STATUTORY INSTRUMENTS

2009 No. 317

BANKS AND BANKING

The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009

Approved by both Houses of Parliament

Made - - - - 19th February 2009
Laid before Parliament 20th February 2009
Coming into force - - 21st February 2009

^{MI}The Treasury, in exercise of the powers conferred by sections 135 and 168 of the Banking Act 2009, make the following Order.

The powers in sections 135 and 168 of the Banking Act 2009 are being exercised for the first time and the Treasury is satisfied, in accordance with section 259(4) of that Act, that it is necessary to exercise it without laying a draft for approval.

Modifications etc. (not altering text)

Order applied (with modifications) (29.3.2009) by The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), art. 18, Sch. 2 paras. 1(a), 2, 3

Marginal Citations

M1 2009 c.1.

PART 1

Introduction

Citation and commencement

1. This Order may be cited as the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 and comes into force on 21st February 2009.

Interpretation

2. In this Order—

"the 2009 Act" means the Banking Act 2009.

PART 2

General Modifications to Legislation

- **3.**—(1) So far as the enactments set out in the Schedule ("the listed enactments") apply in relation to liquidation and administration, they apply with the modifications set out in paragraphs (2) to (4).
- (2) The modifications relating to bank insolvency under Part 2 of the 2009 Act are that references to—
 - (a) "liquidator" include a reference to a bank liquidator under Part 2 of the 2009 Act;
 - (b) "provisional liquidator" include a reference to a provisional bank liquidator under Part 2 of the 2009 Act;
 - (c) "liquidation" or "insolvent liquidation" include a reference to bank insolvency under Part 2 of the 2009 Act;
 - (d) "winding up" or "winding up by the court" include a reference to bank insolvency under Part 2 of the 2009 Act (and a reference to the "commencement of winding up" in this context is to the commencement of bank insolvency);
 - (e) "winding up order" include a reference to a bank insolvency order under Part 2 of the 2009 Act;
 - (f) "wound up" include a reference to a bank having been put into bank insolvency under Part 2 of the 2009 Act; and
 - (g) "winding up petition" or "petition to wind up" include an application for bank insolvency under Part 2 of the 2009 Act.
- (3) The modifications relating to bank administration under Part 3 of the 2009 Act are that references to—
 - (a) "administrator" include a reference to a bank administrator under Part 3 of the 2009 Act;
 - (b) "administration" or "insolvent administration" include a reference to a bank administration under Part 3 of the 2009 Act;
 - (c) "administration order" include a reference to a bank administration order under Part 3 of the 2009 Act; and
 - (d) "provisional liquidator" include a reference to a provisional bank administrator under Part 3 of the 2009 Act.
- (4) The modifications relating to bank insolvency or bank administration under Parts 2 and 3 of the 2009 Act are that references to—
 - (a) "insolvency legislation" or "the law of insolvency" include Parts 2 and 3 of the 2009 Act and the provisions of the Insolvency Act 1986 M2 and the Insolvency (Northern Ireland) Order 1989 M3 as applied by those Parts;
 - (b) a person acting as an "insolvency practitioner" (as defined in section 388 of the Insolvency Act 1986) include a person acting as a bank liquidator or bank administrator under Parts 2 and 3 of the 2009 Act;
 - (c) the provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989, in the context of bank insolvency or bank administration, shall be read to include those provisions as applied and modified by sections 103 and 145 of the 2009 Act; and
 - (d) the provisions of the Insolvency Rules 1986 M4, the Insolvency Rules (Northern Ireland) 1991 M5 and the Insolvency (Scotland) Rules 1986 M6, in the context of bank insolvency or bank administration, shall be read to include those provisions as applied and modified

by rules made under section 411(1A) ^{M7} of the Insolvency Act 1986 in relation to bank insolvency, and under section 411(1B) ^{M8} of the Insolvency Act 1986 in relation to bank administration.

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      Marginal Citations

      M2
      1986 c.45.

      M3
      S.I. 1989 No. 2405 (N.I. 19).

      M4
      S.I.1986/1925.

      M5
      S.R. 1991 No. 364.

      M6
      S.I. 1986/1915.

      M7
      Section 411(1A) of the Insolvency Act 1986 was inserted by section 125(2) of the 2009 Act.

      M8
      Section 411(1B) of the Insolvency Act 1986 was inserted by section 160(2) of the 2009 Act.
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PART 3

Specific Modifications and Amendments to Legislation

Finance (No 2) Act 1992

- **4.**—(1) The following provision of the Finance (No 2) Act 1992 M9 applies with the modification set out in this article.
- (2) Paragraph 2 of Schedule 12 (Banks etc. in Compulsory Liquidation) is to be read as if it included the following—
- "(3A) Where the company is a bank (as defined in section 91 of the Banking Act 2009), bank insolvency proceedings shall be taken to have commenced against the bank when the application for a bank insolvency order is made to the court under section 95 of the Banking Act 2009."

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Marginal Citations
M9 1992 c.48.
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Financial Services and Markets Act 2000

- **5.**—(1) The following provisions of the Financial Services and Markets Act 2000 M10 apply with the modifications set out in this article.
 - (2) In section 215 (Rights of the scheme in relevant person's insolvency)—
 - (a) in subsection (3) MII, the reference to making an administration application is to be read as including making an application for a bank administration order under section 142 of the 2009 Act, and
 - (b) subsection (4) is to be read as if it read the following—
 - "(4) In the case of a bank insolvency (as defined in Part 2 of the Banking Act 2009), if the scheme manager decides, pursuant to section 100(6)(d) of that Act, not to remain on the liquidation committee, the scheme manager shall retain the rights it usually enjoys in respect of the winding up of a relevant person under section 371(3) and (4)."
- (3) In section 355 (Interpretation of Part 24), the definition of "court" is to be read as if ", unless otherwise provided," were inserted after the word "means".

- (4) In section 361^{M12} (Administrator's duty to report to Authority), references to—
 - (a) "administration" are to be read as including a reference to bank administration under Part 3 of the 2009 Act; and
 - (b) "the administrator" are to be read as including the bank administrator under Part 3 of the 2009 Act.
- (5) In section 362 (Authority's powers to participate in proceedings)—
 - (a) references to "court"—
 - (i) in the context of a bank administration under Part 3 of the 2009 Act in England, Wales or Northern Ireland, are to be read as meaning the High Court, and
 - (ii) in the context of a bank administration under Part 3 of the 2009 Act in Scotland, are to be read as meaning the Court of Session,
 - (b) in subsection (1), the reference to making an administration application is to be read as including making an application for a bank administration order under section 142 of the 2009 Act, and
 - (c) in subsections (4) M13 and (4A) M14, references to paragraph 74 of Schedule B1 to the Insolvency Act 1986 and paragraph 75 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 are to be read as including references to those provisions as applied and modified by section 145 of the 2009 Act.
- (6) In section 370 (Liquidator's duty to report to Authority), references to "liquidator" are to be read as including a reference to a bank liquidator under Part 2 of the 2009 Act.
- (7) In section 375 (Authority's right to apply for an order), references to the provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including references to those provisions as applied and modified by section 103 and section 134 of the 2009 Act.

Marginal Citations

M10 2000 c.8.

- M11 Subsection (3) was amended by the Enterprise Act 2002 (2002 c.40), section 248 and Schedule 17, paragraphs 53, 54(1) and (2); and the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56, 57(1) and (2).
- M12 Section 361 was amended by the Enterprise Act 2002 (2002 c.40), section 248(3) and Schedule 17, paragraphs 53 and 56. Section 361(1) was amended by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 59.
- M13 Subsection 4 was amended by the Enterprise Act 2002 (2002 c.40), section 248(3) and Schedule 17, paragraphs 53 and 57(d); and the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 60(1) and (5).
- M14 Subsection 4A was amended by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3) and Schedule 2, paragraphs 56 and 60(1) and (6).

Companies Act 2006

- **6.**—(1) The following provisions of the Companies Act 2006 M15 apply with the modifications set out in this article.
 - (2) In section 461 (permitted disclosure of information obtained under compulsory powers)—
 - (a) subsection (4)(c) is to be read so as to include the 2009 Act in the list of enactments in that subsection;

- (b) in subsection (4)(g) is to be read so as to include the 2009 Act in the list of enactments in that subsection.
- (3) Any references in Part 35 (the registrar of companies) to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including a reference to Parts 2 and 3 of the 2009 Act.
 - (4) Where an application is made to the court for—
 - (a) a bank insolvency order under Part 2 of the 2009 Act,
 - (b) the appointment of a provisional bank liquidator under section 135 of the Insolvency Act 1986 or article 115 of the Insolvency (Northern Ireland) Order 1989, as applied by section 103 of the 2009 Act,
 - (c) a bank administration order under Part 3 of the 2009 Act, or
 - (d) the appointment of a provisional bank administrator under section 135 of the Insolvency Act 1986 or article 115 of the Insolvency (Northern Ireland) Order 1989, as applied by section 145 of the 2009 Act,

sections 1139 and 1140 (service of documents on company, directors, secretaries and others) have effect subject to the provisions for service set out in Parts 2 or 3 of the 2009 Act and in rules made under section 411 of the Insolvency Act 1986 in respect of those Parts.

- (5) In Part 2 of Schedule 2 (Specified Descriptions of Disclosures)—
 - (a) paragraph 25 is to be read so as to include the 2009 Act in the list of enactments in that paragraph, and
 - (b) paragraph 46 is to be read so as to include the 2009 Act in the list of enactments in that paragraph.
- (6) In Part 2 M16 of Schedule 11A (Specified Descriptions of Disclosures)—
 - (a) paragraph 30 is to be read so as to include the 2009 Act in the list of enactments in that paragraph, and
 - (b) paragraph 52 is to be read so as to include the 2009 Act in the list of enactments in that paragraph.

Marginal Citations M15 2006 c.46. M16 Part 2 of Schedule 11A was inserted by S.I. 2007/3494, regulation 8(2) and Schedule.

Dormant Bank and Building Society Accounts Act 2008



Pension Protection Fund (Entry Rules) Regulations 2005

- **8.**—(1) The Pension Protection Fund (Entry Rules) Regulations 2005 M17 are amended as follows.
- (2) In regulation 6 (Circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), after paragraph (1)(a)(v) insert—

"(vi) where the company is a bank (as defined in section 91 of the Banking Act 2009), the bank insolvency procedure is stayed under section 130 of the Insolvency Act 1986 (as applied by section 103 of the Banking Act 2009), or the bank insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009."

Marginal Citations

M17 S.I. 2005/590.

Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

- 9.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005^{M18} are amended as follows.
- (2) In regulation 6 (Circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), after paragraph (1)(a)(v) insert—
 - "(vi) where the company is a bank (as defined in section 91 of the Banking Act 2009), the bank insolvency procedure is stayed under article 110 of the Insolvency (Northern Ireland) Order 1989 (as applied by section 103 of the Banking Act 2009), or the bank insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009."

Marginal Citations

M18 S.R. 2005 No.126, as amended by S.R. 2008 No. 303.

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

SCHEDULE Article 3(1)

Legislation subject to the general modifications in Part 2

Primary Legislation

Taxes Management Act 1970 M19

Marginal Citations
M19 1970 c. 9.

Marginal Citations
M19 1970 c. 9.

Prescription and Limitation (Scotland) Act 1973 $^{\rm M20}$

Marginal Citations
M20 1973 c.52.

Marginal Citations M20 1973 c.52.

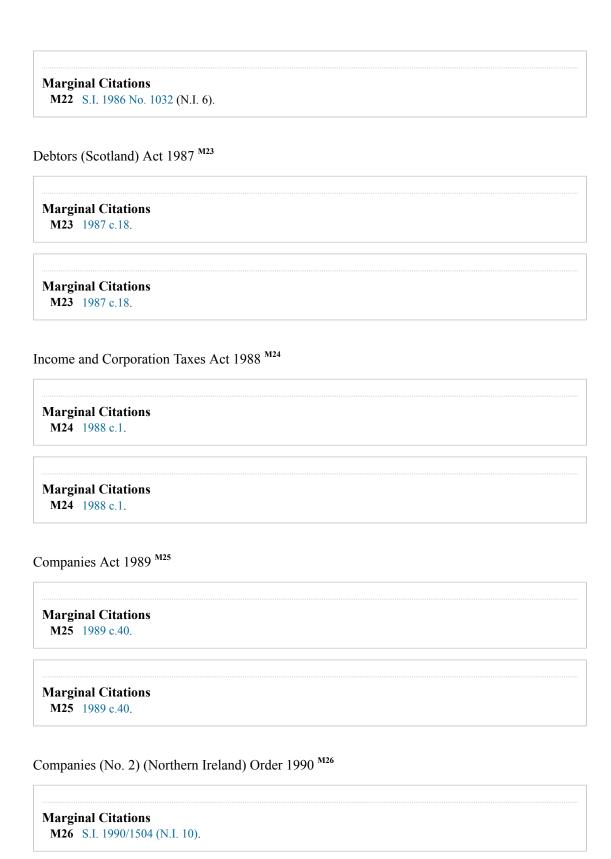
Companies Act 1985^{M21}

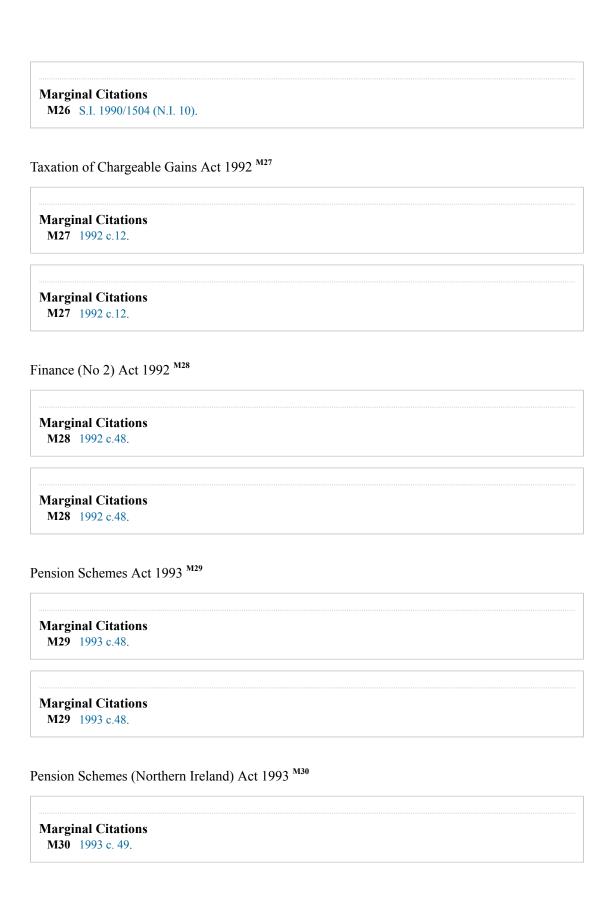
Marginal Citations M21 1985 c. 6.

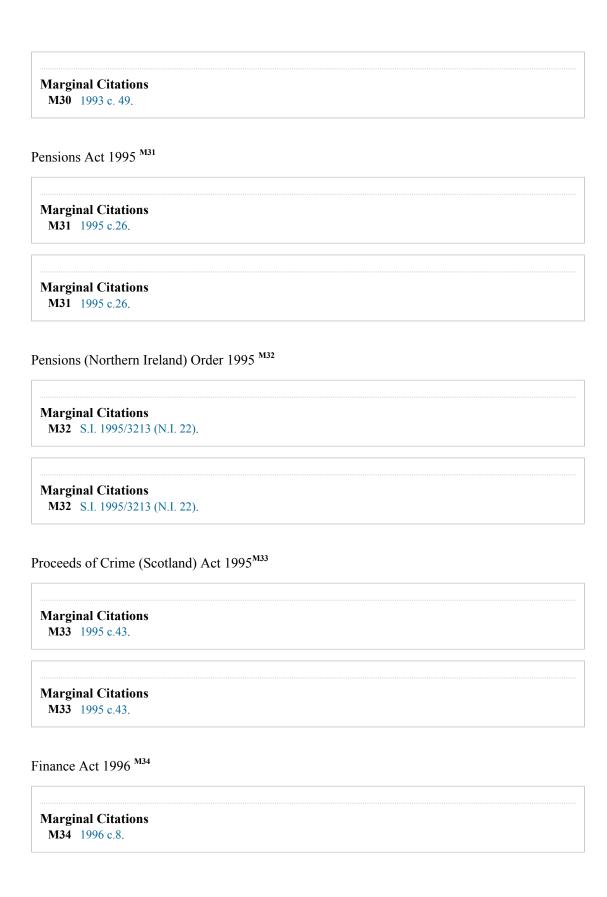
Marginal Citations
M21 1985 c. 6.

Companies (Northern Ireland) Order 1986 M22

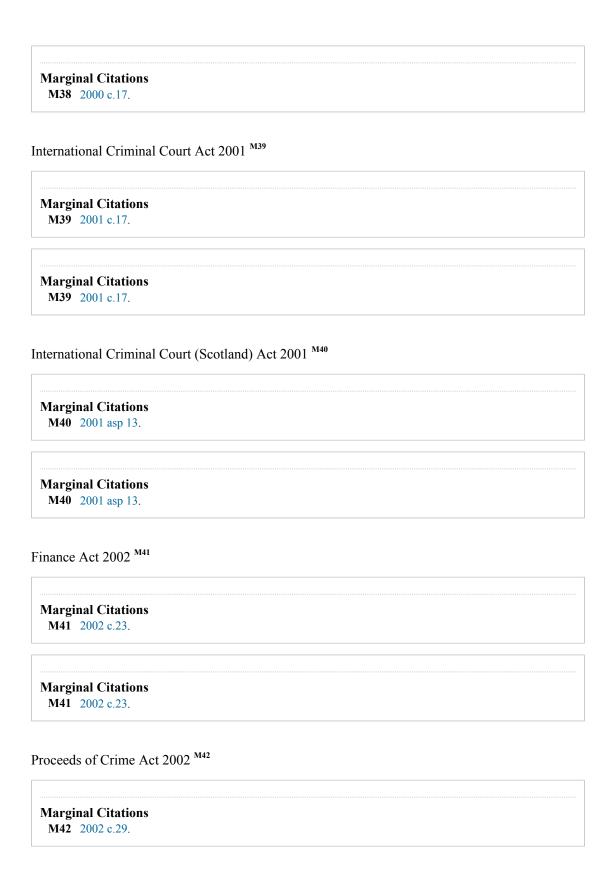
Marginal Citations
M22 S.I. 1986 No. 1032 (N.I. 6).



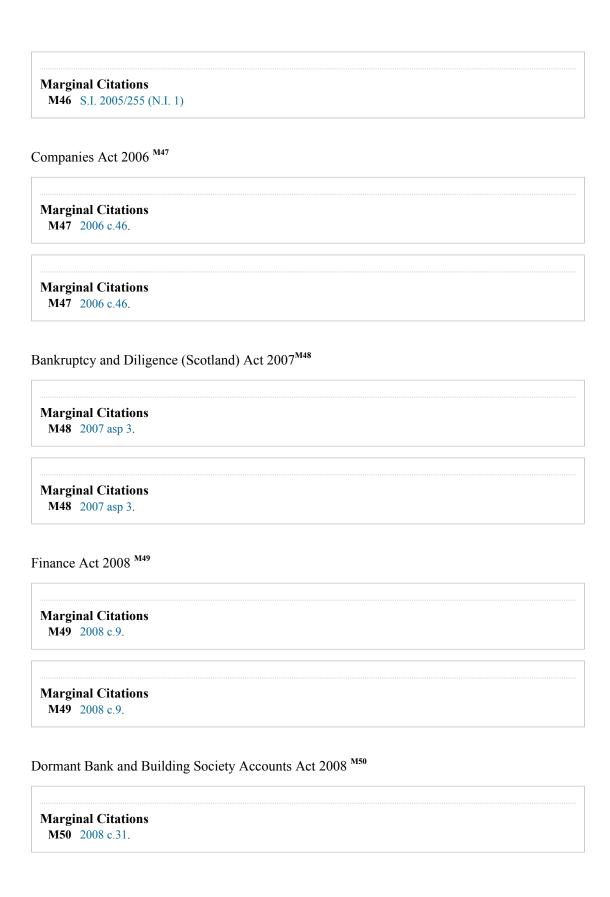




Marginal Citations M34 1996 c.8. Employment Rights Act 1996 M35 **Marginal Citations** M35 1996 c.18. **Marginal Citations M35** 1996 c.18. Employment Rights (Northern Ireland) Order 1996 $^{\rm M36}$ **Marginal Citations M36** S.I. 1996/1919 (N.I. 16). **Marginal Citations M36** S.I. 1996/1919 (N.I. 16). Terrorism Act 2000 M37 **Marginal Citations** M37 2000 c.11. **Marginal Citations** M37 2000 c.11. Finance Act 2000 M38 **Marginal Citations M38** 2000 c.17.



Marginal Citations M42 2002 c.29. Debt Arrangement and Attachment (Scotland) Act 2002 $^{\rm M43}$ **Marginal Citations M43** 2002 asp 17. **Marginal Citations M43** 2002 asp 17. Finance Act 2003 M44 **Marginal Citations** M44 2003 c.14. **Marginal Citations** M44 2003 c.14. Pensions Act 2004 M45 **Marginal Citations** M45 2004 c.35. **Marginal Citations** M45 2004 c.35. Pensions (Northern Ireland) Order 2005 M46 **Marginal Citations M46** S.I. 2005/255 (N.I. 1)





Secondary Legislation

Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 M51

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Marginal Citations
M51 S.I. 1987/2023.

Marginal Citations
M51 S.I. 1987/2023.
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Financial Markets and Insolvency Regulations 1991 $^{\mathrm{M52}}$

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Marginal Citations
M52 S.I. 1991/880.

Marginal Citations
M52 S.I. 1991/880.
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Financial Markets and Insolvency Regulations (Northern Ireland) 1991 $^{\mathrm{M53}}$

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Marginal Citations
M53 S.R. 1991 No. 443.

Marginal Citations
M53 S.R. 1991 No. 443.
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Insolvency Regulations 1994 M54

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Marginal Citations
M54 S.I. 1994/2507.
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Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994 $^{\mathrm{M55}}$

Marginal Citations M55 S.I. 1994/3200. Marginal Citations M55 S.I. 1994/3200.

Insolvent Companies (Reports on Conduct of Directors) Rules 1996 M56

Marginal Citations M56 S.I. 1996/1909. Marginal Citations M56 S.I. 1996/1909.

Financial Markets and Insolvency Regulations 1996 M57

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Marginal Citations
M57 S.I. 1996/1469.

Marginal Citations
M57 S.I. 1996/1469.
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Financial Markets and Insolvency Regulations (Northern Ireland) 1996 $^{\mathrm{M58}}$

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Marginal Citations
M58 S.R. 1996 No. 252.
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Marginal Citations
M58 S.R. 1996 No. 252.

Individual Savings Account Regulations 1998 M59

Marginal Citations
M59 S.I. 1998/1870.

Marginal Citations
M59 S.I. 1998/1870.

Corporation Tax (Simplified Arrangements for Group Relief) Regulations 1999 M60

Marginal Citations
M60 S.I. 1999/2975.

Marginal Citations
M60 S.I. 1999/2975.

Financial Markets and Insolvency (Settlement Finality) Regulations 1999 $^{\rm M61}$

Marginal Citations
M61 S.I. 1999/2979 (applied in Northern Ireland by SI 2006/50 and SI 2007/832).

Marginal Citations
M61 S.I. 1999/2979 (applied in Northern Ireland by SI 2006/50 and SI 2007/832).

Financial Collateral Arrangements (No 2) Regulations 2003 $^{\rm M62}$

Marginal Citations
M62 S.I. 2003/3226.



Insolvency Practitioners and Insolvency Services Account (Fees) Order 2003 M63

Marginal Citations M63 S.I. 2003/3363. Marginal Citations M63 S.I. 2003/3363.

Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003 M64

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Marginal Citations
M64 S.R. 2003 No. 357.

Marginal Citations
M64 S.R. 2003 No. 357.
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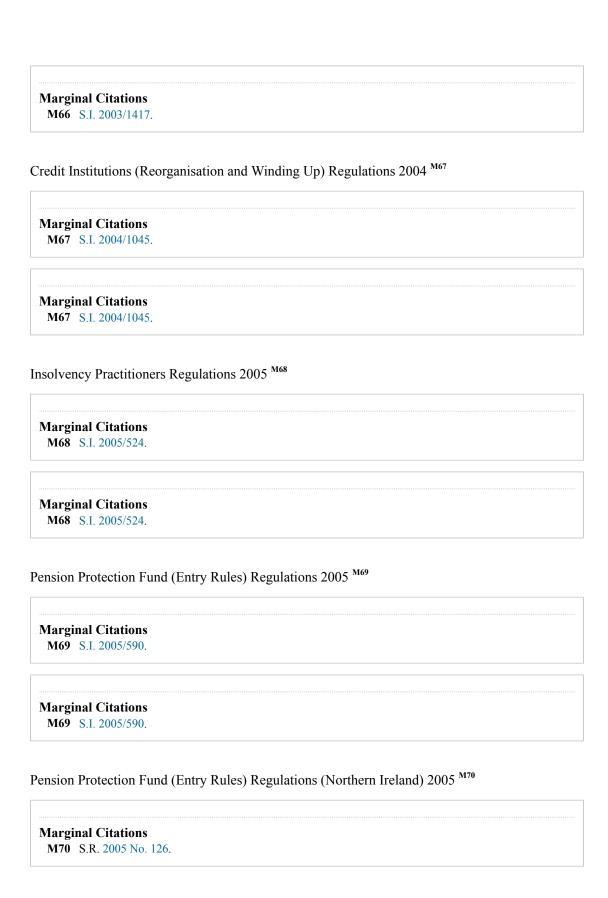
Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003^{M65}

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Marginal Citations
M65 S.R. 2003 No. 358.

Marginal Citations
M65 S.R. 2003 No. 358.
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Land Registration Rules 2003 M66

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Marginal Citations
M66 S.I. 2003/1417.
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Marginal Citations	
M70 S.R. 2005 No. 126.	

Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005

Marginal Citations
M71 S.I. 2005/916.

Marginal Citations
M71 S.I. 2005/916.

Gender Recognition (Disclosure of Information) (Scotland) Order 2005 M72

Marginal Citations
M72 S.S.I. 2005/125

Marginal Citations
M72 S.S.I. 2005/125

Financial Assistance Scheme Regulations 2005 M73

Marginal Citations
M73 S.I. 2005/1986.

Marginal Citations
M73 S.I. 2005/1986.

Insolvency Practitioners Regulations (Northern Ireland) 2006 $^{\rm M74}$

Marginal Citations
M74 S.R. 2006 No. 33.

Marginal Citations M74 S.R. 2006 No. 33.

Insolvency Practitioners and Insolvency Account (Fees) Order (Northern Ireland) 2006 M75

Marginal Citations M75 S.R. 2006 No. 53.

Marginal Citations
M75 S.R. 2006 No. 53.

Land Registration (Scotland) Rules 2006 M76

Marginal Citations M76 S.S.I. 2006/485.

Marginal Citations M76 S.S.I. 2006/485.

F2 ...

- **F2** Words in Sch. omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 3 para. 21**; 2020 c. 1, Sch. 5 para. 1(1)
- **F2** Words in Sch. omitted (31.12.2020) by virtue of The Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/348), reg. 2, **Sch. 3 para. 21**; 2020 c. 1, Sch. 5 para. 1(1)

Regulated Covered Bonds Regulations 2008 M77

Marginal Citations M77 S.I. 2008/346.

Marginal Citations	
M77 S.I. 2008/346.	

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes modifications and amendments to certain Acts and Statutory Instruments as a consequence of Parts 2 (bank insolvency) and 3 (bank administration) of the Banking Act 2009 (c.1) ("the 2009 Act").

Part 1 concerns citation, commencement and interpretation.

Part 2 sets out a number of general modifications, which apply to the primary and secondary legislation set out in the Schedule to this Order. It provides that so far as the enactments in the Schedule apply to liquidation or administration, they apply with the modifications in Part 2, in the case of a bank insolvency or administration under Parts 2 or 3 of the 2009 Act.

Part 3 sets out certain primary legislation that, in the context of a bank insolvency or a bank administration, are to be read with modifications. It also sets out a number of specific textual amendments to secondary legislation.

The Schedule lists the Acts and Statutory Instruments that are subject to the general modifications set out in Part 2.

An impact assessment of the effect of the 2009 Act is available on HM Treasury's website (www.hm-treasury.gov.uk).

Changes to legislation:There are currently no known outstanding effects for the The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009.