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STATUTORY INSTRUMENTS

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**2008 No. 2644**

**The Heritable Bank plc Transfer of  
Certain Rights and Liabilities Order 2008**

**PART 5**

**MISCELLANEOUS**

**Shadow directorship**

**26.**—(1) While Deposits Management (Heritable) is wholly owned by the Treasury (or to be regarded as wholly owned by the Treasury for the purposes of the Act), for the purposes of the provisions listed in Schedule 2 to this Order, none of the persons listed in paragraph (3) shall be regarded as a shadow director or (unless otherwise appointed as a director) a person discharging managerial responsibilities of Deposits Management (Heritable).

(2) For the purposes of the definition of “director” in section 417 of the 2000 Act (definitions), 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 while Deposits Management (Heritable) is wholly owned by the Treasury.

(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 listed in sub-paragraph (a) to (d).

**Modification to Authority’s rule-making power**

**27.**—(1) Subsections (1) and (1A)(1) of section 138 of the 2000 Act (general rule-making power) have effect as if modified by inserting after “protecting the interests of consumers”—

“or for the purposes of, to facilitate or in consequence of, a transfer under section 6 of the Banking (Special Provisions) Act 2008”.

(2) Section 148(2)(2) of the 2000 Act (modification or waiver of rules) shall also apply in relation to Heritable—

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(1) Subsections (1A) to (1C) were inserted by [S.I. 2006/2975](#).  
(2) Subsection (2) was substituted by [S.I. 2007/1973](#).

- (a) in the absence of an application by a person subject to rules made by the Authority; and
- (b) without any requirement for the consent of such a person.

(3) Section 148(4)(3) of the 2000 Act shall not prevent the Authority from modifying or waiving rules in relation to Heritable under section 148 of that Act provided that the Authority is satisfied that the modification or waiver is necessary for the purposes of, to facilitate or in consequence of the transfer.

#### **Modification to Authority’s duty to consult on rule changes**

**28.**—(1) Section 155(7) of the 2000 Act (consultation) has effect as if modified by adding at the end—

“or if it is making rules for the purposes of, or to facilitate or in consequence of, a transfer under section 6 of the Banking (Special Provisions) Act 2008.”

(2) Section 157 of the 2000 Act (guidance) has effect as if modified by adding after subsection (3)

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“(3A) Section 155(7) applies to proposed guidance as it applies to proposed rules with the modification made by article 28 of the Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008.”.

#### **Freedom of information**

**29.** For the purposes of section 3 of the Freedom of Information Act 2000 (public authorities)(4), Deposits Management (Heritable) shall be deemed—

- (a) not to be a publicly-owned company for the purposes of subsection (1)(b);
- (b) not to hold information on behalf of the Treasury or Treasury Solicitor for the purpose of subsection (2)(b).

#### **Proceedings against directors**

**30.**—(1) No director of—

- (a) Heritable; or
- (b) Deposits Management (Heritable),

shall be liable in connection with the transfer or any other provisions of this Order 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) waive the effect of 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 Companies Act 2006 (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

“director” means a person who was a director immediately before the effective time, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced;

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(3) Subsection (4)(a) was amended by S.I. 2007/1973.

(4) 2000 c.36.

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

### **Notification requirement**

**31.**—(1) The Treasury must notify the Authority of the making of this Order.

(2) A notification under paragraph (1)—

(a) may be given by such means as the Treasury consider appropriate;

(b) must be given to the Authority as soon as reasonably practicable after the effective time.

(3) On receiving a notification under paragraph (1), the Authority must in turn notify any relevant EEA authority of the making of the Order.

(4) A notification under paragraph (3)—

(a) may be given by such means as the Authority considers appropriate;

(b) must be given to the relevant EEA authority as soon as reasonably practicable after the Authority is notified under paragraph (1).

(5) “Relevant EEA authority” means any regulatory authority in an EEA state that exercises functions in relation to any office or branch of the authorised deposit-taker in question in that state.

### **Transfer of data**

**32.** Any transfer of data under this Order is not to be taken to breach any restriction on disclosure of information, however imposed.