

**EXPLANATORY MEMORANDUM TO
THE AMENDMENTS TO LAW (RESOLUTION OF DUNFERMLINE BUILDING
SOCIETY) ORDER 2009**

2009 No. 814

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

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

2. **Purpose of the instrument**

- 2.1 The purpose of this Order is enable the powers of Part 1 of the Banking Act 2009 to be used effectively, in connection with the resolution of Dunfermline Building Society, by modifying or disapplying provisions of certain enactments and rules of law.

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

- 3.1 This is the first use of the power in section 75 (as applied by section 84) of the Banking Act 2009.

- 3.2 The Treasury considered it necessary to make this Order without prior Parliamentary approval. Accordingly, it is made under the 28-day affirmative procedure as provided in section 75(8) of the Banking Act 2009.

- 3.3 The Treasury further considered it necessary to make the Order before laying it before Parliament, and gave notification and explanation of this to the Speakers of both Houses on 30 March 2009.

- 3.4 The Treasury further considered it necessary and desirable to make the Order with retrospective effect as authorised by section 75(3) of the Banking Act, and in so doing the Treasury had regard to the fact that it is in the public interest to avoid retrospective legislation.

- 3.5 In connection with the conclusions noted in paragraphs 3.2 to 3.4 the Treasury note that the Order needed to be in force in connection with the resolution of the Dunfermline Building Society under the Banking Act 2009 and in particular that it needed to come into force at the same time as the Dunfermline Building Society Property Transfer Instrument 2009, made by the Bank of England in exercise of its powers under the Banking Act 2009, which itself needed to come into force before business hours on Monday 30 March 2009.

4. Legislative Context

4.1 Part 1 of the Banking Act 2009 (as supported by Parts 2 to 4) puts in place a permanent special resolution regime, providing the Financial Services Authority, the Bank of England and the Treasury with tools to protect financial stability by effectively resolving banks and building societies that are failing, while protecting depositors, taxpayers and the wider economy. These tools include the powers to make orders to transfer shares or other property, rights and liabilities to a private sector purchaser, to a bridge bank (a company wholly owned by the Bank of England) or into temporary public ownership. Section 75 was included in the Banking Act 2009 so that the provisions of primary and secondary legislation and of the common law can be modified where necessary to enable the powers in Part 1 to be used effectively.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Chancellor of the Exchequer has made the following statement regarding Human Rights:

In my view the provisions of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The transfer of parts of the business principally to Nationwide Building Society, and in part to the Dunfermline Bridge Bank, was effected by a property transfer instrument made by the Bank of England and available on their website. This instrument was made because the Bank of England, after consulting the Treasury and the FSA, was satisfied that it was necessary to make the instrument, having regard to the public interest in the matters set out in section 8(2) of the Banking Act 2009.

7.2 The Order amends the law to make that transfer effective, by—

7.2.1 making effective the transfer of shares in a subsidiary of Dunfermline Building Society (namely Dunfermline BS Nominees Ltd.);

7.2.2 making effective the transfer of all employees, other than non-executive directors of Dunfermline Building Society, to Nationwide Building Society;

7.2.3 clarifying the position as regards the application of certain provisions of the Pensions Act 2004;

7.2.4 making provision in relation to the Dunfermline Bridge Bank (as regards proceedings against directors, shadow directorship and freedom of information);

7.2.5 modifying the rule making powers of the FSA;

7.2.6 making provision for the treatment of Treasury claims in insolvency proceedings.

8. Consultation outcome

8.1 There was no public consultation about this order before it was made. There was extensive consultation about the proposals which were included in the Banking Act 2009, including about the special resolution regime.

9. Guidance

9.1 Guidance on the operation of the special resolution regime, including on the use of the power in section 75, is given in the *Banking Act 2009 Special resolution regime: Code of Practice* issued by the Treasury under section 5 of the Act.

10. Impact

10.1 This order is made to enable the powers under Part 1 of the Banking Act 2009 to be used effectively. There is no impact on business, charities, voluntary bodies or the public sector separate from any impact which the use of those powers in relation to Dunfermline Building Society would have had.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The order does not apply to small business.

12. Monitoring & review

12.1 Not applicable.

13. Contact

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