



Banking Act 2009

2009 CHAPTER 1

PART 3

BANK ADMINISTRATION

Modifications etc. (not altering text)

- C1** Pt. 3 modified (21.2.2009) by [Banking Act 2009 \(Bank Administration\) \(Modification for Application to Multiple Transfers\) Regulations 2009 \(S.I. 2009/313\)](#), regs. 1(1), 2, 3, **Sch. 1**
- C2** Pt. 3 modified (21.2.2009) by [The Banking Act 2009 \(Bank Administration\) \(Modification for Application to Banks in Temporary Public Ownership\) Regulations 2009 \(S.I. 2009/312\)](#), regs. 1(1), 2-4, **Sch.**
- C3** Pt. 3 applied (with modifications) by [Building Societies Act 1986 \(c. 53\)](#), s. 90C (as inserted (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 2**)
- C4** Pt. 3 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), Sch. 1 Pts. 1, 3 (as amended (7.4.2010) by [S.I. 2010/1189](#), arts. 1(2), **2** and amended (7.4.2017) by [The Deregulation Act 2015](#), the [Small Business, Enterprise and Employment Act 2015](#) and the [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **8**)
- C5** Pt. 3 applied (with modifications) (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 1, **Sch. 2 para. 6** (as amended (1.4.2013) by [S.I. 2013/472](#), **Sch. 2 para. 198(q)(ii)** (with [Sch. 2 para. 213](#)))

Introduction

136 Overview

- (1) This Part provides for a procedure to be known as bank administration.
- (2) The main features of bank administration are that—
 - (a) it is used where part of the business of a bank is sold to a commercial purchaser in accordance with section 11 or transferred to a [F1resolution company] in

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- accordance with section 12 [^{F2}or 12ZA] (and it can also be used in certain cases of multiple transfers under Part 1),
- (b) the court appoints a bank administrator on the application of the Bank of England,
 - (c) the bank administrator is able and required to ensure that the non-sold or non-transferred part of the bank (“the residual bank”) provides services or facilities required to enable the commercial purchaser (“the private sector purchaser”) or the transferee (“the [^{F1}resolution company]”) to operate effectively, and
 - (d) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 136 to 140	Introduction
Sections 141 to 148	Process
Sections 149 to [^{F3} 152A]	Multiple transfers
Sections 153 and 154	Termination
Sections 155 to 168	Miscellaneous

Textual Amendments

- F1** Words in s. 136(2) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(2)(a)**
- F2** Words in s. 136(2)(a) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(2)(b)**
- F3** Word in s. 136(3) substituted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 2 para. 28**; S.I. 2014/3160, art. 2(1)(b)

Commencement Information

- I1** S. 136 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

137 Objectives

- (1) A bank administrator has two objectives—
- (a) Objective 1: support for commercial purchaser or [^{F4}resolution company] (see section 138), and
 - (b) Objective 2: “normal” administration (see section 140).
- (2) Objective 1 takes priority over Objective 2 (but a bank administrator is obliged to begin working towards both objectives immediately upon appointment).

Textual Amendments

- F4** Words in s. 137(1)(a) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(3)**

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Commencement Information

12 S. 137 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 3

138 Objective 1: supporting private sector purchaser or [^{F5}resolution company]

- (1) Objective 1 is to ensure the supply to the private sector purchaser or [^{F6}resolution company] of such services and facilities as are required to enable it, in the opinion of the Bank of England, to operate effectively.
- (2) For the purposes of Objective 1—
 - (a) the reference to services and facilities includes a reference to acting as transferor or transferee under a supplemental or reverse property transfer instrument [^{F7}(including a bridge bank supplemental property transfer instrument or bridge bank supplemental reverse property transfer instrument)], and
 - (b) the reference to “supply” includes a reference to supply by persons other than the residual bank.
- (3) In the case of bank administration following a private sector purchase the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the private sector purchaser; and—
 - (a) in pursuing Objective 1 the bank administrator must have regard to the terms of that or any other agreement entered into between the residual bank and the private sector purchaser,
 - (b) in particular, the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms,
 - (c) if in doubt about the effect of those terms the bank administrator may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below), and
 - (d) the private sector purchaser may refer to the court a dispute about any agreement with the residual bank, by applying for directions under paragraph 63 of Schedule B1.
- (4) In the case of bank administration following transfer to a [^{F8}resolution company], the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the [^{F8}resolution company]; and—
 - (a) the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with an agreement,
 - (b) the bank administrator must ensure that so far as is reasonably practicable an agreement entered into includes provision for consideration at market rate,
 - (c) paragraph (b) does not prevent the bank administrator from entering into an agreement on any terms that the bank administrator thinks necessary in pursuit of Objective 1, and
 - (d) this subsection does not apply after Objective 1 ceases.

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- (5) Where a bank administrator requires the Bank of England's consent or approval to any action in accordance with this Part, the Bank may withhold consent or approval only on the grounds that the action might prejudice the achievement of Objective 1.

Textual Amendments

- F5** Words in s. 138 heading substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(4)(a)**
- F6** Words in s. 138(1) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(4)(a)**
- F7** Words in s. 138(2)(a) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(4)(b)**
- F8** Words in s. 138(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(4)(a)**

Commencement Information

- I3** S. 138 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

139 Objective 1: duration

- (1) Objective 1 ceases if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with the private sector purchaser or [F9resolution company].
- (2) A bank administrator who thinks that Objective 1 is no longer required may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1) above.
- (3) If immediately upon the making of a bank administration order the Bank of England thinks that the residual bank is not required in connection with the private sector purchaser or [F9resolution company], the Bank of England may give a notice under subsection (1).
- (4) A notice under subsection (1) is referred to in this Part as an “Objective 1 Achievement Notice”.

Textual Amendments

- F9** Words in s. 139 substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(5)**

Commencement Information

- I4** S. 139 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

140 Objective 2: “normal” administration

- (1) Objective 2 is to—
- (a) rescue the residual bank as a going concern (“Objective 2(a)”), or

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- (b) achieve a better result for the residual bank's creditors as a whole than would be likely if the residual bank were wound up without first being in bank administration (“Objective 2(b)”).
- (2) In pursuing Objective 2 a bank administrator must aim to achieve Objective 2(a) unless of the opinion either—
 - (a) that it is not reasonably practicable to achieve it, or
 - (b) that Objective 2(b) would achieve a better result for the residual bank's creditors as a whole.
- (3) In pursuing Objective 2(b) in bank administration following transfer to a [^{F10}resolution company], the bank administrator may not realise any asset unless—
 - (a) the asset is on a list of realisable assets agreed between the bank administrator and the Bank of England, or
 - (b) the Bank of England has given an Objective 1 Achievement Notice.

Textual Amendments

F10 Words in s. 140(3) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(6)**

Commencement Information

I5 S. 140 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

Process

141 Bank administration order

- (1) A bank administration order is an order appointing a person as the bank administrator of a bank.
- (2) A person is eligible for appointment as a bank administrator if qualified to act as an insolvency practitioner [^{F11}in relation to the bank].
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank administration order takes effect in accordance with its terms; and—
 - (a) the process of a bank administration order having effect may be described as “bank administration” in relation to the bank, and
 - (b) while the order has effect the bank may be described as being “in bank administration”.

Textual Amendments

F11 Words in s. 141(2) inserted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **5(7)**

Commencement Information

I6 S. 141 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

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142 Application

- (1) An application for a bank administration order may be made to the court by the Bank of England.
- (2) An application must nominate a person to be appointed as the bank administrator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 160 below).

Commencement Information

I7 S. 142 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

143 Grounds for applying

- (1) The Bank of England may apply for a bank administration order in respect of a bank if the following conditions are met.
- (2) Condition 1 is that the Bank of England has made or intends to make a property transfer instrument in respect of the bank in accordance with section 11(2) [^{F12}, 12(2) or 12ZA(3)].
- (3) Condition 2 is that the Bank of England is satisfied that the residual bank—
 - (a) is unable to pay its debts, or
 - (b) is likely to become unable to pay its debts as a result of the property transfer instrument which the Bank intends to make.

Textual Amendments

F12 Words in s. 143(2) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [26\(7\)](#)

Commencement Information

I8 S. 143 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

144 Grounds for making

- (1) The court may make a bank administration order if satisfied that the conditions in section 143 were met.
- (2) On an application for a bank administration order the court may—
 - (a) grant the application,
 - (b) adjourn the application (generally or to a specified date), or
 - (c) dismiss the application.

Commencement Information

I9 S. 144 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

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145 General powers, duties and effect

- (1) A bank administrator may do anything necessary or expedient for the pursuit of the Objectives in section 137.
- (2) The following provisions of this section provide for—
 - (a) general powers and duties of bank administrators (by application of provisions about administrators), and
 - (b) the general process and effects of bank administration (by application of provisions about administration).
- (3) The provisions set out in the Tables apply in relation to bank administration as in relation to administration, with—
 - (a) the modifications set out in subsection (4),
 - (b) any other modification specified in the Tables, and
 - (c) any other necessary modification.
- (4) The modifications are that—
 - (a) a reference to the administrator is a reference to the bank administrator,
 - (b) a reference to administration is a reference to bank administration,
 - (c) a reference to an administration order is a reference to a bank administration order,
 - (d) [^{F13}except where otherwise specified in Table 2,] a reference to a company is a reference to the bank,
 - (e) a reference to the purpose of administration is a reference to the Objectives in section 137, and
 - (f) in relation to provisions of the Insolvency Act 1986 other than Schedule B1 [^{F14}and section 246ZB], the modifications in section 103 above apply (but converting references into references to bank administration or administrators rather than to bank insolvency or liquidators).
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum.
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.
- [^{F15}(7) In the Tables “Schedule 9 to the 2015 Act” means Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (further amendments relating to the abolition of requirements to hold meetings: company insolvency).]

TABLE 1 OF APPLIED PROVISIONS

SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 40(1)(a)	Dismissal of pending winding-up petition	

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Para. 41	Dismissal of administrative or other receiver	
Para. 42	Moratorium on insolvency proceedings	Ignore sub-paras. (4) and (5).
Para. 43	Moratorium on other legal process	<p>(a) In the case of bank administration following transfer to a [^{F16}resolution company], unless the Bank of England has given an Objective 1 Achievement Notice consent of the bank administrator may not be given for the purposes of para. 43 without the approval of the Bank of England.</p> <p>(b) In the case of bank administration following transfer to a [^{F16}resolution company], unless the Bank of England has given an Objective 1 Achievement Notice, in considering whether to give permission under sub-para. (6) to a winding-up the court must have regard to the Objectives in section 137.</p> <p>(c) In considering whether to give permission for the purposes of para. 43 the court must have regard to the Objectives in section 137.</p>
Para. 44(1)(a) and (5)	Interim moratorium	

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Para. 46	Announcement of appointment	Ignore sub-para. (6)(b) and (c).
Paras. 47 & 48	Statement of affairs	
Para. 49	Administrator's proposals	<p>(a) Para. 49 does not apply unless the Bank of England has given an Objective 1 Achievement Notice; <i>for bank administrator's proposals before the Bank of England has given an Objective 1 Achievement Notice, see section 147.</i></p> <p>(b) Treat the reference in sub-para. (1) to the purpose of administration as a reference to Objective 2.</p> <p>(c) Before making proposals under sub-para. (1) in the case of bank administration following transfer to a [^{F16}resolution company], the bank administrator must consult the Bank of England about the chances of a payment to the residual bank from a scheme established by resolution fund order under section 49(3).</p> <p>(d) Treat the reference in sub-para. (2)(b) to the objective mentioned in para. 3(1)(a) or (b) as a reference to Objective 2(a).</p>

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| Paras. 50–58 | Creditors' meeting | <ul style="list-style-type: none"> <li style="margin-left: 40px;">(e) Ignore sub-para. (3)(b). <li style="margin-left: 20px;">[^{F17}(ea) Ignore the amendment made by paragraph 10(2) of Schedule 9 to the 2015 Act.] <li style="margin-left: 40px;">(f) Treat references in sub-para. (5) to the company's entering administration as references to satisfaction of the condition in para. (a) above. |
| | | <ul style="list-style-type: none"> <li style="margin-left: 20px;">[^{F18}(za) Ignore the repeal of Paras 50 and 58 by paragraph 10(3) and (22) of Schedule 9 to the 2015 Act. <li style="margin-left: 40px;">(zb) Ignore the amendments of Paras 51 to 57 made by paragraph 10(4) to (21) of Schedule 9 to the 2015 Act.] <li style="margin-left: 40px;">(a) Treat references in para. 51(2) to the company's entering administration as references to the giving of an Objective 1 Achievement Notice. <li style="margin-left: 40px;">(b) The bank administrator may comply with a request under para. 56(1)(a) only if satisfied that it will not prejudice pursuit of Objective 1 in section 137. <li style="margin-left: 40px;">(c) A creditors' meeting may |

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		not establish a creditors' committee in reliance on para. 57 until the Bank of England has given an Objective 1 Achievement Notice.
		(d) Until that time the Bank of England shall have the functions of the creditors' committee.
Para. 59	General powers	A bank administrator may not rely on para. 59 (or subsection (1) above) for the purpose of recovering property transferred by property transfer instrument.
Para. 60 and Schedule 1	General powers	(a) The exercise of powers under Schedule 1 is subject to section 137(2). (b) In the case of bank administration following transfer to a [^{F16} resolution company], until the Bank of England has given an Objective 1 Achievement Notice powers under the following paragraphs of Schedule 1 may be exercised only with the Bank of England's consent: 2, 3, 11, 14, 15, 16, 17, 18 and 21.
Para. 61	Directors	
Para. 62	Power to call meetings of creditors	[^{F19} Ignore the amendment made by paragraph 10(23)]

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| | | of Schedule 9 to the 2015 Act.] |
| Para. 63 | Application to court for directions | <p>(a) Before the Bank of England has given an Objective 1 Achievement Notice, the bank administrator may apply for directions if unsure whether a proposed action would prejudice the pursuit of Objective 1; and before making an application in reliance on this paragraph the bank administrator must give notice to the Bank of England, which shall be entitled to participate in the proceedings.</p> <p>(b) In making directions the court must have regard to the Objectives in section 137.</p> |
| Para. 64. | Management powers. | |
| Para. 65 | Distribution to creditors | <p>(a) In the case of bank administration following transfer to a [^{F16}resolution company], until the Bank of England has given an Objective 1 Achievement Notice a bank administrator may make a distribution only with the Bank of England's consent.</p> <p>[^{F20}(b) Where paragraph (a)</p> |

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		applies, ignore sub-para (3).]
Para. 66	Payments	
Para. 67	Taking custody of property	
Para. 68	Management	Before the approval of proposals under para. 53 a bank administrator shall manage the bank's affairs, business and property in accordance with principles agreed between the bank administrator and the Bank of England.
Para. 69	Agency	
Para. 70	Floating charges	The bank administrator may take action only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 71	Fixed charges	The court may make an order only if satisfied that it will not prejudice pursuit of Objective 1 in section 137.
Para. 72	Hire-purchase property	In the case of administration following transfer to a [^{F16} resolution company], until the Bank of England has given an Objective 1 Achievement Notice an application may be made only with the Bank of England's consent.
Para. 73	Protection for secured and preferential creditors	(a) Treat a reference to proposals as including a reference to the principles specified in the modification of para. 68 set out above. (b) Para. 73(1)(a) does not apply until the Bank of England has given an Objective

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Para. 74	Challenge to administrator's conduct	<p style="margin-left: 20px;">1 Achievement Notice.</p> <p>[^{F21}(za) Ignore the amendment made by paragraph 10(24) of Schedule 9 to the 2015 Act.]</p> <p>(a) The Bank of England may make an application to the court, on any grounds, including grounds of insufficient pursuit of Objective 1 in section 137 (in addition to applications that may anyway be made under para. 74).</p> <p>(b) Until the Bank of England has given an Objective 1 Achievement Notice, an order may be made on the application of a creditor only if the court is satisfied that it would not prejudice pursuit of Objective 1 in section 137.</p>
Para. 75	Misfeasance	<p>In addition to applications that may anyway be made under para. 75, an application may be made by the bank administrator or the Bank of England.</p>
[^{F22} Para. 79]	[^{F22} Termination: successful rescue]	<p>[^{F22}(a) Ignore sub-para. (2).</p> <p>(b) See section 153.]</p>
Para. 84	Termination: no more assets for distribution	<p><i>See section 154.</i></p>
Para. 85	Discharge of administration order	

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Para. 86	Notice to Companies Registrar of end of administration	<i>See section 153.</i>
Para. 87	Resignation	A bank administrator may resign only by notice in writing— (a) to the court, copied to the Bank of England, or (b) in the case of a bank administrator appointed by the creditors' committee under para. 90, to the creditors' committee.
Para. 88	Removal	Until the Bank of England has given an Objective 1 Achievement Notice, an application for an order may be made only with the Bank of England's consent.
Para. 89	Disqualification	The notice under sub-para. (2) must be given to the Bank of England.
Paras. 90 & 91	Replacement	(a) Until an Objective 1 Notice has been given, the Bank of England, and nobody else, may make an application under para. 91(1). (b) After that, either the Bank of England or a creditors' committee may apply. (c) Ignore para. 91(1) (b) to (e) and (2).
Para. 96	Substitution of floating charge-holder	Para. 96 applies to a bank administrator, but— (a) only after an Objective 1 Achievement Notice has been given, and (b) ignoring references to priority of charges.

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Para. 98	Discharge	<p>[^{F23}Ignore the amendments made by paragraph 10(36) to (38) of Schedule 9 to the 2015 Act.]</p> <p>Discharge takes effect—</p> <p>(a) where the person ceases to be bank administrator before an Objective 1 Achievement Notice has been given, at a time determined by the Bank of England, and</p> <p>(b) otherwise, at a time determined by resolution of the creditors' committee (for which purpose ignore sub-para. (3)).</p>
Para. 99	Vacation of office: charges and liabilities	<p>In the application of sub-para. (3), payments may be made only—</p> <p>(a) in accordance with directions of the Bank of England, and</p> <p>(b) if the Bank is satisfied that they will not prejudice Objective 1 in section 137.</p>
Paras. 100-103	Joint administrators	<p>Until an Objective 1 Achievement Notice has been given, an application under para. 103 may be made only by the Bank of England.</p>
Para. 104	Validity	
Para. 106 (and section 430 and Schedule 10)	Fines	<p>[^{F24}Ignore the amendments made by paragraph 11 of Schedule 9 to the 2015 Act.]</p>
Paras. 107–109	Extension of time limits	<p>(a) Until an Objective 1 Achievement Notice has been given, an application under para. 107 may be made only</p>

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			with the Bank of England's consent.
		(b)	In considering an application under para. 107 the court must have regard to Objective 1 in section 137.
		[^{F25} (ba)	Ignore the amendments of Para 108 made by paragraph 10(39) to (43) of Schedule 9 to the 2015 Act.]
		(c)	In para. 108(1) “consent” means consent of the Bank of England.
Para. 110	<i>Amendment of provisions about time</i>		<i>An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this section (whether or not in the same way as it amends the provision as it applies otherwise).</i>
Para. 111	Interpretation		[^{F26} Ignore the amendment made by paragraph 10(44) of Schedule 9 to the 2015 Act.]
[^{F27} Paras 112 to 114	Scotland:miscellaneous		
Para 115	Scotland: floating charges	(a)	In Scotland, on the giving by the Bank of England of consent as provided for in Para 65 (as applied by this section), any floating charge granted by the bank attaches to the property which is subject to the charge, unless it has already so attached, but only if the distribution concerned is to be made to creditors of the residual bank who are neither secured creditors nor preferential creditors and otherwise than by virtue

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Para 116	Scotland: payment to holder of floating charge subject to rights]	of section 176A(2)(a) (as applied by this section). (b) Where paragraph (a) applies, ignore sub-paras (1A) and (1B).
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TABLE 2 OF APPLIED PROVISIONS

OTHER PROVISIONS OF THE INSOLVENCY ACT 1986

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 135	Provisional appointment	<p>(a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank administration order.</p> <p>(b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply).</p> <p>(c) Ignore the reference to the official receiver.</p> <p>(d) Only a person who is qualified to act as an insolvency practitioner [F28; in relation to the bank] and who consents to act may be appointed.</p> <p>(e) The court may only confer on a provisional bank administrator functions in connection with the pursuance of Objective 1; and</p>

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		section 138(2)(a) does not apply before a bank administration order is made.
		(f) A provisional bank administrator may not pursue Objective 2.
		(g) The appointment of a provisional bank administrator lapses on the appointment of a bank administrator.
		(h) Section 172(1), (2) and (5) apply to a provisional bank administrator.
Section 168(4) (and para. 13 of Schedule 4)	Discretion in managing and distributing assets	In the case of bank administration following transfer to a [^{F29} resolution company], until the Bank of England has given an Objective 1 Achievement Notice distribution may be made only— (a) with the Bank of England's consent, or (b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.
[^{F30} Section 176ZB	Application of proceeds of office-holder claims]	
Section 176A	Unsecured creditors	In the case of bank administration following transfer to a [^{F29} resolution company], until the Bank of England has given an Objective 1 Achievement Notice distribution may be made in reliance on s. 176A only— (a) with the Bank of England's consent, or

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		(b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.
Section 178	Disclaimer of onerous property	In the case of bank administration following transfer to a [^{F29} resolution company], until the Bank of England has given an Objective 1 Achievement Notice notice of disclaimer may be given only with the Bank of England's consent.
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rentcharge	
Section 181	Disclaimer: powers of court	
Section 182	Leaseholds	
Section 188	Publicity	
F31	F31	
...	...	
F31	F31	F31
...
Section 233	Utilities	
[^{F32} Section 233A	Further protection of utilities]	
Section 234	Getting in company's property	
Section 235	Co-operation with liquidator	
Section 236	Inquiry into company's dealings	
Section 237	Section 236: enforcement by court	
Section 238	Transactions at undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Ss. 238 & 239: relevant time	

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Section 241	Orders under ss. 238 & 239	(a) In considering making an order in reliance on section 241 the court must have regard to Objective 1 of section 137. (b) Ignore subsections (2A)(a) and (3) to (3C).
Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	In considering the grant of a decree under subsection (5) the court must have regard to Objective 1 of section 137.
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	
Section 246	Unenforceability of liens	
[^{F33} Section 246ZA	Fraudulent trading: administration	
Section 246ZB	Wrongful trading: administration	(a) Treat the reference in subsection (2)(b) to going into insolvent liquidation as a reference to entering bank insolvency under Part 2 of this Act at a time when the bank's assets are insufficient for the payment of its debts and other liabilities and the expenses of the bank insolvency. (b) Ignore subsection (6) (b).
Section 246ZC	Proceedings under section 246ZA or 246ZB	
Section 246ZD	Power to assign certain causes of action]	
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	

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Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
[^{F34} Sections 390 to 391T	Authorisation and regulation of insolvency practitioners	<p>(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank administrator.</p> <p>(b) Read subsection (2) of that section (as so modified) as if after “authorised” there were inserted “to act as an insolvency practitioner”.</p> <p>(c) An order under section 391 has effect in relation to any provision applied for the purposes of bank administration.</p> <p>(d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in subsection (4)(d) of this section.</p> <p>(e) In sections 391Q(2)(b) and 391S(3)(e) the reference to a company has effect without the modification in subsection (4)(d) of this section.]</p>
Sections 423–425	Transactions defrauding creditors	<p>(a) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 137.</p> <p>(b) In considering making an order</p>

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Sections 430–432 & Schedule 10	Offences	
Section 433	Statements: admissibility	in reliance on section 425 the court must have regard to Objective 1 of section 137. For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.

Textual Amendments

- F13** Words in s. 145(4)(d) inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(8)(a)**
- F14** Words in s. 145(4)(f) inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(8)(b)**
- F15** S. 145(7) inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(4)**
- F16** Words in s. 145 Table 1 substituted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **26(8)(a)**
- F17** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(a)**
- F18** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(b)**
- F19** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(c)**
- F20** Words in s. 145 Table 1 substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(9)(a)**
- F21** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(d)**
- F22** Words in s. 145 Table 1 inserted (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 21(6), 26(1)(f)**
- F23** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(e)**

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- F24** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(f)**
- F25** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(g)**
- F26** Words in s. 145 Table inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)(h)**
- F27** Words in s. 145 Table 1 substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(9)(b)**
- F28** Words in s. 145 Table 2 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)(a)**
- F29** Words in s. 145 Table 2 substituted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), **26(8)(b)**
- F30** Words in s. 145 Table 2 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)(b)**
- F31** Words in s. 145 Table 2 omitted (7.4.2017) by virtue of The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)(c)**
- F32** Words in s. 145 Table 2 inserted (E.W.S.) (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), art. 1(1), **Sch. para. 4**
- F33** Words in s. 145 Table 2 inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)(d)**
- F34** Words in s. 145 Table 2 substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)(e)** (with reg. 17)

Modifications etc. (not altering text)

- C6** S. 145 applied (with modifications) (23.11.2009) by Scottish and Northern Ireland Banknote Regulations 2009 (S.I. 2009/3056), reg. 1, **Sch. 1 para. 4**

Commencement Information

- I10** S. 145 in force at 21.2.2009 by S.I. 2009/296, art. 3, **Sch. para. 3**

[^{F35}145A Power to direct bank administrator

- (1) This section applies where—
- (a) a bank administration order has been made, and
 - (b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with [^{F36}the making of a mandatory reduction instrument or] the exercise of one or more of the stabilisation powers may constitute the granting

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of aid to which any of the provisions of Article 107 or 108 of TFEU applies (“State aid”).

- (2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).
- (3) The purposes are—
 - (a) to inform the European Commission that State aid has been, may have been, or may be, given;
 - (b) to obtain a decision from the Commission whether State aid—
 - (i) has been given, or
 - (ii) would be given, if the action proposed was taken;
 - (c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;
 - (d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;
 - (e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);
 - (f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;
 - (g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.
- (4) Before giving a direction under this section the Treasury must consult the bank administrator.
- (5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.
- (6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.
- (8) Immunity by virtue of subsection (7) does not extend to action—
 - (a) in bad faith, or
 - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.
- (10) In this section “TFEU” means the Treaty on the Functioning of the European Union.]

Textual Amendments

F35 S. 145A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 103, 122(3)** (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.

F36 Words in s. 145A(1)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **107**

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146 Status of bank administrator

A bank administrator is an officer of the court.

Commencement Information

I11 S. 146 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

147 Administrator's proposals

- (1) This section applies before the giving of an Objective 1 Achievement Notice (at which point paragraph 49 of Schedule B1 to the Insolvency Act 1986 applies in accordance with section 145).
- (2) The bank administrator must as soon as is reasonably practicable after appointment make a statement setting out proposals for achieving the Objectives in section 137.
- (3) The statement must say whether the bank administrator proposes to pursue Objective 2(a) or 2(b) in section 140.
- (4) The statement must have been agreed with the Bank of England.
- (5) But a bank administrator who is unable to agree a statement with the Bank of England may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (as applied by section 145); and the court may make any order, including dispensing with the need for the Bank of England's agreement.
- (6) The bank administrator must send the statement to the [^{F37}PRA and a copy of it to the FCA].
- (7) The bank administrator may revise the statement (and subsections (4) to (6) apply to a revised statement as to the original).
- (8) The statement shall be treated in the same way (subject to this section) as a statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986.

Textual Amendments

F37 Words in s. 147(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 47](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

I12 S. 147 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

148 Sharing information

- (1) This section applies to bank administration following transfer to a [^{F38}resolution company].
- (2) Within the period of 5 days beginning with the day on which the bank administrator is appointed, the Bank of England must give the bank administrator information about the financial positions of the residual bank and the [^{F38}resolution company].

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- (3) While the residual bank is in bank administration the [^{F38}resolution company] must give the bank administrator on request information about the financial position of the [^{F38}resolution company] that the bank administrator requires for the purposes of pursuing Objective 1 in section 137.
- (4) Until the Bank of England has given an Objective 1 Achievement Notice, the bank administrator must—
 - (a) give the Bank of England information on request,
 - (b) allow the Bank of England access to records on request,
 - (c) give the [^{F38}resolution company] information on request,
 - (d) allow the [^{F38}resolution company] access to records on request,
 - (e) keep the Bank of England informed about, and allow the Bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137, and
 - (f) keep the [^{F38}resolution company] informed about, and allow the [^{F38}resolution company] to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 137.
- (5) The Treasury shall by regulations prescribe—
 - (a) the classes of information that must be provided under subsections (2) to (4), and
 - (b) the classes of record to which access must be allowed under subsection (4).
- (6) Regulations under subsection (5)—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F38 Words in s. 148(1)-(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(9)**

Commencement Information

I13 S. 148 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

I14 S. 148 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 3**

Multiple transfers

149 General application of this Part

- (1) This section applies where more than one property transfer instrument is made in respect of a bank.
- (2) For that purpose “property transfer instrument” includes—
 - (a) supplemental instruments under section 42,
 - (b) onward property transfer instruments under section 43, ^{F39}...
 - ^{F40}(ba) bridge bank supplemental property transfer instruments under section 44D, and]

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- (c) property transfer orders under section 45.
- (3) This Part applies to the bank with any modifications specified by the Treasury in regulations.
- (4) The 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

- F39** Word in s. 149(2)(b) omitted (16.12.2016) by virtue of [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(10)(a)**
- F40** S. 149(2)(ba) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(10)(b)**

Commencement Information

- I15** S. 149 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3
- I16** S. 149 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 3**

150 [^{F41}Resolution company] to private purchaser

- (1) This section applies where the Bank of England gives a bank administrator —
 - (a) an Objective 1 Achievement Notice in respect of a [^{F42}resolution company], and
 - (b) notice that Objective 1 is still required to be pursued in respect of a commercial purchaser who has acquired all or part of the business of the [^{F42}resolution company].
- (2) An Objective 1 Achievement Notice accompanied by a notice under subsection (1)(b) is referred to in this Part as an Objective 1 Interim Achievement Notice.
- (3) Where an Objective 1 Interim Achievement Notice is given, Objective 1 continues to apply—
 - (a) in accordance with section 138(3), and
 - (b) with the commercial purchaser being treated as the “private sector purchaser”.
- (4) An Objective 1 Interim Achievement Notice in respect of the [^{F43}resolution company]—
 - (a) has effect as between the bank administrator and the [^{F43}resolution company], but
 - (b) has no other effect for the purposes of provisions of this Part which refer to the giving of an Objective 1 Achievement Notice.
- (5) When the Bank of England gives the bank administrator an Objective 1 Achievement Notice in respect of the commercial purchaser, section 139 and other provisions of this Part which refer to the giving of an Objective 1 Achievement Notice shall have effect.

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Textual Amendments

- F41** Words in s. 150 heading substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(11)**
- F42** Words in s. 150(1) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(11)**
- F43** Words in s. 150(4) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(11)**

Commencement Information

- I17** S. 150 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

151 Property transfer from ^{F44}resolution company]

- (1) This section applies where the Bank of England —
- transfers all or part of the business of a bank (“the original bank”) to a ^{F45}resolution company] (“the original ^{F45}resolution company]”) by making a property transfer instrument in accordance with section 12(2) ^{F46}or 12ZA(3)], and
 - later makes or proposes to make an onward property transfer instrument under section 43(2) from the ^{F45}resolution company] to a transferee (“the onward transferee”).
- (2) If the onward transferee is a company which is wholly owned by the Bank of England—
- the onward transferee is treated as a ^{F45}resolution company] for the purposes of this Part, and
 - the original ^{F45}resolution company] is treated as a residual bank for the purposes of this Part.
- (3) In any other case, the Bank of England may determine that the original ^{F45}resolution company] is to be treated as a residual bank for the purposes of this Part.
- (4) Where the original ^{F45}resolution company] is put into bank administration in reliance on subsection (2)(b), Objective 1 shall apply in accordance with section 138(4) in relation to both—
- services provided by the original bank to the original ^{F45}resolution company], and
 - services provided by the original ^{F45}resolution company] to the onward transferee.
- (5) Where the original ^{F45}resolution company] is put into bank administration in reliance on a determination under subsection (3), Objective 1 shall apply in accordance with—
- section 138(3) in relation to services provided by the original ^{F45}resolution company] to the onward transferee, and
 - section 138(4) in relation to services provided by the original bank to the original ^{F45}resolution company] .
- (6) But the Bank may determine—
- that subsection (5) does not apply, and
 - that section 150 shall apply as if the Bank had given—

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- (i) an Objective 1 Interim Achievement Notice in respect of the original [^{F45}resolution company], and
- (ii) a notice under section 150(1)(b) in respect of the onward transferee.

Textual Amendments

- F44** Words in s. 151 heading substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(12)(a)**
- F45** Words in s. 151 substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(12)(a)**
- F46** Words in s. 151(1)(a) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), **26(12)(b)**

Commencement Information

- I18** S. 151 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

152 Property transfer from temporary public ownership

- (1) This section applies where the Treasury—
 - (a) make a share transfer order, in respect of securities issued by a bank (or a bank's holding company), in accordance with section 13(2), and
 - (b) later make a property transfer order from the bank (or from another bank which is or was in the same group as the bank) under section 45(2).
- (2) This Part applies to the transferor under the property transfer order as to the transferor under a property transfer instrument.
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and the 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

- I19** S. 152 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 3**
- I20** S. 152 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 3**

^{F47}152A Property transfer from transferred institution

- (1) This section applies where the Bank of England—
 - (a) makes a resolution instrument that transfers securities issued by a bank (or a bank's parent undertaking), in accordance with section 12A(2), and
 - (b) later makes a property transfer instrument from the bank or from another bank which is or was in the same group as the bank, in accordance with section 41A(2).

[This section also applies where the Bank of England—

- ^{F48}(1A) (a) makes a share transfer instrument that transfers securities issued by a bank (or a bank's parent undertaking), in accordance with section 12(2), and

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- (b) later makes a property transfer instrument from the bank in accordance with section 44D.]
- (2) This Part applies to the transferor under the property transfer instrument made in accordance with section 41A(2) [^{F49}or 44D(2)] as to the transferor under a property transfer instrument made in accordance with section 12(2).
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and any 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

- F47** S. 152A inserted (31.12.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 2 para. 29](#); [S.I. 2014/3160](#), art. 2(1)(b)
- F48** S. 152A(1A) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [26\(13\)\(a\)](#)
- F49** Words in s. 152A(2) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [26\(13\)\(b\)](#)

Termination

153 Successful rescue

- (1) This section applies if—
 - (a) the Bank of England has given an Objective 1 Achievement Notice, and
 - (b) the bank administrator has pursued Objective 2(a) in section 140 and believes that it has been achieved.
- [^{F50}(2) The bank administrator shall make an application under paragraph 79 of Schedule B1 to the Insolvency Act 1986 (court ending administration on achievement of objectives).
- (3) A bank administrator who makes an application in accordance with subsection (2) must send a copy to the [^{F51}PRA and the FCA].]
- (4) Failure without reasonable excuse to comply with subsection (3) is an offence.

Textual Amendments

- F50** S. 153(2)(3) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 21\(7\)](#), [26\(1\)\(f\)](#)
- F51** Words in s. 153(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 48](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I21** S. 153 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

Status: Point in time view as at 13/03/2018.

Changes to legislation: Banking Act 2009, Part 3 is up to date with all changes known to be in force on or before 12 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)

154 Winding-up or voluntary arrangement

- (1) This section applies if—
- (a) the Bank of England has given an Objective 1 Achievement Notice, and
 - (b) the bank administrator pursues Objective 2(b) in section 140.
- (2) The bank administrator may—
- (a) give a notice under paragraph 84 of Schedule B1 to the Insolvency Act 1986 (no more assets for distribution), or
 - (b) make a proposal in accordance with section 1 of that Act (company voluntary arrangement).
- [^{F52}(2A) For the purpose of subsection (2)(a), paragraph 84 of Schedule B1 has effect without the amendment made by paragraph 10(33) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (further amendments relating to opted-out creditors).]
- (3) Part 1 of [^{F53}the Insolvency Act 1986] shall apply to a proposal made by a bank administrator, with the following modifications.
- [^{F54}(3A) Sections 2 to 6 and 7 and Schedule A1 have effect without the amendments of those provisions made by paragraphs 2 to 9 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (further amendments relating to the abolition of requirements to hold meetings).]
- (4) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (5) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank administration order.
- (6) On the termination of a company voluntary arrangement the bank administrator may apply to the court to lift the suspension of the bank administration order.
- (7) The bank administrator may not act under subsection (2) above unless satisfied that the bank has received any funds it is likely to receive from any scheme under a resolution fund order under section 52.

Textual Amendments

- F52** S. 154(2A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(6)(a)**
- F53** Words in s. 154(3) substituted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(6)(b)**
- F54** S. 154(3A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(6)(c)**

Commencement Information

- I22** S. 154 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

Status: Point in time view as at 13/03/2018.

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Miscellaneous

155 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act—
 - (a) a reference to liquidation includes a reference to bank administration,
 - (b) a reference to winding up includes a reference to making or being subject to a bank administration order,
 - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank administration order, and
 - (d) a reference to a liquidator includes a reference to a bank administrator.
- [^{F55}(3) For the purposes of the application of section 7A of the Disqualification Act (office-holder’s report on conduct of directors) to a bank which is subject to a bank administration order—
 - (a) the “office-holder” is the bank administrator;
 - (b) the “insolvency date” means the date on which the bank administration order is made; and
 - (c) subsections (9) to (11) are omitted.]
- (4) After section 21A of the Disqualification Act (bank insolvency—inserted by section 121 above) insert—

“21B Bank administration

Section 155 of the Banking Act 2009 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.”

Textual Amendments

- F55** S. 155(3) substituted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **5(11)**

Commencement Information

- I23** S. 155 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

156 Application of other law

- (1) The Secretary of State and the Treasury may by order made jointly—
 - (a) provide for an enactment about insolvency or administration to apply to bank administration (with or without specified modifications);
 - (b) amend, or modify the application of, an enactment about insolvency or administration in consequence of this Part.
- (2) An order under subsection (1)—
 - (a) shall be made by statutory instrument, and

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

Commencement Information

- I24** S. 156 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3
I25 S. 156 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

157 Other processes

- (1) [^{F56}Before the PRA or the FCA exercises an insolvency power in respect of a residual bank, whichever of them is exercising the power] must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.
- (2) In subsection (1)—
- (a) “residual bank” means a bank all or part of whose business has been transferred to a commercial purchaser in accordance with section 11 or to a [^{F57}resolution company] in accordance with section 12 [^{F58}or 12ZA], and
- (b) “insolvency power” means—
- (i) section 359 of the Financial Services and Markets Act 2000 (application for administration order), and
- (ii) section 367 of that Act (winding-up petition).

Textual Amendments

- F56** Words in s. 157(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 49](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F57** Words in s. 157(2)(a) substituted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [26\(14\)\(a\)](#)
- F58** Words in s. 157(2)(a) inserted (16.12.2016) by [The Bank Recovery and Resolution Order 2016 \(S.I. 2016/1239\)](#), arts. 1(2), [26\(14\)\(b\)](#)

Commencement Information

- I26** S. 157 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

[^{F59}157A Banks not regulated by PRA

- (1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.
- (2) In this section “FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000.

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 147	The bank administrator must send the statement to the FCA (and need not send a copy of it to the PRA).

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Section 153	Ignore the reference to the PRA in subsection (3).
Section 157	Ignore the reference to the PRA in subsection (1).]

Textual Amendments

F59 S. 157A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 50](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

158 Building societies

- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
 - (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
 - (b) amend an enactment amended by this Part;
 - (c) replicate, with or without modifications, a provision of this Part;
 - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (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 building societies.

Commencement Information

I27 S. 158 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

I28 S. 158 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

159 Credit unions

- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may—
 - (a) amend the Credit Union Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
 - (b) amend an enactment amended by this Part;
 - (c) replicate, with or without modifications, a provision of this Part;
 - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.

Status: Point in time view as at 13/03/2018.

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- (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.

Commencement Information

I29 S. 159 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

I30 S. 159 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

[^{F60}159A Application to investment firms

This Part applies to investment firms as it applies to banks.]

Textual Amendments

F60 S. 159A inserted (1.8.2014) by [Financial Services Act 2012 \(c. 21\)](#), [ss. 101\(6\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2014/1847](#), [art. 2](#)

160 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1A) (inserted by section 125 above) insert—
- “(1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made—
- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
 - (i) the Treasury, and
 - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
 - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2), after “(1A)” (inserted by section 125 above) insert “ or (1B) ”.
- (4) After subsection (2C) (inserted by section 125 above) insert—
- “(2D) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2009.”
- (5) In subsection (3)—
- (a) after “bank liquidator” (inserted by section 125 above) insert “ or administrator ”, and

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(b) after “Part 2” (inserted by section 125 above) insert “ or 3 ”.

- (6) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

Commencement Information

I31 S. 160 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

161 Fees

After section 414(8A) of the Insolvency Act 1986 (fees orders—inserted by section 126 above) insert—

“(8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.”

Commencement Information

I32 S. 161 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

162 Evidence

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (aa) (inserted by section 128 above) insert (before the “and”)—

“(ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration).”

Commencement Information

I33 S. 162 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

163 Partnerships

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships.
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

Modifications etc. (not altering text)

C7 S. 163(1): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), [Sch. 17 para. 23](#) (with arts. 28-31)

Status: Point in time view as at 13/03/2018.

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Commencement Information

I34 S. 163 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

164 Scottish partnerships

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (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.

Commencement Information

I35 S. 164 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

I36 S. 164 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

165 Co-operation between courts

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).
- (2) At the end of that section (after the subsection added by section 129) add—

“(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.”

Commencement Information

I37 S. 165 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 3](#)

166 Interpretation: general

- (1) In this Part “the court” means—
 - (a) in England and Wales, the High Court,
 - (b) in Scotland, the Court of Session, and
 - (c) in Northern Ireland, the High Court.

[^{F61}(2) In this Part—

“the FCA” means the Financial Conduct Authority, and
“the PRA” means the Prudential Regulation Authority.]

- (3) For the purposes of a reference in this Part to inability to pay debts—
 - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
 - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and

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for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.

- (4) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (5) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (6) A reference in this Part to action includes a reference to inaction.

Textual Amendments

F61 S. 166(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 51](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

I38 S. 166 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 3](#)

167 Northern Ireland

In the application of this Part to Northern Ireland—

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) the reference in section 159 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, and
- (d) in section 163—
 - (i) the reference to the Secretary of State is to be treated as a reference to the Department for Enterprise, Trade and Investment, and
 - (ii) the reference to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

Modifications etc. (not altering text)

C8 S. 167 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\), reg. 1, Sch. 1 para. 4](#)

Commencement Information

I39 S. 167 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

168 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (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.

Status: Point in time view as at 13/03/2018.

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- (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

I40 S. 168 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 3

I41 S. 168 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 3](#)

Status:

Point in time view as at 13/03/2018.

Changes to legislation:

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