



Banking Act 2009

2009 CHAPTER 1

PART 3

BANK ADMINISTRATION

Process

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) [^{F1}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

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- (f) in relation to provisions of the Insolvency Act 1986 other than Schedule B1 [^{F2}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.
- [^{F3}(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	
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	(a) In the case of bank administration following transfer to a [^{F4} 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. (b) In the case of bank administration following transfer to a [^{F4} resolution

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			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.
		(c)	In considering whether to give permission for the purposes of para. 43 the court must have regard to the Objectives in section 137.
Para. 44(1)(a) and (5)	Interim moratorium		
Para. 46	Announcement of appointment		Ignore sub-para. (6)(b) and (c).
Paras. 47 & 48	Statement of affairs		
Para. 49	Administrator's proposals	(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>
		(b)	Treat the reference in sub-para. (1) to the purpose of administration as a reference to Objective 2.
		(c)	Before making proposals under

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- sub-para. (1) in the case of bank administration following transfer to a [^{F4}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).
- (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).
- (e) Ignore sub-para. (3)(b).
- [^{F5}(ea) Ignore the amendment made by paragraph 10(2) of Schedule 9 to the 2015 Act.]
- (f) Treat references in sub-para. (5) to the company's entering administration as references to satisfaction of the condition in para. (a) above.
- Paras. 50–58 Creditors' meeting [^{F6}(za) Ignore the repeal of Paras 50 and 58 by paragraph 10(3) and (22) of Schedule 9 to the 2015 Act.
- (zb) Ignore the amendments of Paras 51 to 57 made by paragraph 10(4) to (21) of

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		Schedule 9 to the 2015 Act.]
		(a) Treat references in para. 51(2) to the company's entering administration as references to the giving of an Objective 1 Achievement Notice.
		(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.
		(c) A creditors' meeting may 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).

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| | | (b) In the case of bank administration following transfer to a [^{F4} 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 | [^{F7} Ignore the amendment made by paragraph 10(23) of Schedule 9 to the 2015 Act.] |
| Para. 63 | Application to court for directions | (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.

(b) In making directions the court must have |

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		regard to the Objectives in section 137.
Para. 64.	Management powers.	
Para. 65	Distribution to creditors	(a) In the case of bank administration following transfer to a [^{F4} 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. [^{F8} (b) Where paragraph (a) 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 [^{F4} resolution

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| Para. 73 | Protection for secured and preferential creditors | <p>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.</p> <p>(a) Treat a reference to proposals as including a reference to the principles specified in the modification of para. 68 set out above.</p> <p>(b) Para. 73(1)(a) does not apply until the Bank of England has given an Objective 1 Achievement Notice.</p> |
| Para. 74 | Challenge to administrator's conduct | <p>[^{F9}(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</p> |

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		satisfied that it would not prejudice pursuit of Objective 1 in section 137.
Para. 75	Misfeasance	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.
[^{F10} Para. 79]	[^{F10} Termination: successful rescue]	[^{F10} (a) Ignore sub-para. (2). (b) See section 153.]
Para. 84	Termination: no more assets for distribution	See section 154.
Para. 85	Discharge of administration order	
Para. 86	Notice to Companies Registrar of end of administration	See section 153.
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

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		<p>application under para. 91(1).</p> <p>(b) After that, either the Bank of England or a creditors' committee may apply.</p> <p>(c) Ignore para. 91(1) (b) to (e) and (2).</p>
Para. 96	Substitution of floating charge-holder	<p>Para. 96 applies to a bank administrator, but—</p> <p>(a) only after an Objective 1 Achievement Notice has been given, and</p> <p>(b) ignoring references to priority of charges.</p>
Para. 98	Discharge	<p>[^{F11}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>

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Paras. 100-103	Joint administrators	Until an Objective 1 Achievement Notice has been given, an application under para. 103 may be made only by the Bank of England.
Para. 104	Validity	
Para. 106 (and section 430 and Schedule 10)	Fines	[^{F12} Ignore the amendments made by paragraph 11 of Schedule 9 to the 2015 Act.]
Paras. 107–109	Extension of time limits	(a) Until an Objective 1 Achievement Notice has been given, an application under para. 107 may be made only 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. [^{F13} (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.
<i>Para. 110</i>	<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	[^{F14} Ignore the amendment made by paragraph 10(44) of Schedule 9 to the 2015 Act.]

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[^{F15} 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 of section 176A(2)(a) (as applied by this section). (b) Where paragraph (a) applies, ignore sub-paras (1A) and (1B).
Para 116	Scotland: payment to holder of floating charge subject to rights]	

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	(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. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply).

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- (c) Ignore the reference to the official receiver.
- (d) Only a person who is qualified to act as an insolvency practitioner [^{F16}in relation to the bank] and who consents to act may be appointed.
- (e) The court may only confer on a provisional bank administrator functions in connection with the pursuance of Objective 1; and 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 [^{F17}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

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		as realisable by agreement between the bank administrator and the Bank of England.
[^{F18} Section 176ZB	Application of proceeds of office-holder claims]	
Section 176A	Unsecured creditors	In the case of bank administration following transfer to a [^{F17} 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 (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 [^{F17} 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	
^{F19}	^{F19}	
...	...	
^{F19}	^{F19}	^{F19}
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Section 233	Utilities	
[^{F20} Section 233A	Further protection of utilities]	

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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	
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	
[^{F21} 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

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		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	
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.
[^{F22} Sections 390 to 391T	Authorisation and regulation of insolvency practitioners	(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank administrator. (b) Read subsection (2) of that section (as so modified) as if after "authorised" there were inserted "to act as an insolvency practitioner". (c) An order under section 391 has effect in relation to any provision applied for the purposes of bank administration. (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.

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		(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.]
Sections 423–425	Transactions defrauding creditors	(a) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 137. (b) In considering making an order in reliance on section 425 the court must have regard to Objective 1 of section 137.
Sections 430–432 & Schedule 10	Offences	
Section 433	Statements: admissibility	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

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**

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- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** Words in s. 145 Table inserted (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 21(6), 26(1)(f)**
- F11** 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)**
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** 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**
- F21** 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)**
- F22** 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

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(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)

C1 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

I1 S. 145 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 3**

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

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

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