
STATUTORY INSTRUMENTS

2008 No. 2546

The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008

PART 3

MEMBERS, MEETINGS, DIRECTORS AND PROCEEDINGS

Minimum membership for carrying on business

8.—(1) While Bradford & Bingley is wholly owned by the Treasury, section 24 of the 1985 Act (minimum membership for carrying on business) shall not apply in relation to Bradford & Bingley or any member of Bradford & Bingley.

(2) While Bradford & Bingley is wholly owned by the Treasury, no petition shall be presented for the winding up of Bradford & Bingley on the ground that the number of its members is less than the number required by law, nor shall any person be liable on that ground as a member of the company for the payment of any of its debts.

Resolutions and meetings

9.—(1) While Bradford & Bingley is wholly owned by the Treasury, any meeting of members of Bradford & Bingley shall, if the Treasury Solicitor is present in person, by proxy or authorises a corporate representative to attend, be deemed to be a duly constituted general meeting of the company notwithstanding that it may not have been properly called, or notice of it may not have been properly given, or any quorum required by Bradford & Bingley's articles of association may not be present.

(2) Notwithstanding any provision in the articles of association of Bradford & Bingley, an appointment of a proxy for the Treasury Solicitor—

- (a) may be in any written form (including in an electronic communication);
- (b) need not be given with any period of notice;
- (c) shall not require the approval of the board of Bradford & Bingley; and
- (d) is deemed to be given in accordance with the articles of association.

(3) A resolution of the company adopted after the first transfer time is effective notwithstanding that special notice (notice of intention to move it given to company at least 28 days before the meeting at which it is moved) of the resolution is required by any provision of the 1985 Act or 2006 Act but has not been given.

Removal of directors

10.—(1) While Bradford & Bingley is wholly owned by the Treasury, the Treasury may in accordance with this article—

- (a) remove any person as a director of a relevant undertaking;

(b) terminate a director's service contract with any relevant undertaking.

(2) For the purposes of any contract or arrangement between a person and a relevant undertaking, action taken under paragraph (1) shall be treated as having been carried out by the relevant undertaking and, in the case of paragraph (1)(a), under and in accordance with its articles of association.

(3) The Treasury may remove a person as a director of a relevant undertaking and may terminate his service contract by written notice to the relevant undertaking.

(4) Any notice given in accordance with paragraph (3) shall take effect from the date specified in the notice.

(5) A relevant undertaking which receives notice under paragraph (3) shall notify the person to whom the notice relates of that fact as soon as reasonably practicable.

(6) A person—

(a) removed as director of a relevant undertaking, or

(b) whose service contract with a relevant undertaking is terminated,

in accordance with this article shall not have any right or claim against the Treasury or any company wholly owned by the Treasury (other than a relevant undertaking) in consequence of the Treasury's actions under this article.

(7) This article does not—

(a) deprive any person removed under it of compensation or damages payable to him by a relevant undertaking in respect of—

(i) the termination of his appointment as director or of any appointment terminating with that as director; or

(ii) the termination of his service contract; or

(b) derogate from any power to remove a director or to terminate a director's service contract that may exist apart from this article.

(8) In this article and in article 11, "service contract" has the meaning given by section 227 of the 2006 Act (directors' service contracts).

Appointment of directors

11.—(1) While Bradford & Bingley is wholly owned by the Treasury, the Treasury may appoint one or more directors of a relevant undertaking in accordance with this article and notwithstanding any provision in the articles of association of the relevant undertaking.

(2) The Treasury may appoint a director of a relevant undertaking by written notice to the relevant undertaking provided the appointee has agreed to act in such a capacity.

(3) The appointment shall take effect from the date specified in the notice.

(4) The Treasury may determine the terms (including remuneration) of the service contract of a person appointed as a director under this article in whatever written form they see fit.

(5) Any appointment, contract or arrangement which is made or the terms of which are determined under this article is to be treated as made or entered into by the relevant undertaking in question.

(6) This article does not derogate from any power to appoint a director or determine the remuneration and other terms and conditions of a director's service contract that may exist apart from this article.

Proceedings against directors

12.—(1) No director of a relevant undertaking shall be liable for any act or omission of the director, acting in such capacity, which occurs while Bradford & Bingley is wholly owned by the Treasury and accordingly no proceedings may be brought (or in Scotland, raised) against any such director in respect of such matters.

(2) The Treasury may in writing—

- (a) disapply paragraph (1), and
- (b) give consent to bring (or in Scotland, raise) such proceedings against such directors.

(3) Where paragraph (1) applies, section 232 of the 2006 Act (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

“proceedings” includes proceedings under Part 11 of the 2006 Act (derivative claims and proceedings by members);

“director” means—

- (a) a person who is appointed as a director while Bradford & Bingley is wholly owned by the Treasury, whether or not he has ceased to be a director when proceedings in respect of that liability commenced;
- (b) a person who was a director immediately before the first transfer time and whose continuing appointment as director while Bradford & Bingley is wholly owned by the Treasury, the Treasury approves in writing, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced; and
- (c) an alternate director of a person falling within sub-paragraph (a) or (b).

Shadow directorship

13.—(1) While Bradford & Bingley is wholly owned by the Treasury, for the purposes of the provisions listed in Schedule 1 to this Order, none of the persons listed in paragraph (3) shall be regarded as a shadow director of or (unless otherwise appointed as a director) a person discharging managerial responsibilities of a relevant undertaking.

(2) For the purposes of the definition of “director” in section 417 of the 2000 Act (definitions), while Bradford & Bingley is wholly owned by the Treasury, none of the persons listed in paragraph (3) shall be regarded as a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of a relevant undertaking are accustomed to act.

(3) The persons are—

- (a) a Minister of the Crown;
- (b) the Treasury;
- (c) the Treasury Solicitor;
- (d) the Bank;
- (e) persons—
 - (i) employed by or under; or
 - (ii) acting on behalf of,any of the persons specified in sub-paragraphs (a) to (d).