the initial instrument.
- (2) References in this section to the initial instrument are—
  - (a) in relation to compensation arrangements in the case of property transfer instruments under section [<sup>F35</sup>11(2), 12(2) or 12ZA(2)], to the first instrument to be made under [<sup>F36</sup>those provisions] with respect to the bank;
  - (b) in relation to compensation arrangements in other cases, to the first resolution instrument to be made under section 12A with respect to the bank.
- (3) The “pre-resolution shareholders and creditors” of a bank are the persons who held securities issued by the bank, or were creditors of the bank, immediately before the coming into effect of the initial instrument.
- (4) References in this section to insolvency include a reference to (i) liquidation, (ii) bank insolvency, (iii) administration, (iv) bank administration, (v) receivership, (vi) composition with creditors, and (vii) a scheme of arrangement.]

**Changes to legislation:** Banking Act 2009, Cross Heading: Compensation is up to date with all changes known to be in force on or before 25 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) View outstanding changes

### Textual Amendments

- F34** Ss. 60A, 60B inserted (1.3.2014 for specified purposes, 31.12.2014 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(8\)](#); S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2; S.I. 2014/3160, art. 2(1)(b)
- F35** Words in s. 60B(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 68\(a\)](#)
- F36** Words in s. 60B(2)(a) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\), arts. 1\(2\), 68\(b\)](#)

## 61 Sources of compensation

- (1) This section applies to—
- (a) compensation scheme orders,
  - (b) resolution fund orders,
  - (c) third party compensation orders, <sup>F37</sup>...
  - [<sup>F38</sup>(ca) bail-in compensation orders,]
  - (d) regulations under section 60[<sup>F39</sup>, and]
  - [<sup>F39</sup>(e) regulations under section 60A.]
- (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, [<sup>F40</sup>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

- F37** Word in s. 61(1)(c) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(9\)\(a\)](#); S.I. 2014/3160, art. 2(1)(b)
- F38** S. 61(1)(ca) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(9\)\(b\)](#); S.I. 2014/3160, art. 2(1)(b)
- F39** S. 61(1)(e) and preceding word inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 2 para. 6\(9\)\(c\)](#); S.I. 2014/3160, art. 2(1)(b)
- F40** 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

- I22** 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, <sup>F41</sup>...
  - [<sup>F42</sup>(ba) bail-in compensation orders, and]
  - (c) third party compensation orders.

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**Changes to legislation:** Banking Act 2009, Cross Heading: Compensation is up to date with all changes known to be in force on or before 25 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) View outstanding changes

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(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.

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**Textual Amendments**

- F41** Word in s. 62(1)(b) omitted (31.12.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 6\(10\)](#); S.I. 2014/3160, art. 2(1)(b)
- F42** S. 62(1)(ba) inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(5), [Sch. 2 para. 6\(10\)](#); S.I. 2014/3160, art. 2(1)(b)
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**Commencement Information**

- I23** S. 62 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 1
- I24** 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](#)

**Changes to legislation:**

Banking Act 2009, Cross Heading: Compensation is up to date with all changes known to be in force on or before 25 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(8A)(8B) inserted by [2012 c. 21 s. 96\(3\)](#)
- s. 8(2)(d) and word inserted by [2012 c. 21 s. 96\(4\)\(b\)](#)