

2016 No. 114

BANKS AND BANKING

**The NRAM plc (formerly Northern Rock plc) Consequential
and Supplementary Provisions Order 2016**

Made - - - - - *3rd February 2016*

Laid before Parliament *5th February 2016*

Coming into force in accordance with article 1

Securities issued by Northern Rock plc, an authorised UK deposit-taker, were transferred to the Treasury Solicitor as nominee of the Treasury on 22nd February 2008 by the Northern Rock plc Transfer Order 2008(a).

Northern Rock plc was renamed Northern Rock (Asset Management) plc on 31st December 2009 and subsequently renamed NRAM plc on 15th May 2014.

Certain of NRAM plc's securities, property, rights and liabilities are to be transferred by agreement to a specified person, NRAM (No. 1) Limited, which is a company wholly owned by the Treasury.

The Treasury, in exercise of the powers conferred by sections 8(1), (2)(a) and (c) and (5)(a) and 12(1), (2) and (3) of, and paragraph 7 of Schedule 1 to, the Banking (Special Provisions) Act 2008(b), make the following Order:

Citation, commencement and expiry

1.—(1) This Order may be cited as the NRAM plc (formerly Northern Rock plc) Consequential and Supplementary Provisions Order 2016 and, with the exception of paragraph 1(q) of the Schedule, comes into force on 1st March 2016.

(2) Paragraph 1(q) of the Schedule comes into force on the same day as section 92 of the Small Business, Enterprise and Employment Act 2015(c) (duty to deliver confirmation statement instead of annual return) comes into force, and on that day paragraph 1(p) of the Schedule ceases to have effect.

Interpretation

2. In this Order—

(a) S.I. 2008/432.
(b) 2008 c. 2.
(c) 2015 c. 26.

“the 2006 Act” means the Companies Act 2006^(a);

“service contract” has the meaning given by section 227 of the 2006 Act (directors’ service contracts);

“StayCo” means the company incorporated as NRAM (No. 1) Limited, company registered number 09655526;

“StayCo group undertaking” means any undertaking—

- (a) which is a group undertaking of StayCo for the purposes of section 1161 of the 2006 Act (meaning of “undertaking” and related expressions); or
- (b) whose assets and liabilities are consolidated into StayCo’s consolidated accounts;

“Treasury Solicitor” has the same meaning as in the Treasury Solicitor Act 1876^(b); and

“UK Financial Investments Limited” means UK Financial Investments Limited, company registered number 06720891.

Resolutions and meetings

3.—(1) Any meeting of members of StayCo held while StayCo is wholly owned by the Treasury shall, if the Treasury Solicitor is present in person or by proxy or authorises a corporate representative to attend, be deemed to be a duly constituted general meeting of the company notwithstanding that it may not have been properly called, or notice of it may not have been properly given.

(2) A resolution of StayCo is effective notwithstanding that special notice of the resolution is required by any provision of the 2006 Act but has not been given.

(3) In this article, “special notice” means notice of intention to move a resolution that is given at least 28 days before the meeting at which it is moved.

Removal of directors

4.—(1) While StayCo is wholly owned by the Treasury, the Treasury may in accordance with this article—

- (a) remove any person as a director of StayCo or a StayCo group undertaking;
- (b) terminate a director’s service contract with StayCo or a StayCo group undertaking.

(2) For the purposes of any contract or arrangement between a person and StayCo or between a person and a StayCo group undertaking, action taken under paragraph (1) shall be treated as having been carried out by StayCo or the StayCo group undertaking (as the case may be) and, in the case of paragraph (1)(a), under and in accordance with its articles of association.

(3) The Treasury may remove a person as a director of StayCo or a StayCo group undertaking and may terminate that person’s service contract by written notice to StayCo or the StayCo group undertaking (as the case may be).

(4) Any notice given in accordance with paragraph (3) shall take effect from the date specified in the notice.

(5) If StayCo or a StayCo group undertaking receives notice under paragraph (3) it shall notify the person to whom the notice relates of that fact as soon as reasonably practicable.

(6) A person—

- (a) removed as director of StayCo or a StayCo group undertaking; or
- (b) whose service contract with StayCo or a StayCo group undertaking is terminated,

(a) 2006 c. 46.

(b) 1876 c. 18.

in accordance with this article shall not have any right or claim against the Treasury or any company wholly owned by the Treasury (other than StayCo or a StayCo group undertaking) in consequence of the Treasury's actions under this article.

(7) This article is not to be taken—

- (a) as depriving any person removed under it of compensation or damages payable to that person by StayCo or a StayCo group undertaking in respect of—
 - (i) the termination of the person's appointment as director or of any appointment terminating with that as director; or
 - (ii) the termination of the person's service contract; or
- (b) as derogating from any power to remove a director or to terminate a director's service contract that may exist apart from this article.

Appointment of directors

5.—(1) While StayCo is wholly owned by the Treasury, the Treasury may appoint one or more directors of StayCo or a StayCo group undertaking in accordance with this article and notwithstanding any restriction in the articles of association of StayCo or the StayCo group undertaking.

(2) The Treasury may appoint a director of StayCo or a StayCo group undertaking by written notice to StayCo or the StayCo group undertaking (as the case may be) provided the appointee has agreed to act in that capacity.

(3) The appointment shall take effect from the date specified in the notice.

(4) The Treasury may determine the terms (including remuneration) of the service contract of a person appointed as a director under this article in whatever written form they see fit.

(5) Any appointment, contract or arrangement which is made or the terms of which are determined under this article is to be treated as made or entered into by StayCo or the StayCo group undertaking in question.

(6) This article is not to be taken as derogating from any power to appoint a director or determine the remuneration and other terms and conditions of a director's service contract that may exist apart from this article.

Proceedings against directors of StayCo

6.—(1) No director of StayCo or a StayCo group undertaking shall be liable for any act or omission of the director, acting in such capacity, which occurs while StayCo is wholly owned by the Treasury and accordingly no proceedings shall 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 2006 Act (provisions protecting directors from liability) shall not apply to StayCo or a StayCo group undertaking.

(4) In this article—

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

“director” means—

- (a) a person who holds office as a director while StayCo is wholly owned by the Treasury, whether or not the person has ceased to be a director when proceedings in respect of that liability commenced; and
- (b) an alternate director of a person falling within sub-paragraph (a).

Shadow directorship etc.

7.—(1) While StayCo is wholly owned by the Treasury, none of the persons listed in paragraph (3) shall be regarded for the purposes of the provisions listed in the Schedule as a shadow director of or (unless otherwise appointed as a director) a person discharging managerial responsibilities within StayCo or a StayCo group undertaking.

(2) While StayCo is wholly owned by the Treasury, none of the persons listed in paragraph (3) shall be regarded for the purposes of the definition of “director” in section 417 of FSMA 2000 (definitions) as a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of StayCo or a StayCo group undertaking are accustomed to act.

(3) The persons are—

- (a) a Minister of the Crown;
- (b) the Treasury;
- (c) the Treasury Solicitor;
- (d) the Bank of England;
- (e) UK Financial Investments Limited;
- (f) persons—
 - (i) employed by or under; or
 - (ii) acting on behalf of,any of the persons listed in sub-paragraphs (a) to (e).

StayCo and freedom of information

8.—(1) This article applies while StayCo is wholly owned by the Treasury.

(2) StayCo, and any StayCo group undertaking, is not to be treated as—

- (a) a publicly-owned company for the purposes of section 3(1)(b) (public authorities) of the Freedom of Information Act 2000(a);
- (b) holding information for the purposes of section 3(2)(b) of that Act on behalf of—
 - (i) the Bank of England,
 - (ii) a Minister of the Crown,
 - (iii) the Treasury,
 - (iv) the Treasury Solicitor, or
 - (v) UK Financial Investments Limited.

3rd February 2016

Mel Stride
David Evennett
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

Article 7

Shadow directorship etc.

1. The following provisions of, and under, the 2006 Act(b)—

(a) 2000 c. 36.
(b) The definition of “shadow director” in section 251 of the 2006 Act was amended by section 90(3) of the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) section 84 (criminal consequences of failure to make required disclosures) and regulations made under that section;
- (b) section 162 (register of directors)(a);
- (c) section 165 (register of directors' residential addresses)(b);
- (d) section 167 (duty to notify registrar of changes)(c);
- (e) sections 170 to 177 (general duties of directors)(d);
- (f) sections 182 to 186 (declaration of interest in existing transaction or arrangement) as applied to shadow directors by section 187;
- (g) sections 188 and 189 (directors' long-term service contracts) as applied to shadow directors by section 223;
- (h) sections 190 to 196 (substantial property transactions)(e) as applied to shadow directors by section 223;
- (i) sections 197 to 214 (loans etc. to directors) as applied to shadow directors by section 223;
- (j) sections 215 to 222 (payment for loss of office) as applied to shadow directors by section 223;
- (k) sections 227 to 229 (directors' service contracts) as applied to shadow directors by section 230;
- (l) section 231 (contracts with sole member who is also a director);
- (m) sections 260 to 269 (derivative claims in England and Wales or Northern Ireland and derivative proceedings in Scotland);
- (n) section 275 (duty to keep register of secretaries)(f);
- (o) section 276 (duty to notify registrar of changes)(g);
- (p) sections 854 to 858 (annual return)(h);
- (q) sections 853A to 853L (annual confirmation)(i);
- (r) section 1255 (offences by bodies corporate, partnerships and unincorporated associations).

2. The following provisions of the Insolvency Act 1986(j)—

- (a) section 214 (wrongful trading);
- (b) section 249 (“connected” with a company).

3. The following provisions of FSMA 2000—

- (a) section 96A (disclosure of information requirements)(k);
- (b) section 96B (disclosure rules: persons responsible for compliance)(l).

(a) Amended by S.I. 2015/664.

(b) Amended by S.I. 2015/664.

(c) Amended by S.I. 2015/664 and by section 100 of the Small Business, Enterprise and Employment Act 2015.

(d) Subsection (5) of section 170 was substituted by section 89 of the Small Business, Enterprise and Employment Act 2015.

(e) Section 190 was amended by section 81 of the Enterprise and Regulatory Reform Act 2013 (c.24).

(f) Amended by S.I. 2015/664.

(g) Amended by S.I. 2015/664 and by section 100 of the Small Business, Enterprise and Employment Act 2015.

(h) Amended by S.I. 2008/3000 and 2011/1487, and prospectively repealed by section 92 of the Small Business, Enterprise and Employment Act 2015.

(i) Prospectively substituted by section 92 of the Small Business, Enterprise and Employment Act 2015.

(j) 1986 c. 45. Section 214 was amended by section 117 of the Small Business, Enterprise and Employment Act 2015.

(k) Inserted by S.I. 2005/381 and amended by S.I. 2012/1538 and by section 16 of the Financial Services Act 2012 (c.21).

(l) Inserted by S.I. 2005/381 and amended by the 2006 Act, Schedule 15, paragraphs 1 and 7 and by S.I. 2009/2461.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of Northern Rock plc being taken into public ownership under the Banking (Special Provisions) Act 2008 (c.2) and in connection with a further transfer of some of its business to a new company.

Northern Rock plc's shares were taken into public ownership by the Northern Rock plc Transfer Order 2008 (S.I. 2008/432). It was renamed Northern Rock (Asset Management) plc and has since been renamed NRAM plc. Some of NRAM plc's business is being transferred, by agreement, to a new publicly owned company incorporated as "NRAM (No. 1) Limited" and known as "StayCo".

Article 3 provides for the validity of meetings and company resolutions of StayCo while StayCo is in public ownership.

Articles 4 and 5 enable the Treasury to remove and appoint directors of StayCo and its group undertakings, while StayCo is in public ownership.

Article 6 restricts the circumstances in which proceedings brought against directors of StayCo or its group undertakings might, but for this provision, arise during the period of public ownership.

Article 7 (together with the Schedule) disapplies certain provisions on shadow directorship and persons discharging managerial responsibility in relation to specified persons while StayCo is in public ownership.

Article 8 deems StayCo and any of its group undertakings not to be a publicly-owned company for the purposes of the Freedom of Information Act 2000 (c.36).

An impact assessment has not been produced for this instrument as no significant impact on the cost of business or the voluntary sector is foreseen.

© Crown copyright 2016

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201602044 02/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/114>

ISBN 978-0-11-114334-6



9 780111 143346