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STATUTORY INSTRUMENTS

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**2009 No. 312**

**BANKS AND BANKING**

**The Banking Act 2009 (Bank Administration)  
(Modification for Application to Banks in  
Temporary Public Ownership) Regulations 2009**

*Approved by both Houses of Parliament*

<i>Made</i>	- - - -	<i>19th February 2009</i>
<i>Laid before Parliament</i>		<i>20th February 2009</i>
<i>Coming into force</i>	- -	<i>21st February 2009</i>

These Regulations are made in exercise of the powers conferred by sections 152(3) and 259(1) of the Banking Act 2009(1).

The power in section 152 of the Banking Act 2009 is being exercised for the first time and the Treasury are satisfied, in accordance with section 259(4) of that Act, that it is necessary to exercise it without laying a draft for approval.

Accordingly, the Treasury make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 and come into force on 21st February 2009.

(2) In these Regulations—

“the Act” means the Banking Act 2009;

“onward public sector transferee” means a transferee under a property transfer order by virtue of section 45(2) of the Act who is a company wholly owned by—

- (a) the Bank of England,
- (b) the Treasury, or
- (c) a nominee of the Treasury;

“private sector transferee” means a transferee under a property transfer order by virtue of section 45(2) of the Act who is not an onward public sector transferee.

### **Application following transfer of bank etc to temporary public ownership**

2.—(1) These Regulations make modifications to Part 3 of the Act (bank administration) as applied by section 152(2) of the Act (which applies Part 3 to banks where the Treasury has made a share transfer order to transfer the securities of a bank or a bank’s holding company into temporary public ownership, and makes a property transfer order in respect of that bank to transfer property from the bank to another person)(2).

(2) Regulations 3 and 4 make general modifications.

(3) The Tables in the Schedule make modifications to the specific provisions listed within them.

### **General modifications to Part 3 of the Act**

3. In Part 3 of the Act a reference to—

“the Bank of England” is a reference to “the Treasury” (unless otherwise specified in the Schedule);

“a property transfer instrument” is a reference to “a property transfer order”.

### **General modifications to Tables 1 and 2 of section 145**

4. In Tables 1 and 2 of section 145 of the Act (which apply provisions of the Insolvency Act 1986(3) in relation to bank administration), in addition to the modifications made by Regulation 3, a reference to “a bridge bank” is a reference to “an onward public sector transferee”.

19th February 2009

*Dave Watts*  
*Steve McCabe*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(2) Section 152 applies bank administration where the Treasury make a share transfer order, in respect of securities issued by a bank (or a bank’s holding company), in accordance with section 13(2) (temporary public ownership), and later make a property transfer order from the bank (or another bank which is or was in the same group as the bank) under section 45(2) of the Act (temporary public ownership: property transfer).

(3) 1986 c. 45.

## SCHEDULE

Regulation 2

## SPECIFIC MODIFICATIONS

**Table 1: Modifications to sections of Part 3 of the Act**

<i>Section and subject</i>	<i>Modification or Comment</i>
136 Overview	For subsection (2)(a) substitute— “(a) it is used where— (i) a bank or a bank holding company has been transferred into temporary public ownership in accordance with section 13(2) (including as applied by section 82(1)), and (ii) the Treasury make a property transfer order in accordance with section 45(2) to transfer part of the business of a bank to a private sector transferee or an onward public sector transferee, and it can also be used in certain cases of multiple transfers under Part 1.”
	In subsection (2)(c) for “the commercial purchaser (“private sector purchaser”) or the transferee (“the bridge bank”)” substitute “the private sector transferee or the onward public sector transferee”.
137 Objectives	In subsection (1)(a) for “commercial purchaser or bridge bank” substitute “the private sector transferee or the onward public sector transferee”.
138 Objective 1: supporting private sector purchaser or bridge bank	For the heading, substitute “Objective 1: supporting the private sector transferee or onward public sector transferee”.
	In subsection (1) for “private sector purchaser or bridge bank” substitute “the private sector transferee or onward public sector transferee”.
	In subsection (3) for— (a) “a private sector purchase” substitute “a transfer to a private sector transferee”; (b) “private sector purchaser” substitute “private sector transferee” (in each place).
	In subsection (4) for “bridge bank” substitute “a company wholly owned by the Bank of England”.
	Regulation 3 does not apply to subsection (4).
	After subsection (4) insert— “(4A) In the case of bank administration following a transfer from a bank in temporary public ownership to a company wholly owned by the Treasury or a nominee of the Treasury (“the company”), the bank administrator must co-operate with any request of the Treasury to enter into an agreement for the residual bank to provide services or facilities to the company; and—

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<i>Section and subject</i>	<i>Modification or Comment</i>
	<ul style="list-style-type: none"> <li>(a) the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with an agreement,</li> <li>(b) the bank administrator must ensure that so far as is reasonably practicable an agreement includes provision for consideration at market rate,</li> <li>(c) paragraph (b) does not prevent the bank administrator from entering into an agreement on any terms that the bank administrator thinks necessary in pursuit of Objective 1, and</li> <li>(d) this subsection does not apply after Objective 1 ceases.”.</li> </ul>
139 Objective 1: duration	In subsections (1) and (3) for “private sector purchaser or bridge bank” substitute “the private sector transferee or the onward public sector transferee”.
140 Objective 2: “normal” administration	In subsection (3) for “bridge bank” substitute “the onward public sector transferee”.
143 Grounds for applying	In subsection (2) for “section 11(2) or 12(2)” substitute “section 45(2)”.
148 Sharing information	<p>Section 148 is applied following a transfer to a company wholly owned by the Bank of England with the following modifications—</p> <ul style="list-style-type: none"> <li>(a) for subsection (2) substitute— <ul style="list-style-type: none"> <li>“(2) Within the period of 5 days beginning with the day on which the bank administrator is appointed, the Bank of England must give the bank administrator information about the financial position of the company wholly owned by the Bank and the Treasury must give the bank administrator information about the financial position of the residual bank.”;</li> </ul> </li> <li>(b) in subsection (3) for “bridge bank” substitute “company wholly owned by the Bank of England” (in each place);</li> <li>(c) in subsection (4)(a), (b) and (e) after “Bank of England” or “the Bank” add “and the Treasury” (in each place);</li> <li>(d) in subsection (4)(c), (d) and (e) for “bridge bank” substitute “the company wholly owned by the Bank of England and the Treasury” (in each place).</li> </ul> <p>Section 148 is applied following a transfer to a company wholly owned by the Treasury or a nominee of the Treasury with the following modifications—</p> <ul style="list-style-type: none"> <li>(e) for “bridge bank” substitute “a company wholly owned by the Treasury or a nominee of the Treasury” (in each place);</li> <li>(f) for “Bank of England” substitute “the Treasury” (in each place).</li> </ul>
150 Bridge bank to private sector purchaser	For the heading, substitute “Onward public sector transferee: company wholly owned by the Treasury or a nominee of the Treasury to private purchaser”.

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<i>Section and subject</i>	<i>Modification or Comment</i>
	Section 150 is applied following a transfer to a company wholly owned by the Treasury or a nominee of the Treasury with the following modifications— (g) for “bridge bank” substitute “a company wholly owned by the Treasury or a nominee of the Treasury” (in each place); (h) for “Bank of England” substitute “the Treasury” (in each place).
151 Property transfer from bridge bank	Ignore.
157 Other processes	For subsection (2)(a) substitute— “(a) “residual bank” means a bank all or part of whose business has been transferred to a private sector transferee or an onward public sector transferee in accordance with section 45(2).”.

**Table 2: Modifications to Table 1 of Applied Provisions in section 145 of the Act: Schedule B1 to the Insolvency Act 1986**

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para. 49	Administrator’s proposals	Ignore paragraph (c) of the Table.
Paras. 50 to 58	Creditors’ meeting	For paragraph (d) of the Table substitute— “(d) Until that time a committee shall have the functions of the creditors committee. The committee shall be formed of 3 individuals, one nominated by each of—  (i) the Treasury, (ii) the Bank of England, and (iii) the FSA.”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations modify Part 3 of the Banking Act 2009 (c.1) (“the Act”), which sets out the bank administration procedure.

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Regulation 2 specifies that these Regulations make modifications to Part 3 of the Act as applied by section 152 of the Act (property transfer from temporary public ownership). Section 152 applies bank administration where the Treasury make a share transfer order in respect of the securities issued by a bank (or a bank's holding company), in accordance with section 13(2) of the Act (temporary public ownership), and later make a property transfer order from the bank (or from a bank the parent of which is the bank's holding company) under section 45(2) of the Act (temporary public ownership: property transfer).

Regulations 3 and 4 set out general modifications to Part 3 of the Act and to Tables 1 and 2 of section 145 of the Act (general powers, duties and effect).

The Schedule to the Regulations sets out specific modifications to Part 3 of the Act.