



# Banking Act 2009

## 2009 CHAPTER 1

### PART 1

#### SPECIAL RESOLUTION REGIME

##### *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.

#### **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.

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- (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.

## **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.

## **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.

## **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
  - (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.

#### **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).

#### **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;

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- (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.

## **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, 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 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.

## **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).
- (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.

## **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—

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- (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
  - (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.

## **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).

## **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)—

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- (a) “residual bank” means a bank that is a transferor under a property transfer instrument,
  - (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.

## **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.
- (2) An order or regulations may provide for compensation or other payments to be made by—
- (a) the Treasury,

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- (b) the Financial Services Compensation Scheme, subject to section 214B of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime—inserted by section 171 below), or
- (c) any other specified person.

## **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.