

**EXPLANATORY MEMORANDUM TO**  
**THE BRAFORD & BINGLEY plc TRANSFER OF SECURITIES AND PROPERTY**  
**ETC. ORDER 2008**

**S.I. 2008/2546**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 ("the Order") transfers shares in Bradford & Bingley plc ("Bradford & Bingley") to the Treasury Solicitor as nominee for Her Majesty's Treasury, makes a further transfer of certain property, rights and liabilities to Abbey National plc, and makes various connected provisions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 It was not possible in the case of this Order to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. The Order was made at 7.40 a.m. on 29th September 2008, came into force at 8.00am on that day and then was laid before Parliament on that day.

3.2 It is important that the transfer of securities in Bradford & Bingley, and the transfer of certain property, rights and liabilities and other related matters, has effect as soon as possible following the making of the Order. It is in everyone's interest for the transfer of shares and transfer of property to be effected as swiftly as possible to avoid uncertainty .

4. **Legislative Background**

4.1 The Order is the second order made under the Banking (Special Provisions) Act 2008 and is the first in exercise of the power under section 8 to make a further transfer following a transfer to the public sector. By virtue of section 2(8), the power is only exercisable for a period of one year from the passing of the Act.

4.2 Section 2 of the Act requires that, before making an order under section 3, the Treasury must consider that it is desirable to make the order for either or both of the purposes set out in section 2(2). The Treasury considers it desirable to make the Order for the purpose set out in section 2(2)(a), that is, to maintain the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the order were not made.

4.3 In addition to providing for the transfer of Bradford & Bingley shares, the Order also, among other things, extinguishes the existing share options; provides for the rights or obligations of lenders, bondholders, swap counterparties or suppliers which would be triggered by the act of bringing Bradford & Bingley into temporary public ownership not to be so triggered; facilitates Bradford & Bingley board changes; deals with the issue of liability of those directors appointed to or continuing on the board of Bradford & Bingley whilst it is in public ownership; modifies the application of certain provisions of the Financial Services and Markets Act 2000 to the company; and disapplies shadow directorship provisions to specified public sector persons.

4.4 In accordance with the requirement in section 5(1) of the Act, the Treasury intends to make an order, as required by section 5, which will provide for the amount of any compensation payable by the Treasury to persons who held shares in Bradford & Bingley immediately before the transfer and for the extinguishment of certain associated rights.

4.5 The Order provides for the transfer of certain property, rights and liabilities of Bradford & Bingley to Abbey National plc (“Abbey”) in exercise of the power under section 8 of the Act to make a further transfer following a transfer to the public sector. In addition to providing for the transfer of such property, rights and liabilities, the Order, among other things, provides for the transfer by Bradford & Bingley to Abbey of the shares in Bradford & Bingley International Limited (a subsidiary of Bradford & Bingley registered in the Isle of Man); makes provision in relation to the interests, rights and liabilities of third parties relating to the property, rights and liabilities transferred; and makes provision in relation to employees of Bradford & Bingley and their pensions.

4.6 The Order also provides for the interaction of the transfer described in paragraph 4.5 above with the Financial Services Compensation Scheme (“FSCS”). In particular, it provides for certain payments to be made to Abbey by the FSCS and the Treasury in connection with that transfer, and for the payments by the FSCS to Abbey to constitute the payment of compensation to persons eligible to claim from the FSCS (for the purposes of the relevant provisions of the Financial Services and Markets Act 2000 and the relevant sections of the FSA Handbook).

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is necessary.

## **7. Policy background**

7.1 The purpose of the Act is to enable the Government to act to secure the continued stability of the UK financial system and to protect the public interest.

7.2 The purpose of the Order is to transfer Bradford & Bingley's UK and Isle of Man retail deposit business, along with its branch network, to Abbey and to take the remainder of Bradford & Bingley's business into a period of public ownership.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

9.1 HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 020-7270 4558 or e-mail: [b&benquiries@hm-treasury.x.gsi.gov.uk](mailto:b&benquiries@hm-treasury.x.gsi.gov.uk) for any queries regarding the instrument.



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HMT</b>	<b>Title:</b> <b>Impact Assessment of The Bradford &amp; Bingley plc Transfer of Securities and Property etc. Order 2008</b>	
<b>Stage:</b> Implementation	<b>Version:</b> 1	<b>Date:</b> 29 September 2008
<b>Related Publications:</b> The Banking (Special Provisions) Act 2008		

**Available to view or download at:**

<http://www.hm-treasury.gov.uk>

**Contact for enquiries:**

**Telephone:**

**What is the problem under consideration? Why is government intervention necessary?**

Protecting the public interest and maintaining stability of the UK financial system in circumstances where the Financial Services Authority has determined that a deposit taker is no longer meeting its threshold conditions for authorisation.

**What are the policy objectives and the intended effects?**

To support financial stability; to protect depositors' money; and to protect the interests of the taxpayer.

**What policy options have been considered? Please justify any preferred option.**

The purpose of the Order is to transfer Bradford & Bingley plc's UK and Isle of Man retail deposit business, along with its branch network, to Abbey National plc and to take the remainder of Bradford and Bingley plc's business into public ownership. The Government has considered a number of other options, including other expressions of interest from the private sector, and considers this to be the best solution having weighed up the various competing considerations.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The government will put in place arrangements for a business plan to be developed for the remainder of Bradford & Bingley plc's business being taken into public ownership.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

.....Date: 29 September