



Banking Act 2009

2009 CHAPTER 1

PART 6

BANKNOTES: SCOTLAND AND NORTHERN IRELAND

Introduction

207 Overview

This Part—

- (a) repeals existing provisions about permission to issue banknotes in Scotland and Northern Ireland, and
- (b) replaces the provisions, but only for banks which already have permission to issue banknotes.

Key terms

208 “Banknote”

In this Part “banknote” means a promissory note, bill of exchange or other document which—

- (a) records an engagement to pay money,
- (b) is payable to the bearer on demand, and
- (c) is designed to circulate as money.

209 “Issue”

(1) For the purposes of this Part a banknote is issued when it passes—

- (a) from a person who holds it not as bearer but as a person carrying on the business of banking (“the issuing bank”), and
- (b) to a person taking as bearer (“the bearer”).

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- (2) In subsection (1)(a) the reference to a banknote passing from the issuing bank includes a reference to it passing—
- (a) from the issuing bank’s agent, or
 - (b) from a person printing or preparing the banknote for, or taking it to, the issuing bank or its agent.
- (3) For the purposes of subsection (1)(b) it does not matter whether the bearer also holds the banknote for use in the business of banking.

210 “Authorised bank”

In this Part “authorised bank” means a bank which immediately before commencement was authorised to issue banknotes in Scotland or Northern Ireland.

211 “Commencement”

In this Part “commencement” means the date set for the coming into force of section 212 (under the commencement power in section 263).

Authorisation to issue

212 Repeal of old authorising enactments

The following shall cease to have effect—

- (a) section 1 of the Bank Notes (Scotland) Act 1845 (authorisation to issue banknotes), and
- (b) section 8 of the Bankers (Ireland) Act 1845 (authorisation to issue banknotes).

213 Saving for existing issuers

An authorised bank may continue to issue banknotes after commencement, but only—

- (a) in accordance with the provisions of this Part, and
- (b) in the part of the United Kingdom in which it was authorised to issue banknotes before commencement.

214 Consequential repeals and amendments

- (1) In the Bankers (Ireland) Act 1845—
- (a) sections 9 to 23 cease to have effect,
 - (b) in section 26 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 213 of the Banking Act 2009”,
 - (c) section 28 ceases to have effect, and
 - (d) Schedules A and B cease to have effect.
- (2) In the Bank Notes (Scotland) Act 1845—
- (a) every section ceases to have effect except for sections 16, 18, 21 and 22, and

- (b) in section 18 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 213 of the Banking Act 2009”.
- (3) The following cease to have effect—
 - (a) section 12 of the Bank Charter Act 1844,
 - (b) section 9 of the Currency and Bank Notes Act 1928,
 - (c) sections 1 and 3 of, and the Schedule to, the Bankers (Northern Ireland) Act 1928, and
 - (d) in the Coinage Act 1971—
 - (i) section 12(4)(b) and (c), and
 - (ii) in Schedule 2 the entries relating to—
 - (a) the Bankers (Ireland) Act 1845,
 - (b) the Bank Notes (Scotland) Act 1845, and
 - (c) section 3 of the Bankers (Northern Ireland) Act 1928.

Regulations and rules

215 Banknote regulations

- (1) The Treasury shall make regulations about the treatment, holding and issuing of banknotes by authorised banks (“banknote regulations”).
- (2) Banknote 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.

216 Banknote rules

- (1) Banknote regulations may require or permit the Bank of England to make rules (“banknote rules”) about any aspect of the treatment, holding or issuing of banknotes by authorised banks.
- (2) In particular, banknote regulations may require or permit banknote rules to do anything which banknote regulations may do.
- (3) Banknote rules—
 - (a) may make provision generally or only for specified purposes, cases or circumstances, and
 - (b) may make different provision for different purposes, cases or circumstances.

Specific issues

217 Backing assets

- (1) Banknote regulations must require authorised banks to have backing assets.
- (2) “Backing assets” means assets of a kind specified by banknote regulations; and the regulations may, in particular, specify—

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- (a) banknotes issued by the Bank of England,
 - (b) current coins of the United Kingdom, and
 - (c) funds in a specified kind of account held with the Bank of England or with another specified institution or class of institution.
- (3) The regulations must—
- (a) require banknote rules to include provision for determining the value of backing assets to be held,
 - (b) require backing assets in the form of banknotes to be held either—
 - (i) by the Bank of England, or
 - (ii) at one or more locations approved by the Bank of England, and
 - (c) require backing assets held in the form of coins to be held at one or more locations approved by the Bank of England.
- (4) The regulations may make other provision about backing assets; including, in particular—
- (a) provision requiring a proportion of a bank’s backing assets to consist of assets of a specified kind;
 - (b) provision about the manner in which backing assets may or must be held;
 - (c) provision about ownership of and interests in backing assets;
 - (d) provision permitting backing assets to be held by an agent of an authorised bank.
- (5) Banknote regulations may make provision about the treatment of backing assets in relation to insolvency; in particular, the regulations may—
- (a) modify or disapply a provision or rule of law about insolvency;
 - (b) protect backing assets from being treated in the same way as other assets of the bank;
 - (c) provide for banknotes to be exchanged by bearers within a specified period;
 - (d) allow the Treasury to extend the period for exchange;
 - (e) provide for exchange to be funded from backing assets;
 - (f) provide for the Bank of England to acquire or control a bank’s backing assets for the purpose of administering arrangements for exchange.
- (6) In subsection (5) a reference to “insolvency” includes a reference to—
- (a) liquidation,
 - (b) bank insolvency,
 - (c) administration,
 - (d) bank administration,
 - (e) receivership,
 - (f) a composition between a bank and its creditors,
 - (g) a scheme of arrangement of a bank’s affairs, and
 - (h) a process under the law of a country or territory outside the United Kingdom which the Treasury identify, in banknote regulations, as serving a similar purpose to any of the processes listed in paragraphs (a) to (g).

218 Information

- (1) Banknote regulations or rules may make provision about—

- (a) reports to be made by an authorised bank in respect of the treatment, holding or issue of banknotes or in respect of compliance with banknote regulations or rules, and
 - (b) information to be given by an authorised bank or an agent of an authorised bank.
- (2) Banknote regulations may make provision enabling the publication or disclosure of—
- (a) information provided in accordance with banknote regulations or rules;
 - (b) details of anything done in contravention of this Part or banknote regulations or rules;
 - (c) details of action taken under sections 221 to 224 (which may include details of the reason for the action and its result).
- (3) Her Majesty’s Revenue and Customs shall transfer to the Bank of England any information acquired or held in connection with functions in respect of the issue of banknotes in Scotland or Northern Ireland.
- (4) The Bank of England may use information received in accordance with subsection (3) only for the purposes of its functions under or by virtue of this Part.

219 Ceasing the business of issuing notes

- (1) If an authorised bank at any time after commencement stops issuing banknotes, it may not resume issuing banknotes in reliance on section 213.
- (2) Banknote regulations or rules—
- (a) may specify procedures to be followed by an authorised bank that intends to stop issuing banknotes, and
 - (b) may apply to an authorised bank for two years after it stops issuing banknotes.

220 Insolvency, &c.

- (1) Banknote regulations may make provision in connection with the application to an authorised bank of—
- (a) the special resolution regime (under Parts 1 to 3), or
 - (b) a provision about insolvency within the meaning of section 217(6).
- (2) The regulations may, in particular—
- (a) provide for the destruction of banknotes which have not been issued;
 - (b) provide for the destruction of banknotes which have been exchanged in accordance with section 217(5)(c);
 - (c) extinguish a claim to or interest in un-issued or exchanged banknotes.
- (3) A right to rely on section 213 cannot be transferred by or acquired from an authorised bank (and, in particular, cannot be acquired by virtue of or in connection with anything done under Part 1).
- (4) The fact that an authorised bank is taken into temporary public ownership in accordance with section 13 does not itself prevent the bank from relying on section 213.
- (5) If an authorised bank enters insolvency (within the meaning of section 217(6)) it loses the right to rely on section 213.

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- (6) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case.
- (7) A reference in this section to the special resolution regime includes a reference to any provision of the law of a country or territory outside the United Kingdom which the Treasury identifies, in banknote regulations, as serving a similar purpose.

Enforcement

221 Offence: unlawful issue

- (1) A person who issues banknotes in Scotland or Northern Ireland otherwise than in reliance on section 213 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) An offence under subsection (1) committed by a body corporate is also committed by an officer of the body (“O”) if the offence—
 - (a) is committed with O’s consent or connivance, or
 - (b) is attributable to O’s negligence.
- (4) In subsection (3) “officer” means—
 - (a) a director,
 - (b) a manager,
 - (c) a secretary or similar officer, and
 - (d) a person purporting to act as an officer within paragraphs (a) to (c).
- (5) Subsection (3) applies to a partnership constituted under the law of Scotland as to a body corporate; for which purpose “officer” means—
 - (a) a partner, or
 - (b) a person purporting to act as a partner.
- (6) Proceedings for an offence under subsection (1) may be instituted—
 - (a) in England and Wales, only by the Director of Public Prosecutions, and
 - (b) in Northern Ireland, only by the Director of Public Prosecutions for Northern Ireland.

222 Financial penalty

- (1) Banknote regulations may enable the Bank of England to impose a penalty on an authorised bank that fails to comply with banknote regulations or rules.
- (2) A penalty—
 - (a) shall be paid to the Bank of England, and
 - (b) is enforceable by the Bank of England as a debt.

- (3) Banknote regulations must establish a method for determining the maximum amount of a penalty.

223 Termination of right to issue

- (1) The Treasury may determine—
- (a) that an authorised bank has failed to comply with banknote regulations or banknote rules, and
 - (b) that, having regard to the nature of the failure, the authorised bank should no longer be permitted to issue banknotes in reliance on section 213.
- (2) Before making a determination the Treasury must consult the Bank of England.
- (3) On making a determination the Treasury shall notify the authorised bank.
- (4) Upon receipt of the notice the authorised bank loses the right to rely on section 213.
- (5) If an authorised bank ceases to have permission under Part 4 of the Financial Services and Markets Act 2000 (regulated activities) to carry on the regulated activity of accepting deposits, it loses the right to rely on section 213 above.
- (6) The reference in subsection (5) to Part 4 of the Financial Services and Markets Act 2000 includes a reference to any provision of the law of another country which the Treasury identify, in banknote regulations, as serving a similar purpose.
- (7) Transitional provision of banknote regulations (included in reliance on section 259(1)(c)) may include provision for a case where a bank loses the right to rely on section 213; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case.

224 Application to court

Banknote regulations may enable the Bank of England to apply to the High Court or Court of Session for—

- (a) relief in respect of failure to comply with banknote regulations or rules, or
- (b) any order designed to ensure, or facilitate monitoring of, compliance with a provision of banknote regulations or rules.

Bank of England

225 Organisation

Expenses incurred and sums received by the Bank of England in connection with its functions under this Part are to be treated as expenses and receipts of the Issue Department.

226 Discretionary functions

- (1) Banknote regulations may confer a discretionary function on the Bank of England.
- (2) In particular, banknote regulations—

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- (a) may require compliance with conditions to be imposed (whether generally or only for specified cases or circumstances) by the Bank of England, and
 - (b) may make a permission or option subject to the approval of the Bank of England (which may be general or only for specified cases or circumstances).
- (3) Subsection (2) is in addition to express references in this Part to Bank of England approval.

227 Exemption

Section 221(1) does not prohibit the issue of banknotes by the Bank of England.