

2009 No. 313

BANKS AND BANKING

The Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009

Approved by both Houses of Parliament

Made - - - - 19th February 2009

Laid before Parliament 20th February 2009

Coming into force - - 21st February 2009

These Regulations are made in exercise of the powers conferred by sections 149(3) and 259(1) of the Banking Act 2009(a).

The power in section 149(3) 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 Multiple Transfers) Regulations 2009 and come into force on 21st February 2009.

(2) In these Regulations—

“the Act” means the Banking Act 2009;

“a bank in temporary public ownership” is a reference to a bank wholly owned by the Treasury or a nominee of the Treasury;

“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;

“property transfer instrument” has the meaning given by section 149(2) of the Act(a).

(a) 2009 c.1.

Modification of Part 3 where more than one property transfer instrument is made (other than in respect of a bank in temporary public ownership)

2. The modifications of Part 3 of the Act listed in the Table to the Schedule apply where—
- (a) the Bank of England makes more than one property transfer instrument in respect of a bank, and
 - (b) Part 3 applies to the bank by virtue of section 149 of the Act.

Modification of Part 3 where more than one property transfer instrument is made in respect of a bank in temporary public ownership

3.—(1) The modifications of Part 3 of the Act listed in the Table to the Schedule apply with the general modifications specified in paragraph (2) where—

- (a) 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,
 - (b) the Treasury make more than one property transfer instrument in respect of the bank under section 45(2) of the Act**(b)**, and
 - (c) Part 3 applies to the bank by virtue of section 149 and 152 of the Act**(c)**.
- (2) The general modifications to the Table to the Schedule are—
- (a) a reference to “the Bank of England” is a reference to “the Treasury”;
 - (b) a reference to a “private sector purchaser” is a reference to a “private sector transferee”;
 - (c) a reference to a “bridge bank” is a reference to an “onward public sector transferee”.

*Dave Watts
Steve McCabe*

19th February 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulations 2 and 3

MODIFICATIONS

Table: Modifications to Part 3 of the Act

<i>Section and subject</i>	<i>Modification or comment</i>
138 Objective 1: supporting private sector purchaser or bridge bank	After section 138, insert— <p style="text-align: center;">“138A Objective 1: Application where more than one property transfer instrument is made—</p> <p style="text-align: center;">(1) Where more than one property transfer instrument is made and business is transferred from a bank to more than one transferee, Objective 1 is to be pursued in relation to each private sector purchaser or bridge bank</p>

- (a) Section 149(2) defines “property transfer instrument” for the purposes of regulations made under section 149(3). For those purposes a reference to a property transfer instrument includes a reference to supplemental instruments under section 42 of the Act (supplemental instruments), onward property transfer instruments under section 43 of the Act (onward transfer), and property transfer orders under section 45 of the Act (temporary public ownership: property transfer).
- (b) In accordance with section 149(2), a reference to a “property transfer instrument” made by the Treasury is a reference to a property transfer order under section 45(2) or a supplemental property transfer order under section 42 (supplemental instrument) as applied by section 45(7) of the Act.
- (c) Section 152(3) confers a power on the Treasury to make regulations applying Part 3 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) (temporary public ownership) and later make a property transfer order in respect of the bank (or from another bank which is in the same group as the bank) under section 45(2) of the Act (property transfer from temporary public ownership). The Treasury has made regulations in exercise of that power and the regulations are entitled the Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (S.I. 2009/312).

	<p>who, in the opinion of the Bank of England, is to be supplied with such services and facilities as are required to enable it to operate effectively.</p> <p>(2) Where the bank administrator considers that the supply to one private sector purchaser or bridge bank of services and facilities may prejudice the supply of services and facilities to another transferee, the bank administrator—</p> <ul style="list-style-type: none"> (a) must consult with the Bank of England, and the Bank of England may give directions to the bank administrator regarding the supply of services and facilities to transferees, (b) shall pursue Objective 1 in respect of each transferee in so far as is reasonably practicable in the circumstances, and (c) may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below) if unsure whether to pursue a proposed action.”.
139 Objective 1: duration	<p>In subsections (1) and (3) for “with the”, substitute “with any”.</p> <p>After subsection (1), insert—</p> <p>“(1A) The obligations of Objective 1 cease to apply in respect of a particular private sector purchaser or bridge bank if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with that private sector purchaser or bridge bank.”.</p> <p>After subsection (2), add—</p> <p>“(2A) A bank administrator who thinks that Objective 1 is no longer required in respect of a particular private sector purchaser or bridge bank may apply to court for directions under paragraph 63 of Schedule B1 to the Insolvency Act (applied by section 145 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1A) above.”.</p>
143 Grounds for applying	<p>In subsection (2) for “a property transfer instrument” substitute “one or more property transfer instruments”.</p> <p>In subsection (3)(b) after “property transfer instrument” add “or instruments”.</p>
150 Bridge bank to private sector purchaser	<p>For subsection (1)(a), substitute—</p> <p>“(a) notice under section 139(1A) that the residual bank is no longer required in connection with a bridge bank, and”.</p> <p>In subsection (2) for “An Objective 1 Achievement Notice”, substitute “A notice under section 139(1A)”.</p> <p>For subsection (5), substitute—</p> <p>“(5) When the Bank of England gives a notice to the bank administrator that Objective 1 is no longer required to be pursued in respect of a commercial purchaser who has acquired all or part of the business of the bridge bank, the Bank of England may give the bank administrator an Objective 1 Achievement Notice only if the residual bank is no longer required in connection with any private sector purchaser or bridge bank, and section 139 and</p>

	other provisions of this Part which refer to the giving of an Objective 1 Achievement Notice shall have effect.”.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 2 specifies that the Schedule to these Regulations sets out modifications to Part 3 of the Act as applied by section 149(1) of the Act (general application of this Part) where more than one property transfer instrument is made by the Bank of England.

Regulation 3 specifies that the modifications listed in the Schedule apply, with the general modifications set out in that Regulation, where Part 3 is applied by section 149 and 152 of the Act (property transfer from temporary public ownership).

Section 152(3) confers a power on the Treasury to make regulations applying Part 3 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) (temporary public ownership) and later make a property transfer order in respect of the bank (or from another bank which is in the same group as the bank) under section 45(2) of the Act (property transfer from temporary public ownership). The Treasury has made regulations in exercise of that power and the regulations are entitled the Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (S.I. 2009/312).

Regulation 3, therefore, applies Part 3 of the Act where the Treasury make more than one property transfer instrument. In these Regulations, in accordance with section 149(2), a reference to a “property transfer instrument” made by the Treasury includes a property transfer order under section 45(2) and a supplemental property transfer order under section 42 (supplemental instrument) as applied by section 45(7).

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