

# Banking Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Treasury, are published separately as Bill 147 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Chancellor of the Exchequer has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Banking Bill are compatible with the Convention rights.

# Banking Bill

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**B I L L**

TO

Make provision about banking.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

SPECIAL RESOLUTION REGIME

*Introduction*

**1 Overview**

- (1) The purpose of the special resolution regime for banks is to address the situation where all or part of the business of a bank has encountered, or is likely to encounter, financial difficulties. 5
- (2) The special resolution regime consists of—
  - (a) the three stabilisation options,
  - (b) the bank insolvency procedure (provided by Part 2), and 10
  - (c) the bank administration procedure (provided by Part 3).
- (3) The three “stabilisation options” are—
  - (a) transfer to a private sector purchaser (section 10),
  - (b) transfer to a bridge bank (section 11), and
  - (c) transfer to temporary public ownership (section 12). 15
- (4) Each of the three stabilisation options is achieved through the exercise of one or more of the “stabilisation powers”, which are—
  - (a) the share transfer powers (sections 14, 15, 25, 26, 27, 28 and 72), and
  - (b) the property transfer powers (sections 30, 39, 40 and 41).
- (5) Each of the following has a role in the operation of the special resolution regime— 20
  - (a) the Bank of England,

- (b) the Treasury, and
  - (c) the Financial Services Authority.
- (6) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>	
Sections 1 to 3	Introduction	5
Sections 4 to 6	Objectives and code	
Sections 7 to 9	Exercise of powers: general	
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Sections 71 to 76	Building societies, &c.	

- 2 Interpretation: “bank”** 15
- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22).
- (2) But “bank” does not include – 20
- (a) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
  - (c) any other class of institution excluded by an order made by the Treasury. 25
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c) – 30
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Section 71 applies this Part to building societies with modifications.
- (6) Section 76 allows the application of this Part to credit unions.

- 3 Interpretation: other expressions** 35
- In this Part –
- “the FSA” means the Financial Services Authority, and

“financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).

*Objectives and code*

**4 Special resolution objectives**

- (1) This section sets out the special resolution objectives. 5
- (2) The relevant authorities shall have regard to the special resolution objectives in using, or considering the use of –
  - (a) the stabilisation powers,
  - (b) the bank insolvency procedure, or
  - (c) the bank administration procedure. 10
- (3) For the purpose of this section the relevant authorities are –
  - (a) the Treasury,
  - (b) the FSA, and
  - (c) the Bank of England.
- (4) Objective 1 is to protect and enhance the stability of the financial systems of the United Kingdom. 15
- (5) Objective 2 is to protect and enhance public confidence in the stability of the banking systems of the United Kingdom.
- (6) Objective 3 is to protect depositors.
- (7) Objective 4 is to protect public funds. 20
- (8) Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).
- (9) The order in which the objectives are listed in this section is not significant; they are to be balanced as appropriate in each case.

**5 Code of practice**

- (1) The Treasury shall issue a code of practice about the use of –
  - (a) the stabilisation powers,
  - (b) the bank insolvency procedure, and
  - (c) the bank administration procedure.
- (2) The code may, in particular, provide guidance on –
  - (a) how to achieve the special resolution objectives,
  - (b) the information to be provided in the course of a consultation under this Part,
  - (c) the giving of advice by one relevant authority to another about whether, when and how the stabilisation powers are to be used, 35
  - (d) how to determine whether Condition 2 in section 7 is met,
  - (e) how to determine whether the test for the use of stabilisation powers in section 8 is satisfied,
  - (f) the content of reports about bridge banks under section 70(1), and
  - (g) the giving of notices under section 57. 40

- (3) Sections 11 and 12 require the inclusion in the code of certain matters about bridge banks and temporary public ownership.
- (4) The relevant authorities shall have regard to the code.
- (5) For the purpose of this section the relevant authorities are –
  - (a) the Treasury, 5
  - (b) the FSA, and
  - (c) the Bank of England.

## 6 Code of practice: procedure

- (1) Before issuing the code of practice the Treasury must consult –
  - (a) the FSA, 10
  - (b) the Bank of England, and
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000).
- (2) As soon as is reasonably practicable after issuing the code of practice the Treasury shall lay a copy before Parliament. 15
- (3) The Treasury may revise and re-issue the code of practice.
- (4) Subsections (1) and (2) apply to re-issue as to the first issue.

### *Exercise of powers: general*

- ## 7 General conditions 20
- (1) A stabilisation power may be exercised in respect of a bank only if the FSA is satisfied that the following conditions are met.
  - (2) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the threshold conditions (within the meaning of section 41(1) of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)). 25
  - (3) Condition 2 is that having regard to timing and other relevant circumstances it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will enable the bank to satisfy the threshold conditions.
  - (4) The FSA shall treat Conditions 1 and 2 as met if satisfied that they would be met but for financial assistance provided by –
    - (a) the Treasury, or
    - (b) the Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms). 30
  - (5) Before determining whether or not Condition 2 is met the FSA must consult –
    - (a) the Bank of England, and
    - (b) the Treasury. 35
  - (6) The special resolution objectives are not relevant to Conditions 1 and 2.
  - (7) The conditions for applying for and making a bank insolvency order are set out in sections 83 and 84. 40

- (8) The conditions for applying for and making a bank administration order are set out in sections 130 and 131.

## 8 Specific conditions: private sector purchaser and bridge bank

- (1) The Bank of England may exercise a stabilisation power in respect of a bank in accordance with section 10(2) or 11(2) only if satisfied that Condition A is met. 5
- (2) Condition A is that the exercise of the power is necessary, having regard to the public interest in—
- (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of the banking systems of the United Kingdom, or 10
  - (c) the protection of depositors.
- (3) Before determining whether Condition A is met, and if so how to react, the Bank of England must consult—
- (a) the FSA, and
  - (b) the Treasury. 15
- (4) Where the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom, the Bank may exercise a stabilisation power in respect of the bank in accordance with section 10(2) or 11(2) only if satisfied that Condition B is met (instead of Condition A). 20
- (5) Condition B is that—
- (a) the Treasury have recommended the Bank of England to exercise the stabilisation power on the grounds that it is necessary to protect the public interest, and 25
  - (b) in the Bank’s opinion, exercise of the stabilisation power is an appropriate way to provide that protection.
- (6) The conditions in this section are in addition to the conditions in section 7.

## 9 Specific conditions: temporary public ownership

- (1) The Treasury may exercise a stabilisation power in respect of a bank in accordance with section 12(2) only if satisfied that one of the following conditions is met. 30
- (2) Condition A is that the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial systems of the United Kingdom.
- (3) Condition B is that exercise of the power is necessary to protect the public interest, where the Treasury have provided financial assistance in respect of the bank for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom. 35
- (4) Before determining whether a condition is met the Treasury must consult—
- (a) the FSA, and 40
  - (b) the Bank of England.
- (5) The conditions in this section are in addition to the conditions in section 7.

*The stabilisation options***10 Private sector purchaser**

- (1) The first stabilisation option is to sell all or part of the business of the bank to a commercial purchaser.
- (2) For that purpose the Bank of England may make— 5
- (a) one or more share transfer instruments;
  - (b) one or more property transfer instruments.

**11 Bridge bank**

- (1) The second stabilisation option is to transfer all or part of the business of the bank to a company which is wholly owned by the Bank of England (a “bridge bank”). 10
- (2) For that purpose the Bank of England may make one or more property transfer instruments.
- (3) The code of practice under section 5 must include provision about the management and control of bridge banks including, in particular, provision about— 15
- (a) setting objectives,
  - (b) the content of the articles of association,
  - (c) the content of reports under section 70(1),
  - (d) different arrangements for management and control at different stages, 20
  - and
  - (e) eventual disposal.
- (4) Where property, rights or liabilities are first transferred by property transfer instrument to a bridge bank and later transferred (whether or not by the exercise of a power under this Part) to another company which is wholly owned by the Bank of England, that other company is an “onward bridge bank”. 25
- (5) An onward bridge bank—
- (a) is a bridge bank for the purposes of— 30
    - (i) subsection (3),
    - (ii) section 67,
    - (iii) section 69, and
    - (iv) section 70(5), but
  - (b) is not a bridge bank for the purposes of— 35
    - (i) section 28(1),
    - (ii) section 40(1), or
    - (iii) section 70(1).

**12 Temporary public ownership**

- (1) The third stabilisation option is to take the bank into temporary public ownership. 40
- (2) For that purpose the Treasury may make one or more share transfer orders in which the transferee is—

- (a) a nominee of the Treasury, or
  - (b) a company wholly owned by the Treasury.
- (3) The code of practice under section 5 must include provision about—
- (a) the content of share transfer orders, and
  - (b) the management of transferees under share transfer orders. 5

*Transfer of securities*

**13 Interpretation: “securities”**

- (1) In this Part “securities” includes anything falling within any of the following classes.
- (2) Class 1: shares and stock. 10
- (3) Class 2: debentures, including—
- (a) debenture stock,
  - (b) loan stock,
  - (c) bonds,
  - (d) certificates of deposit, and 15
  - (e) any other instrument creating or acknowledging a debt.
- (4) Class 3: warrants or other instruments that entitle the holder to acquire anything in Class 1 or 2.
- (5) Class 4: rights which—
- (a) are granted by a deposit-taker, and 20
  - (b) form part of the deposit-taker’s own funds for the purposes of section 1 of Chapter 2 of Title V of Directive 2006/48/EC (on the taking up and pursuit of the business of credit institutions).

**14 Share transfer instrument**

- (1) A share transfer instrument is an instrument which— 25
- (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise). 30
- (2) A share transfer instrument may relate to—
- (a) specified securities, or
  - (b) securities of a specified description.

**15 Share transfer order**

- (1) A share transfer order is an order which— 35
- (a) provides for securities issued by a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified bank (whether or not the transfer has been or is to be effected by that order, by another share transfer order or otherwise). 40

- (2) A share transfer order may relate to—
- (a) specified securities, or
  - (b) securities of a specified description.

## 16 Effect

- (1) In this section “transfer” means a transfer provided for by a share transfer instrument or order. 5
- (2) A transfer takes effect by virtue of the instrument or order (and in accordance with its provisions as to timing or other ancillary matters).
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way. 10
- (4) In subsection (3) “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name). 15
- (5) A share transfer instrument or order may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).
- (6) A share transfer instrument or order may extinguish rights to acquire securities falling within Class 1 or 2 in section 13. 20

## 17 Continuity

- (1) A share transfer instrument or order may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A share transfer instrument or order may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee. 25
- (3) A share transfer instrument or order may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee. 30
- (4) A share transfer instrument or order may modify references (express or implied) in an instrument or document to a transferor.
- (5) A share transfer instrument or order may require or permit—
- (a) a transferor to provide a transferee with information and assistance; 35
  - (b) a transferee to provide a transferor with information and assistance.

## 18 Conversion and delisting

- (1) A share transfer instrument or order may provide for securities to be converted from one form or class to another.

- (2) A share transfer instrument or order may provide for the listing of securities, under section 74 of the Financial Services and Markets Act 2000, to be discontinued.

## 19 Directors

- (1) A share transfer instrument may enable the Bank of England – 5
- (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) A share transfer order may enable the Treasury – 10
- (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England. 15
- (4) Appointments under subsection (2)(d) are to be on terms and conditions agreed with the Treasury.

## 20 Ancillary instruments: production, registration, &c.

- (1) A share transfer instrument or order may permit or require the execution, issue or delivery of an instrument. 20
- (2) A share transfer instrument or order may provide for a transfer to have effect irrespective of –
- (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with; 25
  - (b) registration.
- (3) A share transfer instrument or order may provide for the effect of an instrument executed, issued or delivered in accordance with the order.
- (4) A share transfer instrument or order may modify or annul the effect of an instrument. 30
- (5) A share transfer instrument or order may –
- (a) entitle a transferee to be registered in respect of transferred securities;
  - (b) require a person to effect registration.

## 21 Termination rights, &c.

- (1) In this section “default event provision” means a provision of a contract or other agreement that if a specified event occurs – 35
- (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement, 40

- 
- (d) a right accrues to terminate, modify or replace rights or duties under the agreement,
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses, 5
  - (h) any other right accrues, changes or lapses, or
  - (i) an interest is created, changes or lapses.
- (2) A share transfer instrument or order may provide for subsection (3) or (4) to apply (but need not apply either).
  - (3) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies. 10
  - (4) If this subsection applies, the share transfer instrument or order is to be disregarded in determining whether a default event provision applies except in so far as the instrument or order provides otherwise.
  - (5) In subsections (3) and (4) a reference to the share transfer instrument or order is a reference to— 15
    - (a) the making of the instrument or order,
    - (b) anything that is to be, or may be, done under or by virtue of the instrument or order, and
    - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument or order. 20
  - (6) Provision under subsection (2) may apply subsection (3) or (4) generally or only for specified purposes.
- 22 Incidental provision** 25
- (1) A share transfer instrument or order may include incidental, consequential or transitional provision.
  - (2) In relying on subsection (1) a share transfer instrument or order—
    - (a) may make provision generally or only for specified purposes, and
    - (b) may make different provision for different purposes. 30
- 23 Procedure: instruments**
- (1) As soon as is reasonably practicable after making a share transfer instrument in respect of a bank the Bank of England shall send a copy to—
    - (a) the bank,
    - (b) the Treasury, 35
    - (c) the FSA, and
    - (d) any other person specified in the code of practice under section 5.
  - (2) As soon as is reasonably practicable after making a share transfer instrument the Bank of England shall publish a copy—
    - (a) on the Bank’s internet website, and 40
    - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.

## 24 Procedure: orders

- (1) A share transfer order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (2) As soon as is reasonably practicable after making a share transfer order in respect of a bank the Treasury shall send a copy to –
  - (a) the bank,
  - (b) the Bank of England,
  - (c) the FSA, and 10
  - (d) any other person specified in the code of practice under section 5.
- (3) As soon as is reasonably practicable after making a share transfer order the Treasury shall publish a copy –
  - (a) on the Treasury’s internet website, and
  - (b) in two newspapers, chosen by the Treasury to maximise the likelihood of the instrument coming to the attention of persons likely to be affected. 15

## 25 Supplemental instruments

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 10(2) (“the original instrument”). 20
- (2) The Bank of England may make one or more supplemental share transfer instruments.
- (3) A supplemental share transfer instrument is a share transfer instrument which makes provision of a kind that a share transfer instrument may make under section 14(1)(b) (whether or not in connection with a transfer under the original instrument). 25
- (4) Sections 7 and 8 do not apply to a supplemental share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part). 30
- (5) Before making a supplemental share transfer instrument the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury.
- (6) The possibility of making a supplemental share transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 10(2) (and not in reliance on subsection (2) above). 35

## 26 Supplemental orders

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 12(2) (“the original order”). 40
- (2) The Treasury may make one or more supplemental share transfer orders.

- (3) A supplemental share transfer order is a share transfer order which—
- (a) provides for securities issued by the bank to be transferred (whether issued before or after the original order);
  - (b) makes provision of a kind that a share transfer order may make under section 15(1)(b), whether in connection with a transfer under the original order or in connection with a transfer under that or another supplemental order. 5
- (4) Sections 7 and 9 do not apply to a supplemental share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part). 10
- (5) Before making a supplemental share transfer order the Treasury must consult—
- (a) the FSA, and
  - (b) the Bank of England. 15
- (6) The possibility of making a supplemental share transfer order in reliance on subsection (2) is without prejudice to the possibility of making of a new order in accordance with section 10(2) (and not in reliance on subsection (2) above).

## 27 Onward transfer

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 12(2) (“the original order”). 20
- (2) The Treasury may make one or more onward share transfer orders.
- (3) An onward share transfer order is a share transfer order which—
- (a) provides for securities issued by the bank (whether before or after the original order) to be transferred; 25
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bank (whether the transfer has been or is to be effected by that order, by another share transfer order or otherwise). 30
- (4) An onward share transfer order may not transfer securities to the transferor under the original order.
- (5) Sections 7 and 9 do not apply to an onward share transfer order (but it is to be treated in the same way as any other share transfer order for all other purposes, including for the purposes of the application of a power under this Part). 35
- (6) Before making an onward share transfer order the Treasury must consult—
- (a) the FSA, and
  - (b) the Bank of England.
- (7) Section 26 applies where the Treasury have made an onward share transfer order. 40

## 28 Bridge bank: share transfers

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 11(2) (“the original instrument”).
- (2) The Bank of England may make one or more bridge bank share transfer instruments. 5
- (3) A bridge bank share transfer instrument is a share transfer instrument which –
  - (a) provides for securities issued by the bridge bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bridge bank (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise). 10
- (4) Sections 7 and 8 do not apply to a bridge bank share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part). 15
- (5) Before making a bridge bank share transfer instrument the Bank of England must consult –
  - (a) the FSA, and
  - (b) the Treasury. 20
- (6) Section 25 applies where the Bank of England has made a bridge bank share transfer instrument.

## 29 Interpretation: general

In this group of sections –

“service contract” has the meaning given by section 227 of the Companies Act 2006, and 25

“transfer date” means the date or time on or at which a share transfer instrument or order (or the relevant part of it) takes effect.

### *Transfer of property*

## 30 Property transfer instrument 30

- (1) A property transfer instrument is an instrument which –
  - (a) provides for property, rights or liabilities of a specified bank to be transferred;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise). 35
- (2) A property transfer instrument may relate to –
  - (a) all property, rights and liabilities of the specified bank,
  - (b) all its property, rights and liabilities subject to specified exceptions, 40
  - (c) specified property, rights or liabilities, or
  - (d) property, rights or liabilities of a specified description.

**31 Effect**

- (1) In this section “transfer” means a transfer provided for by a property transfer instrument.
- (2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters). 5
- (3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (4) In subsection (3) “restriction” includes –
  - (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and 10
  - (b) a requirement for consent (by any name).

**32 Transferable property**

- (1) A property transfer instrument may transfer any property, rights or liabilities including, in particular – 15
  - (a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,
  - (b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,
  - (c) property outside the United Kingdom, 20
  - (d) rights and liabilities under the law of a country or territory outside the United Kingdom, and
  - (e) rights and liabilities under an enactment (including legislation of the European Union).
- (2) Section 29 applies for the interpretation of this section (with the necessary modification). 25

**33 Continuity**

- (1) A property transfer instrument may provide –
  - (a) for a transfer to be, or to be treated as, a succession;
  - (b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor. 30
- (2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.
- (3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee. 35
- (4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment. 40
- (5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.

- (6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.
- (7) A property transfer instrument may apportion liability to tax between transferor and transferee. 5
- (8) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification –
  - (a) must achieve a result that could have been achieved by the instrument, and 10
  - (b) may not transfer (or arrange for the transfer of) property, rights or liabilities.
- (9) A property transfer instrument may require or permit –
  - (a) a transferor to provide a transferee with information and assistance;
  - (b) a transferee to provide a transferor with information and assistance. 15
- (10) Section 29 applies for the interpretation of this section (with the necessary modification).

#### **34 Licences**

- (1) A licence in respect of anything transferred by property transfer instrument shall continue to have effect despite the transfer. 20
- (2) A property transfer instrument may disapply subsection (1) to a specified extent.
- (3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee. 25
- (4) In this section “licence” includes permission and approval and any other permissive document in respect of anything transferred.

#### **35 Termination rights, &c.**

- (1) In this section “default event provision” means a provision of a contract or other agreement that if a specified event occurs –
  - (a) the agreement is terminated, modified or replaced,
  - (b) rights or duties under the agreement are terminated, modified or replaced,
  - (c) a right accrues to terminate, modify or replace the agreement,
  - (d) a right accrues to terminate, modify or replace rights or duties under the agreement, 35
  - (e) a sum becomes payable or ceases to be payable,
  - (f) delivery of anything becomes due or ceases to be due,
  - (g) a right to claim a payment or delivery accrues, changes or lapses,
  - (h) any other right accrues, changes or lapses, or 40
  - (i) an interest is created, changes or lapses.
- (2) A property transfer instrument may provide for subsection (3) or (4) to apply (but need not apply either).

- (3) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies.
- (4) If this subsection applies, the property transfer instrument is to be disregarded in determining whether a default event provision applies except in so far as the instrument provides otherwise. 5
- (5) In subsections (3) and (4) a reference to the property transfer instrument is a reference to –
- (a) the making of the instrument,
  - (b) anything that is to be, or that may be, done under or by virtue of the instrument, and 10
  - (c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.
- (6) Provision under subsection (2) may apply subsection (3) or (4) generally or only for specified purposes. 15

### 36 Foreign property

- (1) This section applies where a property transfer instrument transfers foreign property.
- (2) In subsection (1) “foreign property” means –
- (a) property outside the United Kingdom, and 20
  - (b) rights and liabilities under foreign law.
- (3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).
- (4) Until the transfer is effective as a matter of foreign law, the transferor must – 25
- (a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or
  - (b) discharge the liability on behalf of the transferee.
- (5) The transferee must meet any expenses of the transferor in complying with this section. 30
- (6) An obligation imposed by this section is enforceable as if created by contract between the transferor and transferee.
- (7) The transferor must comply with any directions of the Bank of England in respect of the obligations under subsections (3) and (4); and – 35
- (a) a direction may disapply subsections (3) and (4) to a specified extent, and
  - (b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank of England.
- (8) In this section “foreign law” means the law of a country or territory outside the United Kingdom. 40

### 37 Incidental provision

- (1) A property transfer instrument may include incidental, consequential or transitional provision.
- (2) In relying on subsection (1) an instrument –
  - (a) may make provision generally or only for specified purposes, and 5
  - (b) may make different provision for different purposes.

### 38 Procedure

- (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a bank the Bank of England shall send a copy to –
  - (a) the bank, 10
  - (b) the Treasury,
  - (c) the FSA, and
  - (d) any other person specified in the code of practice under section 5.
- (2) As soon as is reasonably practicable after making a property transfer instrument the Bank of England shall publish a copy – 15
  - (a) on the Bank’s internet website, and
  - (b) in two newspapers, chosen by the Bank of England to maximise the likelihood of the instrument coming to the attention of persons likely to be affected.

### 39 Supplemental instruments 20

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 10(2) or 11(2) (“the original instrument”).
- (2) The Bank of England may make one or more supplemental property transfer instruments. 25
- (3) A supplemental property transfer instrument is a property transfer instrument which –
  - (a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument); 30
  - (b) makes other provision of a kind that an original property transfer instrument may make under section 30(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).
- (4) Sections 7 and 8 do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Part). 35
- (5) In the case of a property transfer instrument made in accordance with section 10(2), a supplemental property transfer instrument may not transfer property, rights or liabilities. 40
- (6) Before making a supplemental property transfer instrument the Bank of England must consult –
  - (a) the FSA, and

- (b) the Treasury.
- (7) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) is without prejudice to the possibility of making of a new instrument in accordance with section 10(2) or 11(2) (and not in reliance on subsection (2) above). 5

#### 40 Onward transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in respect of a bridge bank in accordance with section 11(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward property transfer instruments. 10
- (3) An onward property transfer instrument is a property transfer instrument which—
- (a) provides for property, rights or liabilities of the bridge bank to be transferred (whether accruing or arising before or after the original instrument); 15
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bridge bank (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise). 20
- (4) An onward property transfer instrument may relate to property, rights or liabilities of the bridge bank whether or not they were transferred under the original instrument.
- (5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument. 25
- (6) Sections 7, 8 and 46 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Part).
- (7) Before making an onward property transfer instrument the Bank of England must consult— 30
- (a) the FSA, and
  - (b) the Treasury.
- (8) Section 39 applies where the Bank of England has made an onward property transfer instrument. 35

#### 41 Temporary public ownership: property transfer

- (1) This section applies where the Treasury have made a share transfer order, in respect of securities issued by a bank, in accordance with section 12(2) (“the original order”).
- (2) The Treasury may make one or more property transfer orders. 40
- (3) A property transfer order is an order which—
- (a) provides for property, rights or liabilities of the bank to be transferred (whether accruing or arising before or after the original order);

- (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bank (whether the transfer has been or is to be effected by the order or otherwise).
- (4) A property transfer order may not transfer property, rights or liabilities to the transferor under the original order. 5
- (5) Sections 7, 8 and 9 do not apply to a property transfer order.
- (6) A property transfer order is to be treated –
  - (a) in the same way as a share transfer order for the procedural purposes of section 24, but
  - (b) as a property transfer instrument for all other purposes (including for the purposes of the application of powers under this Part). 10
- (7) In the application of section 36 by virtue of subsection (6)(b) above, the power to give directions under section 36(7) vests in the Treasury (instead of the Bank of England).
- (8) Section 39 applies where the Treasury has made a property transfer order. 15
- (9) Before making a property transfer order the Treasury must consult –
  - (a) the FSA, and
  - (b) the Bank of England.

#### 42 Restriction of partial transfers

- (1) In this Part “partial property transfer” means a property transfer instrument which provides for the transfer of some, but not all, of the property, rights and liabilities of a bank. 20
- (2) The Treasury may by order –
  - (a) restrict the making of partial property transfers;
  - (b) impose conditions on the making of partial property transfers; 25
  - (c) require partial property transfers to include specified provision or provision to a specified effect;
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section). 30
- (3) Provision under subsection (2) may, in particular, refer to particular classes of deposit.
- (4) An order may apply to transfers generally or only to transfers – 35
  - (a) of a specified kind, or
  - (b) made or applying in specified circumstances.
- (5) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 40

**43 Power to protect certain interests**

- (1) In this section –
- (a) “security interests” means arrangements under which one person acquires an actual or contingent interest in the property of another (including arrangements of a kind described commercially as “title transfer security” arrangements), 5
  - (b) “set-off” or “netting” arrangements are arrangements under which Debt 1 can be set off against Debt 2 to reduce the amount of Debt 2, and
  - (c) “netting arrangements” includes, in particular, “close-out” netting arrangements, under which theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other. 10
- (2) The Treasury may by order –
- (a) restrict the making of partial property transfers in cases that involve, or where they might affect, security interests or set-off or netting arrangements; 15
  - (b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, security interests or set-off or netting arrangements;
  - (c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with security interests or set-off or netting arrangements; 20
  - (d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the order (or of another order under this section). 25
- (3) An order may apply to arrangements generally or only to arrangements –
- (a) of a specified kind, or
  - (b) made or applying in specified circumstances. 30
- (4) An order may include provision for determining which arrangements are to be, or not to be, treated as security interests or set-off or netting arrangements; in particular, an order may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice. 35
- (5) In this section “arrangements” includes arrangements which –
- (a) are formed wholly or partly by one or more contracts;
  - (b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom; 40
  - (c) wholly or partly arise automatically as a matter of law.
- (6) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 45

*Compensation*

**44 Orders**

- (1) This Part provides three methods of protecting the financial interests of transferors and others in connection with share transfer instruments and orders and property transfer instruments. 5
- (2) A “compensation scheme order” is an order establishing a scheme for –
  - (a) determining whether transferors should be paid compensation, and
  - (b) paying any compensation.
- (3) A “resolution fund order” is an order establishing a scheme under which transferors become entitled to the proceeds of the disposal of things transferred – 10
  - (a) in specified circumstances, and
  - (b) to a specified extent.
- (4) A “third party compensation order” is provision made in accordance with section 54 for compensation to be paid to persons other than transferors. 15

**45 Sale to private sector purchaser**

- (1) This section applies if the Bank of England makes a share transfer instrument or a property transfer instrument in accordance with section 10(2).
- (2) The Treasury shall make a compensation scheme order.
- (3) An order made by virtue of subsection (2) may include a third party compensation order. 20
- (4) In the case of a partial property transfer, an order made by virtue of subsection (2) must include a third party compensation order.

**46 Transfer to bridge bank**

- (1) This section applies if the Bank of England makes a property transfer instrument in accordance with section 11(2). 25
- (2) The Treasury shall make a resolution fund order.
- (3) An order made by virtue of subsection (2) may include –
  - (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of specified classes of creditor, for rights in addition to any rights they may have by virtue of the resolution fund order). 30
- (4) In the case of a partial property transfer, the resolution fund order must include a third party compensation order. 35

**47 Transfer to temporary public ownership**

- (1) This section applies if the Treasury make a share transfer order in accordance with section 12(2).
- (2) The Treasury shall make either –

- (a) a compensation scheme order, or
  - (b) a resolution fund order.
- (3) A resolution fund order made by virtue of subsection (2)(b) may include—
- (a) a compensation scheme order;
  - (b) a third party compensation order (which may, in particular, make provision, in respect of specified classes of creditor, for rights in addition to any rights they may have by virtue of the resolution fund order). 5
- (4) A compensation scheme order made by virtue of subsection (2) may include a third party compensation order. 10

#### 48 Onward transfers

- (1) This section applies where—
- (a) the Treasury make an onward share transfer order under section 27,
  - (b) the Bank of England makes a bridge bank share transfer instrument under section 28, 15
  - (c) the Bank of England makes an onward property transfer instrument under section 40, or
  - (d) the Treasury makes a property transfer order under section 41.
- (2) The Treasury may make—
- (a) a compensation scheme order; 20
  - (b) a third party compensation order.

#### 49 Independent valuer

- (1) A compensation scheme order must provide for the amount of any compensation payable to be determined by a person appointed in accordance with the order (the “independent valuer”). 25
- (2) An order must provide for the independent valuer to be appointed by a person appointed by the Treasury (“the appointing person”).
- (3) An order may either—
- (a) require the Treasury to make arrangements to identify a number of possible independent valuers, one of whom is to be selected by the appointing person, or 30
  - (b) require the appointing person to make arrangements to select the independent valuer, having regard to any criteria specified in the order.
- (4) The independent valuer may be removed only—
- (a) on the grounds of incapacity or serious misconduct, and 35
  - (b) by a person specified by the Treasury in accordance with the compensation scheme order.
- (5) An order must include provision for resignation and replacement of the independent valuer (and subsections (2) and (3) apply to replacement as to the first appointment). 40

## 50 Independent valuer: supplemental

- (1) An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.
- (2) The Treasury may by order confer specific functions on independent valuers; in particular, the order may –
  - (a) enable an independent valuer to apply to a court or tribunal for an order requiring the provision of information or the giving of oral or written evidence; 5
  - (b) enable or require independent valuers to publish, disclose or withhold information. 10
- (3) Provision under subsection (2) may –
  - (a) confer a discretion on independent valuers;
  - (b) confer jurisdiction on a court or tribunal;
  - (c) make provision about oaths, expenses and other procedural matters relating to the giving of evidence or the provision of information; 15
  - (d) create a criminal offence;
  - (e) make other provision about enforcement.
- (4) An independent valuer may appoint staff.
- (5) The Treasury may by order make provision about the procedure to be followed by independent valuers. 20
- (6) The Treasury shall by order make provision for –
  - (a) reconsideration of a decision of an independent valuer, and
  - (b) appeal to a court or tribunal against a decision of an independent valuer. 25
- (7) Independent valuers (and their staff) are neither servants nor agents of the Crown (and, in particular, are not civil servants).
- (8) Records of an independent valuer are public records for the purposes of the Public Records Act 1958.
- (9) An order under this section – 30
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 51 Independent valuer: money

- (1) *The Treasury may by order provide for the payment by the Treasury of remuneration and allowances to – 35*
  - (a) *independent valuers,*
  - (b) *staff of independent valuers, and*
  - (c) *appointing persons.*
- (2) An order – 40
  - (a) must provide for the appointment by the Treasury of a person to monitor the operation of the arrangements for remuneration and allowances for independent valuers;

- (b) may require, or enable a compensation scheme order or third party compensation order to require, the monitor’s approval before specified things may be done in the course of those arrangements;
  - (c) may include provision about records and accounts;
  - (d) may make provision about numbers of staff and the terms and conditions of their appointment (which may include provision requiring the approval of the Treasury or the monitor). 5
- (3) In subsection (1) a reference to the payment of allowances to a person includes a reference to the payment to or in respect of the person of sums by way of or in respect of pension. 10
- (4) Independent valuers (and their staff) are not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the office (subject to section 8 of the Human Rights Act 1998).
- (5) An order under this section –
- (a) shall be made by statutory instrument, and 15
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 52 Valuation principles

- (1) A compensation scheme order may specify principles (“valuation principles”) to be applied in determining the amount of compensation. 20
- (2) Valuation principles may, in particular, require an independent valuer –
- (a) to apply, or not to apply, specified methods of valuation;
  - (b) to assess values or average values at specified dates or over specified periods;
  - (c) to take specified matters into account in a specified manner; 25
  - (d) not to take specified matters into account.
- (3) In determining an amount of compensation (whether or not in accordance with valuation principles) an independent valuer must disregard actual or potential financial assistance provided by the Bank of England or the Treasury (disregarding ordinary market assistance offered by the Bank on its usual terms). 30
- (4) Valuation principles may require or permit an independent valuer to make assumptions; such as, for example, that the bank –
- (a) has had a permission under Part 4 of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled, 35
  - (b) is unable to continue as a going concern,
  - (c) is in administration, or
  - (d) is being wound up.
- (5) There is nothing to prevent the application of the valuation principles in an order from resulting in no compensation being payable to a transferor. 40

## 53 Resolution fund

- (1) A resolution fund order must include provision for determining –
- (a) who will be entitled to a share of the proceeds on disposal of things transferred,

- (b) the way in which the proceeds will be calculated, and
  - (c) the way in which shares will be calculated.
- (2) Provision under subsection (1)(b) may, in particular, provide for proceeds to be calculated net of –
  - (a) amounts required for the repayment of loans from public funds or for other payments in respect of public financial assistance; 5
  - (b) some or all of the administrative or other expenses incurred in connection with the provisions of this Part.
- (3) A resolution fund order may confer a discretionary function on –
  - (a) a Minister of the Crown, 10
  - (b) the Treasury,
  - (c) the Bank of England, or
  - (d) any other specified person.
- (4) A resolution fund order may include provision for the determination of disputes about the application of its provisions (whether by conferring jurisdiction on a court or tribunal or otherwise). 15
- (5) A resolution fund order may require the Bank of England in managing a bridge bank to aim to maximise the proceeds available for distribution in accordance with the order; and an order which includes a requirement must –
  - (a) subserviate it to pursuit of the special resolution objectives and compliance with the code of practice under section 5, 20
  - (b) specify its extent, and
  - (c) include provision about how the Bank is to comply with it.
- (6) A resolution fund order may require the Treasury to ensure that a bank in temporary public ownership in accordance with section 12(2) is managed with the aim of maximising the proceeds available for distribution in accordance with the order; and an order which includes a requirement must –
  - (a) subserviate it to pursuit of the special resolution objectives and compliance with the code of practice under section 5, 25
  - (b) specify its extent, and 30
  - (c) include provision about how the Treasury is to comply with it.

#### **54 Third party compensation: discretionary provision**

- (1) A power or duty in this Part to make a third party compensation order is a power or duty to make provision establishing a scheme for paying compensation to persons other than a transferor. 35
- (2) A third party compensation order may –
  - (a) form part of a compensation scheme order or resolution fund order, or
  - (b) be a separate order.
- (3) A third party compensation order may include provision for –
  - (a) an independent valuer (in which case sections 49 and 50 shall apply); 40
  - (b) valuation principles (in which case section 52(2) to (5) shall apply).

**55 Third party compensation: mandatory provision**

- (1) The Treasury may make regulations about third party compensation arrangements in the case of partial property transfers.
- (2) In making regulations the Treasury shall, in particular, have regard to the desirability of ensuring that if a residual bank is wound up after transfer, pre-transfer creditors do not receive less favourable treatment than they would have received had it been wound up immediately before transfer. 5
- (3) In subsection (2) –
- (a) “residual bank” means a bank that is a transferor under a property transfer instrument, 10
  - (b) “pre-transfer creditor” means a person who –
    - (i) is a creditor of a residual bank immediately before a property transfer instrument takes effect, and
    - (ii) satisfies conditions specified by the regulations, and
  - (c) the reference to winding-up includes a reference to winding-up through insolvency or bank insolvency. 15
- (4) The regulations may –
- (a) require a compensation scheme order or a resolution fund order to include a third party compensation order;
  - (b) require a third party compensation order to include provision of a specified kind or to specified effect; 20
  - (c) make provision which is to be treated as forming part of a third party compensation order (whether (i) generally, (ii) only if applied, (iii) unless disappplied, or (iv) subject to express modification).
- (5) Regulations may provide for whether compensation is to be paid, and if so what amount is to be paid, to be determined by reference to any factors or combination of factors; in particular, the regulations may provide for entitlement –
- (a) to depend in part upon the amounts which are or may be payable under a resolution fund order; 30
  - (b) to be contingent upon the occurrence or non-occurrence of specified events;
  - (c) to be determined wholly or partly by an independent valuer (within the meaning of sections 49 to 51) appointed in accordance with a compensation scheme order or resolution fund order. 35
- (6) Regulations may make provision about payment including, in particular, provision for payments –
- (a) on account subject to terms and conditions;
  - (b) by instalment;
  - (c) *by the Treasury*; 40
  - (d) by the Financial Services Compensation Scheme.
- (7) Regulations –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 45

## 56 Procedure

- (1) This section applies to—
  - (a) compensation scheme orders,
  - (b) resolution fund orders, and
  - (c) third party compensation orders. 5
- (2) An order may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Incidental functions*

## 57 General continuity obligation: property transfers

- (1) In this section and section 58—
  - (a) “residual bank” means a bank all or part of whose business has been transferred in accordance with section 10(2)(b) or 11(2), 10
  - (b) “group company” means a company which is a group undertaking in relation to a residual bank,
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), 15
  - (d) “the transferred business” means the part of the bank’s business that has been transferred, and
  - (e) “transferee” means a commercial purchaser or bridge bank to whom the transferred business has been transferred. 20
- (2) The residual bank and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business effectively.
- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the residual bank or group company and the transferee. 25
- (4) The residual bank or a group company may—
  - (a) require consideration at market rate for anything done in fulfilment of the continuity obligation, and
  - (b) impose any other terms or conditions that would be expected in arrangements concluded between parties dealing at arm’s length on market terms. 30
- (5) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.
- (6) The Bank of England may, with the consent of the Treasury, by notice to the residual bank or a group company state that in the Bank’s opinion—
  - (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms. 40
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

**58 Special continuity obligations: property transfers**

- (1) Expressions in this section have the same meaning as in section 57.
- (2) The Bank of England may –
- (a) cancel a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee); 5
  - (b) modify the terms of a contract or other arrangement between the residual bank and a group company (whether or not rights or obligations under it have been transferred to a transferee);
  - (c) add or substitute a transferee as a party to a contract or other arrangement between the residual bank and a group company; 10
  - (d) confer and impose rights and obligations on a group company and a transferee, which shall have effect as if created by contract between them;
  - (e) confer and impose rights and obligations on the residual bank and a transferee which shall have effect as if created by contract between them. 15
- (3) In modifying or setting terms under subsection (2) the Bank of England shall aim, so far as is reasonably practicable, to preserve or include –
- (a) provision for consideration at market rate, and 20
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm’s length on market terms.
- (4) The power under subsection (2) –
- (a) may be exercised only in so far as the Bank of England thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business effectively, 25
  - (b) may be exercised only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a property transfer instrument (or supplemental instrument). 30

**59 General continuity obligation: share transfers**

- (1) In this section and section 60 –
- (a) “transferred bank” means a bank all or part of the ownership of which has been transferred in accordance with section 10(2)(a) or 12(2),
  - (b) “former group company” means a company which was a group undertaking in relation to the transferred bank immediately before the transfer, 35
  - (c) “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006 (interpretation), and
  - (d) “the continuity authority” means – 40
    - (i) the Bank of England, where ownership was transferred in accordance with section 10(2)(a), and
    - (ii) the Treasury, where ownership was transferred in accordance with section 12(2).
- (2) Each former group company must provide such services and facilities as are required to enable the transferred bank to operate effectively. 45

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- (3) The duty under subsection (2) (the “continuity obligation”) may be enforced as if created by contract between the transferred bank and the former group company.
- (4) A former group company may –
- (a) require consideration at market rate for anything done in fulfilment of the continuity obligation, and
  - (b) impose any other terms or conditions that would be expected in arrangements concluded between parties dealing at arm’s length on market terms.
- (5) The continuity obligation is not limited to the provision of services or facilities directly to the transferred bank.
- (6) The continuity authority may by notice to a former group undertaking state that in the authority’s opinion –
- (a) specified activities are required to be undertaken in accordance with the continuity obligation;
  - (b) activities are required be undertaken in accordance with the continuity obligation on specified terms.
- (7) A notice under subsection (6) shall be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.
- 60 Special continuity obligations: share transfers**
- (1) Expressions in this section have the same meaning as in section 59.
- (2) The continuity authority may –
- (a) cancel a contract or other arrangement between the transferred bank and a former group company;
  - (b) modify the terms of a contract or other arrangement between the transferred bank and a former group company;
  - (c) confer and impose rights and obligations on a former group company and the transferred bank, which shall have effect as if created by contract between them.
- (3) In modifying or setting terms under subsection (2) the continuity authority shall aim, so far as is reasonably practicable, to preserve or include –
- (a) provision for consideration at market rate, and
  - (b) any other provision that would be expected in arrangements concluded between parties dealing at arm’s length on market terms.
- (4) The power under subsection (2) –
- (a) may be exercised only in so far as the continuity authority thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business effectively,
  - (b) may be exercised by the Bank of England only with the consent of the Treasury, and
  - (c) must be exercised by way of provision in a share transfer instrument or order (or supplemental instrument or order).

**61 Pensions**

- (1) This section applies to –
- (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments. 5
- (2) An order or instrument may make provision –
- (a) about the consequences of a transfer for a pension scheme;
  - (b) about property, rights and liabilities of any pension scheme of the bank.
- (3) In particular, an order or instrument may –
- (a) modify any rights and liabilities; 10
  - (b) apportion rights and liabilities;
  - (c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).
- (4) Provision by virtue of this section may (but need not) amend the terms of a pension scheme. 15
- (5) A share or property transfer instrument may make provision in reliance on this section only with the consent of the Treasury.
- (6) In this section –
- (a) “pension scheme” includes any arrangement for the payment of pensions, allowances and gratuities, and
  - (b) a reference to a pension scheme of a bank is a reference to a scheme in respect of which the bank is or was an employer. 20

**62 Enforcement**

- (1) The Treasury may by regulations make provision for the enforcement of obligations imposed by or under – 25
- (a) a share transfer order,
  - (b) a share transfer instrument, or
  - (c) a property transfer instrument.
- (2) Regulations – 30
- (a) may confer jurisdiction on a court or tribunal;
  - (b) may not impose a penalty or create a criminal offence;
  - (c) may make provision which has effect in respect of an order or instrument only if applied by the order or instrument.
- (3) Regulations – 35
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**63 Disputes**

- (1) This section applies to – 40
- (a) share transfer orders,
  - (b) share transfer instruments, and
  - (c) property transfer instruments.

- (2) An order or instrument may include provision for disputes to be determined in a specified manner.
- (3) Provision by virtue of subsection (2) may, in particular –
  - (a) confer jurisdiction on a court or tribunal;
  - (b) confer discretion on a specified person.

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## 64 Tax

- (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of a stabilisation power.
- (2) Regulations may relate to –
  - (a) capital gains tax;
  - (b) corporation tax;
  - (c) income tax;
  - (d) inheritance tax;
  - (e) stamp duty;
  - (f) stamp duty land tax;
  - (g) stamp duty reserve tax.
- (3) Regulations may apply to –
  - (a) anything done in connection with an instrument or order;
  - (b) things transferred or otherwise affected by virtue of an instrument or order;
  - (c) a transferor or transferee under an instrument or order;
  - (d) persons otherwise affected by an instrument or order.
- (4) Regulations may –
  - (a) modify or disapply an enactment;
  - (b) provide for an action to have or not have specified consequences;
  - (c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
  - (d) withdraw or restrict a relief;
  - (e) extend, restrict or otherwise modify a charge to tax;
  - (f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.
- (5) Regulations may make provision for the fiscal consequences of the exercise of a stabilisation power in respect of things done –
  - (a) during the period of three months before the date on which the stabilisation power is exercised, or
  - (b) on or after that date.
- (6) In relation to the exercise of a supplemental or onward instrument or order under section 25, 26, 27, 28, 39, 40 or 41, in subsection (5)(a) above “the stabilisation power” is a reference to the first stabilisation power in connection with which the supplemental or onward instrument or order is made.
- (7) The Treasury may by order amend subsection (2) so as to –
  - (a) add an entry, or
  - (b) remove an entry.

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- (8) Regulations or an order under this section shall be made by statutory instrument.
- (9) Regulations under this section may not be made unless a draft has been laid before and approved by resolution of the House of Commons.
- (10) An order under this section shall be subject to annulment in pursuance of a resolution of the House of Commons. 5

## 65 Power to change law

- (1) The Treasury may by order amend the law for the purpose of enabling the powers under this Part to be used effectively, having regard to the special resolution objectives. 10
- (2) An order may be made –
- (a) for the general purpose of the exercise of powers under this Part,
  - (b) to facilitate a particular proposed or possible use of a power, or
  - (c) in connection with a particular exercise of a power.
- (3) An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made. 15
- (4) In subsection (1) “amend the law” means –
- (a) disapply or modify the effect of a provision of an enactment, or 20
  - (b) disapply or modify the effect of a rule of law not set out in legislation.
- (5) In subsection (4) “enactment” includes –
- (a) subordinate legislation,
  - (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and 25
  - (c) Northern Ireland legislation.
- (6) Provision under this section may relate to this Part as it applies –
- (a) to banks,
  - (b) to building societies,
  - (c) to credit unions (by virtue of section 76), or 30
  - (d) to any combination.
- (7) Specific powers under this Part are without prejudice to the generality of this section.
- (8) An order –
- (a) shall be made by statutory instrument, and 35
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) But if the Treasury think it necessary to make an order without complying with subsection (8)(b) –
- (a) the order may be made, 40
  - (b) the order shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made,

- (c) the lapse of an order under paragraph (b) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
- (d) the lapse of an order under paragraph (b) does not prevent the making of a new order.

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*Treasury*

**66 International obligation notice: general**

- (1) The Bank of England may not exercise a stabilisation power in respect of a bank if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom. 10
- (2) A notice under subsection (1) –
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally).
- (3) If the Treasury give a notice under subsection (1) the Bank of England must consider other exercises of the stabilisation powers with a view to – 15
  - (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury’s notice was based.
- (4) The Treasury may by notice to the Bank of England disapply subsection (3) in respect of a bank; and a notice may be revoked by further notice.

**67 International obligation notice: bridge bank**

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- (1) This section applies where the Bank of England has transferred all or part of a bank’s business to a bridge bank.
- (2) The Bank of England must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations – 25
  - (a) to take specified action under this Part in respect of the bridge bank, or
  - (b) not to take specified action under this Part in respect of the bridge bank.
- (3) A notice under subsection (1) –
  - (a) must be in writing, and
  - (b) may be withdrawn (generally, partially or conditionally). 30
- (4) A notice may include requirements about timing.

**68 Public funds: general**

- (1) The Bank of England may not exercise a stabilisation power in respect of a bank without the Treasury’s consent if the exercise would be likely to have implications for public funds. 35
- (2) In subsection (1) –
  - (a) “public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and
  - (b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds. 40

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- (3) The Treasury may by order specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of subsection (1).
- (4) If the Treasury refuse consent under subsection (1), the Bank of England must consider other exercises of the stabilisation powers with a view to – 5
- (a) pursuing the special resolution objectives, and
  - (b) avoiding the objections on which the Treasury’s refusal was based.
- (5) The Treasury may by notice to the Bank of England disapply subsection (4) in respect of a bank; and a notice may be revoked by further notice.
- (6) An order under subsection (3) – 10
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of the House of Commons.
- 69 Public funds: bridge bank**
- (1) This section applies where the Bank of England has transferred all or part of a bank’s business to a bridge bank. 15
- (2) The Bank of England may not take action in respect of the bridge bank without the Treasury’s consent if the action would be likely to have implications for public funds.
- (3) Section 68(2) and (3) have effect for the purposes of this section. 20
- 70 Bridge bank: report**
- (1) Where the Bank of England transfers all or part of a bank’s business to a bridge bank, the Bank must report to the Chancellor of the Exchequer about the activities of the bridge bank.
- (2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the bridge bank. 25
- (3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.
- (4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) or (3) before Parliament. 30
- (5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a bridge bank.
- (6) A request under subsection (5) may include provision about – 35
- (a) the content of the report;
  - (b) timing.

*Building societies, &c.*

**71 Application of Part 1: general**

This Part shall apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to the provisions of the Table.

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Section	Topic	Modification or note	
10	Private purchaser sector	A share transfer instrument may not be made.	
12	Temporary ownership public	The procedure provided by section 72 has effect in place of share transfer orders.	10
13 to 29	Transfer of securities	The procedure provided by section 72 has effect in place of share transfer orders; and – (a) sections 27 and 28 do not apply), and (b) section 26 applies following an order under section 72 as following a share transfer order.	15
30	Property transfer instrument: nature	A property transfer instrument in respect of a building society may – (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).	20
30 and 33	Property transfer instrument: continuity	A property transfer instrument in respect of a bank which provides for transfer to a building society may confer rights and impose liabilities by way of actual or deemed shares in the building society.	25
31	Property transfer instrument: effect	A property transfer instrument may, in particular, have effect without causing sections 93 to 102D of the Building Societies Act 1986 (mergers and transfers) to apply.	
39	Supplemental property transfer instrument	A supplemental property transfer instrument in respect of a building society may – (a) cancel shares in the building society; (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).	30 35
41	Temporary ownership: public property transfer	(a) Section 41 applies following an order under section 72 as following a share transfer order. (b) A property transfer order in respect of a building society may cancel shares in the building society.	40
44 to 56	Compensation	(a) A reference to a share transfer order includes a reference to an order under section 72. (b) A resolution fund order may not be made under section 47(2)(b). (c) If and in so far as an order under section 72 provides for the issue of new deferred shares, section 47(2) shall not apply.	45
57 to 65	Incidental functions	A reference to a share transfer order includes a reference to an order under section 72.	

**72 Temporary public ownership**

- (1) For the purpose of exercising the third stabilisation option in respect of a building society the Treasury may make one or more orders for the purposes of –
- (a) arranging for deferred shares of a building society to be publicly owned, 5
  - (b) cancelling private membership rights in the building society,
  - (c) allowing the building society to continue in business while in public ownership, and
  - (d) eventually either winding up or dissolving the building society. 10
- (2) For the purpose specified in subsection (1)(a) an order may –
- (a) arrange for the transfer of existing deferred shares;
  - (b) provide for new deferred shares.
- (3) For the purpose of arranging for the transfer of existing deferred shares an order may – 15
- (a) provide for deferred shares to be transferred;
  - (b) make other provision for the purposes of, or in connection with, the transfer of deferred shares (whether or not the transfer has been or is to be effected by the order, by another order under this section or otherwise); 20
  - (c) relate to all or any specified class or description of deferred shares issued by the building society.
- (4) For the purpose of providing for new deferred shares an order may –
- (a) issue or allow the Treasury to issue new deferred shares on behalf of the building society; 25
  - (b) specify or allow the Treasury to specify the terms and effect of new deferred shares;
  - (c) specify or allow the Treasury to specify the recipient of new deferred shares.
- (5) For the purpose specified in subsection (1)(b) an order may – 30
- (a) cancel or permit the cancellation of shares (whether or not deferred) in the building society;
  - (b) confer rights and impose liabilities, or allow them to be conferred and imposed, in place of cancelled shares;
  - (c) prevent the issue or acquisition of shares in or other rights in respect of the building society otherwise than in accordance with the order. 35
- (6) For the purpose specified in subsection (1)(c) an order may make any provision which the Treasury think desirable to facilitate the business of the building society after the making of provision in accordance with subsections (3) to (5).
- (7) An order in respect of a building society may – 40
- (a) make provision expressly or impliedly disapplying or modifying the memorandum or rules of the building society;
  - (b) disapply or modify an enactment about, or in its application to, building societies.
- (8) The following sections apply to orders under this section as to share transfer orders: sections 16, 17, 19, 20, 21, 22, 24, 61, 62 and 63. 45

### **73 Distribution of assets on dissolution or winding up**

- (1) The Treasury may by order make provision about the distribution of surplus assets of a building society which—
  - (a) is the subject of a property transfer instrument or order, and
  - (b) is later wound up or dissolved by consent. 5
- (2) An order under section 72 may include provision about the distribution of surplus assets of the building society if it is later wound up or dissolved by consent.
- (3) “Surplus” means remaining after the satisfaction of liabilities to creditors and shareholders. 10
- (4) An order under or by virtue of this section—
  - (a) may include any provision of a kind that may be made by order under section 90B of the Building Societies Act 1986 (power to alter priorities on dissolution or winding up),
  - (b) may be made whether or not the power under that section has been exercised, and 15
  - (c) shall be treated for all procedural purposes in the same way as an order under that section.

### **74 Interpretation**

- (1) Expressions used in this group of sections and in the Building Societies Act 1986 have the same meaning in this group of sections as in that Act. 20
- (2) An order under section 119(1) of that Act defining “deferred shares”—
  - (a) may make special provision for the meaning of that expression in the application of this group of sections, and
  - (b) shall otherwise apply to this group of sections as to that Act. 25

### **75 Consequential provision**

- (1) The Treasury may by order make provision, in addition to the provisions of this group of sections, in consequence of the application of this Part to building societies.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment) passed before the commencement of this Part. 30
- (3) An order—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 35

### **76 Credit unions**

- (1) The Treasury may by order provide for the application of this Part to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) subject to modifications set out in the order.
- (2) An order may disapply, modify or apply (with or without modifications) any enactment which relates, or in so far as it relates, to credit unions. 40

- (3) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions. 5
- (5) In the application of this section to Northern Ireland the reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985.

## PART 2 10

### BANK INSOLVENCY

#### *Introduction*

#### 77 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that – 15
- (a) a bank enters the process by court order,
  - (b) the order appoints a bank liquidator,
  - (c) the bank liquidator aims to arrange for the bank’s eligible depositors to have their accounts transferred or to receive their compensation from the FSCS, 20
  - (d) the bank liquidator then winds up the bank, and
  - (e) for those purposes, the bank liquidator has powers and duties of liquidators, as applied and modified by the provisions of this Part.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>	25
Sections 77 to 80	Introduction	
Sections 81 to 85	Bank insolvency order	
Sections 86 to 92	Process of bank liquidation	
Sections 93 to 99	Tenure of bank liquidator	
Sections 100 to 103	Termination of process, &c.	30
Sections 104 to 109	Other processes	
Sections 110 to 122	Miscellaneous	

#### 78 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22). 35

- (2) But “bank” does not include –
  - (a) a building society within the meaning of section 119 of the Building Societies Act 1986,
  - (b) a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
  - (c) any other class of institution excluded by an order made by the Treasury.
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.
- (4) An order under subsection (2)(c) –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Section 117 makes provision for the application of this Part to building societies.
- (6) Section 118 makes provision for the application of this Part to credit unions.

#### **79 Interpretation: “the court”**

In this Part “the court” means –

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

#### **80 Interpretation: other expressions**

- (1) In this Part “the FSA” means the Financial Services Authority.
- (2) In this Part a reference to “the FSCS” is a reference to –
  - (a) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000), or
  - (b) where appropriate, the scheme manager of that Scheme.
- (3) In this Part “eligible depositors” means depositors who are eligible for compensation under the FSCS.
- (4) For the purposes of a reference in this Part to inability to pay debts –
  - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
  - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; andfor the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank.
- (5) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (6) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (7) A reference in this Part to action includes a reference to inaction.

- (8) The expression “fair” is used in this Part as a shorter modern equivalent of the expression “just and equitable” (and is not therefore intended to exclude the application of any judicial or other practice relating to the construction and application of that expression).

*Bank insolvency order* 5

**81 The order**

- (1) A bank insolvency order is an order appointing a person as the bank liquidator of a bank.
- (2) A person is eligible for appointment as a bank liquidator if qualified to act as an insolvency practitioner. 10
- (3) An appointment may be made only if the person has consented to act.
- (4) A bank insolvency order takes effect in accordance with section 85; and –
- (a) the process of a bank insolvency order having effect may be described as “bank insolvency” in relation to the bank, and
  - (b) while the order has effect the bank may be described as being “in bank insolvency”. 15

**82 Application**

- (1) An application for a bank insolvency order may be made to the court by –
- (a) the Bank of England,
  - (b) the FSA, or 20
  - (c) the Secretary of State.
- (2) An application must nominate a person to be appointed as the bank liquidator.
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 112 below).

**83 Grounds for applying** 25

- (1) In this section –
- (a) Ground A is that a bank is unable, or likely to become unable, to pay its debts,
  - (b) Ground B is that the winding up of a bank would be in the public interest, and 30
  - (c) Ground C is that the winding up of a bank would be fair.
- (2) The Bank of England may apply for a bank insolvency order only if –
- (a) the FSA has informed the Bank of England that the FSA is satisfied that Conditions 1 and 2 in section 7 are met, and
  - (b) the Bank of England is satisfied – 35
    - (i) that the bank has eligible depositors, and
    - (ii) that Ground A or C applies.
- (3) The FSA may apply for a bank insolvency order only if –
- (a) the Bank of England consents, and
  - (b) the FSA is satisfied – 40

- (i) that Conditions 1 and 2 in section 7 are met,
  - (ii) that the bank has eligible depositors, and
  - (iii) that Ground A or C applies.
- (4) The Secretary of State may apply for a bank insolvency order only if satisfied –
  - (a) that the bank has eligible depositors, and 5
  - (b) that Ground B applies.
- (5) The sources of information on the basis of which the Secretary of State may be satisfied of the matters specified in subsection (4) include those listed in section 124A(1) of the Insolvency Act 1986 (petition for winding up on grounds of public interest). 10

#### 84 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the FSA if satisfied –
  - (a) that the bank has eligible depositors, and
  - (b) that Ground A or C of section 83 applies. 15
- (2) The court may make a bank insolvency order on the application of the Secretary of State if satisfied –
  - (a) that the bank has eligible depositors, and
  - (b) that Grounds B and C of section 83 apply.
- (3) On an application for a bank insolvency order the court may – 20
  - (a) grant the application in accordance with subsection (1) or (2),
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

#### 85 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section. 25
- (2) In the case where –
  - (a) notice has been given to the FSA under section 107 of an application for an administration order or a petition for a winding up order, and
  - (b) the FSA or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section, 30the bank insolvency order is treated as having taken effect when the application or petition was made or presented.
- (3) In any other case, the bank insolvency order is treated as having taken effect when the application for the order was made. 35
- (4) Unless the court directs otherwise on proof of fraud or mistake, proceedings taken in the bank insolvency, during the period for which it is treated as having had effect, are treated as having been taken validly.

*Process of bank liquidation***86 Objectives**

- (1) A bank liquidator has two objectives.
- (2) Objective 1 is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor – 5
  - (a) has the relevant account transferred to another financial institution, or
  - (b) receives payment from (or on behalf of) the FSCS.
- (3) Objective 2 is to wind up the affairs of the bank so as to achieve the best result for the bank’s creditors as a whole.
- (4) Objective 1 takes precedence over Objective 2 (but the bank liquidator is obliged to begin working towards both objectives immediately upon appointment). 10

**87 Liquidation committee**

- (1) Following a bank insolvency order a liquidation committee must be established, for the purpose of ensuring that the bank liquidator properly exercises the functions under this Part. 15
- (2) The liquidation committee shall consist initially of 3 individuals, one nominated by each of – 20
  - (a) the Bank of England,
  - (b) the FSA, and
  - (c) the FSCS.
- (3) The bank liquidator must report to the liquidation committee about any matter – 25
  - (a) on request, or
  - (b) which the bank liquidator thinks is likely to be of interest to the liquidation committee.
- (4) In particular, the bank liquidator – 30
  - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 86, and
  - (b) must notify the liquidation committee when in the bank liquidator’s opinion Objective 1 in section 86 has been achieved entirely or so far as is reasonably practicable.
- (5) As soon as is reasonably practicable after receiving notice under subsection (4)(b) the liquidation committee must either – 35
  - (a) resolve that Objective 1 in section 86 has been achieved entirely or so far as is reasonably practicable (a “full payment resolution”), or
  - (b) apply to the court under section 168(5) of the Insolvency Act 1986 (as applied by section 90 below).
- (6) Where a liquidation committee passes a full payment resolution – 40
  - (a) the bank liquidator must summon a meeting of creditors,
  - (b) the meeting may elect 2 or 4 individuals as new members of the liquidation committee,

- (c) those individuals replace the members nominated by the Bank of England and the FSA,
  - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and
  - (e) if no individuals are elected under paragraph (b), or the resulting committee would have fewer than 3 members or an even number of members, the liquidation committee ceases to exist at the end of the meeting. 5
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 112 below) may make provision about – 10
  - (a) the establishment of liquidation committees,
  - (b) the membership of liquidation committees,
  - (c) the functions of liquidation committees, and
  - (d) the proceedings of liquidation committees.
- 88 Liquidation committee: supplemental 15**
- (1) A meeting of the liquidation committee may be summoned –
  - (a) by any of the members, or
  - (b) by the bank liquidator.
- (2) While the liquidation committee consists of the initial members (or their nominated replacements) a meeting is quorate only if all the members are present. 20
- (3) A person aggrieved by any action of the liquidation committee before it has passed a full payment resolution may apply to the court, which may make any order (including an order for the repayment of money).
- (4) The court may (whether on an application under subsection (3), on the application of a bank liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution. 25
- (5) If a liquidation committee fails to comply with section 87(5) the bank liquidator must apply to the court – 30
  - (a) for an order under subsection (4) above, or
  - (b) for directions under or by virtue of section 168(3) or 169(2) of the Insolvency Act 1986 as applied by section 90 below.
- (6) A nominating body under section 87(2) may replace its nominee at any time.
- (7) After the removal of the nominated members under section 87(6)(c) the FSA and the Bank of England – 35
  - (a) may attend meetings of the liquidation committee,
  - (b) are entitled to copies of documents relating to the liquidation committee’s business,
  - (c) may make representations to the liquidation committee, and
  - (d) may participate in legal proceedings relating to the bank insolvency. 40
- (8) Where a liquidation committee ceases to exist by virtue of section 87(6)(e) –
  - (a) it may be re-formed by a creditors’ meeting summoned by the bank liquidator for the purpose, and

- (b) the bank liquidator must summon a meeting for the purpose if requested to do so by one-tenth in value of the bank’s creditors.
- (9) Where a liquidation committee ceases to exist by virtue of section 87(6)(e) and has not been re-formed under subsection (8) above –
- (a) ignore a reference in this Part to the liquidation committee, 5
  - (b) for section 100(2) to (4) substitute requirements for the bank liquidator, before making a proposal –
    - (i) to produce a final report,
    - (ii) to send copies in accordance with section 100(2)(b),
    - (iii) to make it available in accordance with section 100(2)(c), and 10
    - (iv) to be satisfied as specified in section 100(4)(b),
  - (c) ignore Condition 2 in section 101, and
  - (d) for section 102(1) to (5) substitute a power for the bank liquidator to apply to the Secretary of State or Accountant of Court for release and requirements that before making an application the bank liquidator must – 15
    - (i) produce a final report,
    - (ii) send copies in accordance with section 102(2)(b),
    - (iii) make it available in accordance with section 102(2)(c), and
    - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release. 20
- 89 Objective 1: (a) or (b)?**
- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue – 25
    - (a) Objective 1(a) in section 86,
    - (b) Objective 1(b) in section 86, or
    - (c) Objective 1(a) for one specified class of case and Objective 1(b) for another.
  - (2) In making a recommendation the liquidation committee must consider – 30
    - (a) the desirability of achieving Objective 1 as quickly as possible, and
    - (b) Objective 2 in section 86.
  - (3) If the liquidation committee thinks that the bank liquidator is failing to comply with their recommendation, they must apply to the court for directions under section 168(5) of the Insolvency Act 1986 (as applied by section 90 below).
  - (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 88(3); and the court may, in particular, make a direction in lieu of a recommendation if the liquidation committee fail to make one within a period set by the court. 35
- 90 General powers, duties and effect**
- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 86. 40
  - (2) The following provisions of this section provide for –
    - (a) general powers and duties of bank liquidators (by application of provisions about liquidators), and

- (b) the general process and effects of bank insolvency (by application of provisions about winding up).
- (3) The provisions set out in the Table apply in relation to bank insolvency as in relation to winding up, with—
  - (a) the modifications set out in subsection (4), 5
  - (b) any other modification specified in the Table, and
  - (c) any other necessary modification.
- (4) The modifications are that—
  - (a) a reference to the liquidator is a reference to the bank liquidator,
  - (b) a reference to winding up is a reference to bank insolvency, 10
  - (c) a reference to winding up by the court is a reference to the imposition of bank insolvency by order of the court,
  - (d) a reference to being wound up under Part IV or V of the Insolvency Act 1986 is a reference to being made the subject of a bank insolvency order,
  - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency, 15
  - (f) a reference to going into liquidation is a reference to entering bank insolvency,
  - (g) a reference to a winding-up order is a reference to a bank insolvency order, and 20
  - (h) a reference to a company is a reference to the bank.
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum. 25
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied.

TABLE OF APPLIED PROVISIONS

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 127	Avoidance of property dispositions	Ignore section 127(2).	30
Section 128	Avoidance of attachment, &c.		35
Section 130	Consequences of winding-up order	Ignore section 130(4).	
Section 131	Company's statement of affairs	<ul style="list-style-type: none"> <li>(a) Treat references to the official receiver as references to the bank liquidator.</li> <li>(b) A creditor or contributory of the bank is entitled to receive a copy of a statement under section 131 on request to the bank liquidator.</li> </ul>	40

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 143	General functions of liquidator	(a) Section 143(1) is subject to Objective 1 in section 86 above. (b) Ignore section 143(2).	5
Section 144	Custody of property		
Section 145	Vesting of property		
Section 146	<i>Duty to summon final meeting</i>	<i>Section 146 is not applied - but section 102 below makes similar provision.</i>	10
Section 147	Power to stay or sist proceedings	An application may be made only by – (a) the bank liquidator, (b) the FSA, (c) the Bank of England, (d) the FSCS, or (e) a creditor or contributory (but only if the liquidation committee has passed a full payment resolution).	15
Section 148	List of contributories and application of assets	<i>By virtue of the Insolvency Rules the functions under this section are largely delegated to the liquidator - rules by virtue of section 112 may achieve a similar delegation to the bank liquidator.</i>	20
Section 149	Debts due from contributories		
Section 150	Power to make calls		25
Section 152	Order on contributory: evidence		
Section 153	Exclusion of creditors		
Section 154	Adjustment of rights of contributories		
Section 155	Inspection of books by creditors	In making or considering whether to make an order under section 155 the court shall have regard to Objective 1 in section 86 above.	30
Section 156	Payment of expenses of winding up		
Section 157	Attendance at company meetings (Scotland)		35
Section 158	Power to arrest absconding contributory		
Section 159	<i>Powers to be cumulative</i>	<i>Section 159 is not applied - but subsection (5) above makes similar provision.</i>	40
Section 160	Delegation of powers to liquidator (England and Wales)		
Section 161	Orders for calls on contributories (Scotland)		
Section 162	Appeals from orders (Scotland)	An appeal may be brought only if the liquidation committee has passed a full payment resolution.	45

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 167 and Schedule 4	General powers of liquidator	<p>(a) An application to the court may not be made under section 167(3) unless the liquidation committee has passed a full payment resolution (although a creditor or contributory may apply to the court with respect to any action (or inaction) of the liquidation committee, under section 88(3) above).</p> <p>(b) In exercising or considering whether to exercise a power under Schedule 4 the bank liquidator shall have regard to Objective 1 in section 86.</p> <p>(c) A reference to the liquidation committee is to the liquidation committee established by section 87.</p> <p>(d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration.</p> <p><i>Some additional general powers are conferred by section 91 below.</i></p>	5 10 15 20
Section 168	Supplementary powers of liquidator	<p>(a) A direction or request under section 168(2) has no effect unless the liquidation committee has passed a full payment resolution.</p> <p>(b) Section 168(5) also applies in the case of the imposition of bank insolvency by order of the Court of Session.</p> <p>(c) An application to the court may not be made under section 168(5) unless the liquidation committee has passed a full payment resolution (except as provided in section 87 or 89 above).</p>	25 30 35
Section 169	Supplementary powers (Scotland)	<p>(a) Ignore section 169(1).</p> <p>(b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 86 above.</p>	40
Section 170	Liquidator's duty to make returns	The liquidation committee is added to the list of persons able to apply under section 170(2).	
Section 172	Removal of liquidator	<i>Section 172 is not applied - but section 95 makes similar provision.</i>	45
Section 174	Release of liquidator	<i>Section 174 is not applied - but section 102 makes similar provision.</i>	
Section 175	Preferential debts		
Section 176	Preferential charge on goods restrained		50
Section 176ZA	Expenses of winding up		
Section 176A	Share of assets for unsecured creditors		55
Section 177	Appointment of special manager		

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 178	Power to disclaim onerous property		5
Section 179	Disclaimer of leaseholds		
Section 180	Land subject to rentcharge		
Section 181	Disclaimer: powers of court		
Section 182	Leaseholds		
Section 183	Effect of execution or attachment (England and Wales)		10
Section 184	Execution of writs (England and Wales)		
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 the reference to an order of the court awarding winding up is a reference to the making of the bank insolvency order.	15
Section 186	Rescission of contracts by court		20
Section 187	Transfer of assets to employees		
Section 188	Publicity		
Section 189	Interest on debts		
Section 190	Exemption from stamp duty		
Section 191	Company's books as evidence		25
Section 192	Information about pending liquidations		
Section 193	Unclaimed dividends (Scotland)		
Section 194	Resolutions passed at adjourned meetings		30
Section 195	Meetings to ascertain wishes of creditors or contributories	The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 86.	
Section 196	Judicial notice of court documents		35
Section 197	Commission for receiving evidence		
Section 198	Court order for examination of persons (Scotland)		
Section 199	Costs of application for leave to proceed (Scotland)		40
Section 200	Affidavits		
Section 206	Fraud in anticipation of winding up		

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 207	Transactions in fraud of creditors		5
Section 208	Misconduct in course of winding up		
Section 209	Falsification of company's books		
Section 210	Material omissions		10
Section 211	False representations to creditors		
Section 212	Summary remedy against directors, &c.		
Section 213	Fraudulent trading		15
Section 214	Wrongful trading		
Section 215	Sections 213 & 214: procedure		
Section 216	Restriction on re-use of company names		
Section 217	Personal liability for debts		20
Section 218	Prosecution of officers and members of company	(a) Ignore subsections (4) and (6). (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3).	25
Section 219	Obligations under section 218		
Section 231	Appointment of 2 or more persons		30
Section 232	Validity of acts		
Section 233	Utilities		
Section 234	Getting in company's property		
Section 235	Co-operation with liquidator	Ignore references to the official receiver	
Section 236	Inquiry into company's dealings	Ignore references to the official receiver	35
Section 237	Section 236: enforcement by court		
Section 238	Transactions at undervalue (England and Wales)	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 238.	40
Section 239	Preferences (England and Wales)	Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to giving a preference for the purpose of section 239.	45

<i>Provision of Insolvency Act 1986</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 240	Sections 238 & 239: relevant time		5
Section 241	Orders under sections 238 & 239	Having notice of the relevant proceedings means having notice of – (a) an application by the Bank of England, the FSA or the Secretary of State for a bank insolvency order, or (b) notice under section 107 below.	10
Section 242	Gratuitous alienations (Scotland)		
Section 243	Unfair preferences (Scotland)		
Section 244	Extortionate credit transactions		15
Section 245	Avoidance of floating charges		
Section 246	Unenforceability of liens		
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts		20
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.	
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.	30
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.	35
Sections 423 - 425	Transactions defrauding creditors	Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a transaction at an undervalue for the purposes of section 423.	40
Sections 430 to 432 and Schedule 10	Offences		
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.	45

## 91 Additional general powers

- (1) A bank liquidator has the following powers.
- (2) Power to effect and maintain insurances in respect of the business and property of the bank.

- (3) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the bank.
- (4) Power to make any payment which is necessary or incidental to the performance of the bank liquidator's functions.

**92 Status of bank liquidator** 5

A bank liquidator is an officer of the court.

*Tenure of bank liquidator*

**93 Term of appointment**

A bank liquidator appointed by bank insolvency order remains in office until vacating office— 10

- (a) by resigning under section 94,
- (b) on removal under section 95 or 96,
- (c) on disqualification under section 97,
- (d) on the appointment of a replacement in accordance with section 99,
- (e) in accordance with sections 100 to 102, or 15
- (f) on death.

**94 Resignation**

- (1) A bank liquidator may resign by notice to the court.
- (2) Rules under section 411 of the Insolvency Act 1986 (as applied by section 112 below) may restrict a bank liquidator's power to resign. 20
- (3) Resignation shall take effect in accordance with those rules (which shall include provision about release).

**95 Removal by court**

- (1) A bank liquidator may be removed by order of the court on the application of— 25
  - (a) the liquidation committee,
  - (b) the FSA, or
  - (c) the Bank of England.
- (2) Before making an application the FSA must consult the Bank of England.
- (3) Before making an application the Bank of England must consult the FSA. 30
- (4) A bank liquidator removed by order has release with effect from a time determined by—
  - (a) the Secretary of State, or
  - (b) in the case of a bank liquidator in Scotland, the Accountant of Court.

**96 Removal by creditors**

- (1) A bank liquidator may be removed by resolution of a meeting of creditors held pursuant to section 195 of the Insolvency Act 1986 (as applied by section 90 above) provided that the following conditions are met.
- (2) Condition 1 is that the liquidation committee has passed a full payment resolution. 5
- (3) Condition 2 is that the notice given to creditors of the meeting includes notice of intention to move a resolution removing the bank liquidator.
- (4) Condition 3 is that the Bank of England and the FSA – 10
- (a) receive notice of the meeting, and
  - (b) are given an opportunity to make representations to it.
- (5) A bank liquidator who is removed under this section has release with effect – 15
- (a) from the time when the court is informed of the removal, or
  - (b) if the meeting removing the bank liquidator resolves to disapply paragraph (a), from a time determined by –
    - (i) the Secretary of State, or
    - (ii) in the case of a bank liquidator in Scotland, the Accountant of Court.

**97 Disqualification**

- (1) If a bank liquidator ceases to be qualified to act as an insolvency practitioner, the appointment lapses. 20
- (2) A bank liquidator whose appointment lapses under subsection (1) has release with effect from a time determined by –
- (a) the Secretary of State, or
  - (b) in the case of a bank liquidator in Scotland, the Accountant of Court. 25

**98 Release**

A bank liquidator who is released is discharged from all liability in respect of acts or omissions in the bank insolvency and otherwise in relation to conduct as bank liquidator (but without prejudice to the effect of section 212 of the Insolvency Act 1986 as applied by section 90 above). 30

**99 Replacement**

- (1) Where a bank liquidator vacates office the Bank of England must as soon as is reasonably practicable appoint a replacement bank liquidator.
- (2) But where a bank liquidator is removed by resolution of a meeting of creditors under section 96 – 35
- (a) a replacement may be appointed by resolution of the meeting, and
  - (b) failing that, subsection (1) above applies.

*Termination of process, &c.*

**100 Company voluntary arrangement**

- (1) A bank liquidator may make a proposal in accordance with section 1 of the Insolvency Act 1986 (company voluntary arrangement).
- (2) Before making a proposal the bank liquidator – 5
  - (a) shall present a final report on the bank liquidation to the liquidation committee,
  - (b) shall send a copy of the report to –
    - (i) the FSA,
    - (ii) the FSCS, 10
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request. 15
- (3) A proposal may be made only with the consent of the liquidation committee.
- (4) The liquidation committee may consent only if –
  - (a) it has passed a full payment resolution, and
  - (b) the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositor still eligible for compensation under the scheme will be dealt with in accordance with section 86(2)(a) or (b). 20
- (5) The bank liquidator must be the nominee (see section 1(2) of the 1986 Act).
- (6) Part 1 of the 1986 Act shall apply to a proposal made by a bank liquidator, with the following modifications.
- (7) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies. 25
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.
- (9) On the termination of a company voluntary arrangement the bank liquidator may apply to the court to lift the suspension of the bank insolvency order.

**101 Administration**

30

- (1) A bank liquidator who thinks that administration would achieve a better result for the bank’s creditors as a whole than bank insolvency may apply to the court for an administration order (under paragraph 38 of Schedule B1 to the Insolvency Act 1986).
- (2) An application may be made only if the following conditions are satisfied. 35
- (3) Condition 1 is that the liquidation committee has passed a full payment resolution.
- (4) Condition 2 is that the liquidation committee has resolved that moving to administration might enable the rescue of the bank as a going concern.

- (5) Condition 3 is that the bank liquidator is satisfied, as a result of arrangements made with the FSCS, that any depositors still eligible for compensation under the scheme will receive their payments during administration.

## 102 Dissolution

- (1) A bank liquidator who thinks that the winding up of the bank is for practical purposes complete shall summon a final meeting of the liquidation committee. 5
- (2) The bank liquidator –
- (a) shall present a final report on the bank insolvency to the meeting,
  - (b) shall send a copy of the report to –
    - (i) the FSA, 10
    - (ii) the FSCS,
    - (iii) the Bank of England,
    - (iv) the Treasury, and
    - (v) the registrar of companies, and
  - (c) shall make the report available to members, creditors and contributories on request. 15
- (3) At the meeting the liquidation committee shall –
- (a) consider the report, and
  - (b) decide whether to release the bank liquidator.
- (4) If the liquidation committee decides to release the bank liquidator, the bank liquidator – 20
- (a) shall notify the court and the registrar of companies, and
  - (b) vacates office, and has release, when the court is notified.
- (5) If the liquidation committee decides not to release the bank liquidator, the bank liquidator may apply to the Secretary of State for release; if the application is granted, the bank liquidator – 25
- (a) vacates office when the application is granted, and
  - (b) has release from a time determined by the Secretary of State.
- (6) In the case of a bank liquidator in Scotland, a reference in subsection (5) to the Secretary of State is a reference to the Accountant of Court. 30
- (7) On receipt of a notice under subsection (4)(a) the registrar of companies shall register it.
- (8) At the end of the period of 3 months beginning with the day of the registration of the notice, the bank is dissolved (subject to deferral under section 103).

## 103 Dissolution: supplemental

- (1) The Secretary of State may by direction defer the date of dissolution under section 102, on the application of a person who appears to the Secretary of State to be interested. 35
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1). 40
- (3) Subsection (1) does not apply where the bank insolvency order was made by the court in Scotland; but the court may by direction defer the date of

- dissolution on an application by a person appearing to the court to have an interest.
- (4) A person who obtains deferral under subsection (1) or (3) shall, within 7 days after the giving of the deferral direction, deliver a copy of the direction to the registrar of companies for registration. 5
- (5) A person who without reasonable excuse fails to comply with subsection (4) is liable to a fine and, for continued contravention, to a daily default fine, in each case of the same amount as for a contravention of section 205(6) of the Insolvency Act 1986 (dissolution).
- (6) The bank liquidator may give the notice summoning the final meeting under section 102 above at the same time as giving notice of any final distribution of the bank's property; but, if summoned for an earlier date the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the bank liquidator is able to report to the meeting that the winding up of the bank is for practical purposes complete. 10  
15
- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 102 above.

*Other processes*

**104 Bank insolvency as alternative order**

- (1) On a petition for a winding up order or an application for an administration order in respect of a bank the court may, instead, make a bank insolvency order. 20
- (2) A bank insolvency order may be made under subsection (1) only –
- (a) on the application of the FSA made with the consent of the Bank of England, or 25
  - (b) on the application of the Bank of England.

**105 Voluntary winding-up**

A resolution for voluntary winding up of a bank under section 84 of the Insolvency Act 1986 shall have no effect without the prior approval of the court. 30

**106 Exclusion of other procedures**

- (1) The following paragraphs of Schedule B1 to the Insolvency Act 1986 (administration) apply to a bank insolvency order as to an administration order.
- (2) Those paragraphs are – 35
- (a) paragraph 40 (dismissal of pending winding-up petition), and
  - (b) paragraph 42 (moratorium on insolvency proceedings).
- (3) For that purpose –
- (a) a reference to an administration order is a reference to a bank insolvency order, 40

- (b) a reference to a company being in administration is a reference to a bank being in bank insolvency, and
- (c) a reference to an administrator is a reference to a bank liquidator.

### 107 Notice to FSA of preliminary steps

- (1) An application for an administration order in respect of a bank may not be determined unless the conditions below are satisfied. 5
- (2) A petition for a winding up order in respect of a bank may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a bank may not be made unless the conditions below are satisfied. 10
- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the FSA has been notified –
  - (a) by the applicant for an administration order, that the application has been made, 15
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the bank, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment. 20
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).
- (7) Condition 3 is that –
  - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or 25
  - (b) both –
    - (i) the FSA has informed the person who gave the notice that it does not intend to apply for a bank insolvency order, and
    - (ii) the Bank of England has informed the person who gave the notice that it does not intend to apply for a bank insolvency order or to exercise a stabilisation power under Part 1. 30
- (8) Condition 4 is that no application for a bank insolvency order is pending.
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a bank’s creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading). 35
- (10) Where the FSA receives notice under Condition 1 –
  - (a) the FSA shall inform the Bank of England,
  - (b) the FSA shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a bank insolvency order, and 40
  - (c) if the Bank of England decides to apply for a bank insolvency order or to exercise a stabilisation power under Part 1, the Bank shall inform the person who gave the notice, within the period in Condition 3(a).

## 108 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.
- (2) In the Disqualification Act –
  - (a) a reference to liquidation includes a reference to bank insolvency, 5
  - (b) a reference to winding up includes a reference to making or being subject to a bank insolvency order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank insolvency order, and
  - (d) a reference to a liquidator includes a reference to a bank liquidator. 10
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank insolvency order, the responsible office-holder is the bank liquidator.
- (4) After section 21 of the Disqualification Act (interaction with Insolvency Act) insert – 15

### “21A Bank insolvency

Section 108 of the Banking Act 2008 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

## 109 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly – 20
  - (a) provide for an enactment about insolvency to apply to bank insolvency (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency in consequence of this Part.
- (2) In subsection (1) “enactment” includes – 25
  - (a) subordinate legislation,
  - (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and
  - (c) Northern Ireland legislation.
- (3) An order under subsection (1) – 30
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

### *Miscellaneous*

## 110 Role of FSCS

- (1) For the purpose of co-operating in the pursuit of Objective 1 in section 86 the FSCS – 35
  - (a) may make or arrange for payments to or in respect of eligible depositors of the bank, and
  - (b) may make money available to facilitate the transfer of accounts of eligible depositors of the bank. 40

- (2) The FSCS may include provision about expenditure under this section; and, in particular –
- (a) money may be raised through the imposition of a levy under Part 15 of the Financial Services and Markets Act in respect of expenditure or possible expenditure under this section, and 5
  - (b) sums raised in connection with the scheme (whether or not under paragraph (a)) may be expended under this section.
- (3) In section 220(3)(a) of the Financial Services and Markets Act 2000 (Compensation Scheme: information) after “liquidator” insert “, bank liquidator”. 10
- (4) The FSCS is entitled to participate in proceedings for or in respect of a bank insolvency order.
- (5) A bank liquidator must –
- (a) comply with a request of the FSCS for the provision of information, and
  - (b) provide the FSCS with any other information which the bank liquidator thinks might be useful for the purpose of co-operating in the pursuit of Objective 1. 15
- (6) A bank liquidator may enter into an agreement under section 221A of the Financial Services and Markets Act 2000 (Compensation Scheme: delegation of functions) for the bank liquidator to exercise functions of the scheme manager for the purpose of facilitating the pursuit of Objective 1. 20
- (7) Where a bank insolvency order is made in respect of a bank, the fact that it later ceases to be an authorised person does not prevent the operation of the compensation scheme in respect of it; and for that purpose the bank is a relevant person within the meaning of section 213(9) of the Financial Services and Markets Act 2000 despite the lapse of authorisation. 25

### 111 Transfer of accounts

- (1) This section applies where a bank liquidator arranges, in pursuit of Objective 1 in section 86, for the transfer of eligible depositors’ accounts from the bank to another financial institution. 30
- (2) The arrangements may disapply, or provide that they shall have effect despite, any restriction arising by virtue of contract or legislation or in any other way.
- (3) In subsection (2) “restriction” includes –
- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
  - (b) a requirement for consent (by any name). 35
- (4) In making the arrangements mentioned in subsection (1) the bank liquidator must ensure that eligible depositors will be able to remove money from transferred accounts as soon as is reasonably practicable after transfer. 40

### 112 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.

(2) In subsection (1) after “Parts I to VII of this Act” insert “, Part 2 of the Banking Act 2008 (bank insolvency orders)”.

(3) After subsection (2B) insert –

“(2C) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2008.”

5

(4) In subsection (3) –

(a) after “provisional liquidator” insert “or bank liquidator”, and

(b) after “Parts I to VII of this Act” insert “or Part 2 of the Banking Act 2008”.

10

### 113 Fees

After section 414(8) of the Insolvency Act 1986 (fees orders) insert –

“(8A) This section applies in relation to Part 2 of the Banking Act 2008 (bank insolvency) as in relation to Parts I to VII of this Act.”

15

### 114 Insolvency Services Account

A bank liquidator who obtains money by realising assets in the course of the bank insolvency must pay it into the Insolvency Services Account (kept by the Secretary of State).

### 115 Evidence

20

In section 433(1) of the Insolvency Act 1986 (admissibility of statements of affairs) after paragraph (a) insert (before the “and”) –

“(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2008 (bank insolvency),”.

### 116 Co-operation between courts

25

(1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts).

(2) At the end of that section add –

“(13) Section 116 of the Banking Act 2008 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.”

30

### 117 Building societies

(1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order.

35

(2) An order may –

(a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;

(b) amend an enactment amended by this Part;

- 
- (c) replicate, with or without modifications, any provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.
- (3) An order –
- (a) shall be made by statutory instrument, and 5
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies.
- 118 Credit unions 10**
- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order.
- (2) An order may –
- (a) amend the Credit Union Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions; 15
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, any provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions. 20
- (3) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 25
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.
- 119 Partnerships**
- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships. 30
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships).
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland. 35
- 120 Scottish partnerships**
- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland.
- (2) An order – 40
- (a) shall be made by statutory instrument, and

- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 121 Northern Ireland

In the application of this Part to Northern Ireland –

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland, 5
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,
- (c) references to the Secretary of State, except in section 109, are to be treated as references to the Department of Enterprise, Trade and Investment, 10
- (d) a reference to the Insolvency Services Account is to be treated as a reference to the Insolvency Account,
- (e) a reference to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985, 15
- (f) the Judgments Enforcement (Northern Ireland) Order 1981 has effect in place of sections 183 and 184 of the Insolvency Act 1986 (applied by section 90 above), and 20
- (g) the reference in section 119 to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

## 122 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment and an Act of the Scottish Parliament) passed before the commencement of this Part. 25
- (3) An order –
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 30

### PART 3

#### BANK ADMINISTRATION

##### *Introduction*

## 123 Overview 35

- (1) This Part provides for a procedure to be known as bank administration.
- (2) The main features of bank administration are that –
  - (a) it is used where part of the business of a bank is sold to a commercial purchaser in accordance with section 10 or transferred to a bridge bank in accordance with section 11 (and it can also be used in certain cases of multiple transfers under Part 1), 40

- (b) the court appoints a bank administrator on the application of the Bank of England,
  - (c) the bank administrator is able and required to ensure that the non-sold or non-transferred part of the bank (“the residual bank”) provides services or facilities required to enable the commercial purchaser (“the private sector purchaser”) or the transferee (“the bridge bank”) to operate effectively, and 5
  - (d) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.
- (3) The Table describes the provisions of this Part. 10

<i>Sections</i>	<i>Topic</i>
Sections 123 to 127	Introduction
Sections 128 to 135	Process
Sections 136 to 139	Multiple transfers
Sections 140 and 141	Termination
Sections 142 to 154	Miscellaneous

15

## 124 Objectives

- (1) A bank administrator has two objectives –
  - (a) Objective 1: support for commercial purchaser or bridge bank (see section 125), and 20
  - (b) Objective 2: “normal” administration (see section 127).
- (2) Objective 1 takes priority over Objective 2 (but a bank administrator is obliged to begin working towards both objectives immediately upon appointment).

## 125 Objective 1: supporting private sector purchaser or bridge bank

- (1) Objective 1 is to ensure the supply to the private sector purchaser or bridge bank of such services and facilities as are required to enable it, in the opinion of the Bank of England, to operate effectively. 25
- (2) For the purposes of Objective 1 –
  - (a) the reference to services and facilities includes a reference to acting as transferor or transferee under a supplemental property transfer instrument, and 30
  - (b) the reference to “supply” includes a reference to supply by persons other than the residual bank.
- (3) In the case of bank administration following a private sector purchase the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the private sector purchaser; and – 35
  - (a) in pursuing Objective 1 the bank administrator must have regard to the terms of that or any other agreement entered into between the residual bank and the private sector purchaser, 40

- (b) in particular, the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms,
  - (c) if in doubt about the effect of those terms the bank administrator may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 132 below), and 5
  - (d) the private sector purchaser may refer to the court a dispute about any agreement with the residual bank, by applying for directions under paragraph 63 of Schedule B1.
- (4) In the case of bank administration following transfer to a bridge bank, the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the bridge bank; and – 10
  - (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, 15
  - (b) the bank administrator must ensure that so far as is reasonably practicable an agreement entered into includes provision for consideration at market rate,
  - (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 20
  - (d) this subsection does not apply after Objective 1 ceases.
- (5) Where a bank administrator requires the Bank of England’s consent or approval to any action in accordance with this Part, the Bank may withhold consent or approval only on the grounds that the action might prejudice the achievement of Objective 1. 25

## 126 Objective 1: duration

- (1) Objective 1 ceases if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank. 30
- (2) A bank administrator who thinks that Objective 1 is no longer required may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 132 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1) above. 35
- (3) If immediately upon the making of a bank administration order the Bank of England thinks that the residual bank is not required in connection with the private sector purchaser or bridge bank, the Bank of England may give a notice under subsection (1). 40
- (4) A notice under subsection (1) is referred to in this Part as an “Objective 1 Achievement Notice”.

## 127 Objective 2: “normal” administration

- (1) Objective 2 is to – 45
  - (a) rescue the residual bank as a going concern (“Objective 2(a)”), or

- (b) achieve a better result for the residual bank’s creditors as a whole than would be likely if the residual bank were wound up without first being in bank administration (“Objective 2(b)”).
- (2) In pursuing Objective 2 a bank administrator must aim to achieve Objective 2(a) unless of the opinion either – 5
- (a) that it is not reasonably practicable to achieve it, or
- (b) that Objective 2(b) would achieve a better result for the residual bank’s creditors as a whole.
- (3) In pursuing Objective 2(b) in bank administration following transfer to a bridge bank, the bank administrator may not realise any asset unless – 10
- (a) the asset is on a list of realisable assets agreed between the bank administrator and the Bank of England, or
- (b) the Bank of England has given an Objective 1 Achievement Notice.

#### *Process*

### **128 Bank administration order** 15

- (1) A bank administration order is an order appointing a person as the bank administrator of a bank.
- (2) A person is eligible for appointment as a bank administrator if qualified to act as an insolvency practitioner.
- (3) An appointment may be made only if the person has consented to act. 20
- (4) A bank administration order takes effect in accordance with its terms; and –
- (a) the process of a bank administration order having effect may be described as “bank administration” in relation to the bank, and
- (b) while the order has effect the bank may be described as being “in bank administration”. 25

### **129 Application**

- (1) An application for a bank administration order may be made to the court by the Bank of England.
- (2) An application must nominate a person to be appointed as the bank administrator. 30
- (3) The bank must be given notice of an application, in accordance with rules under section 411 of the Insolvency Act 1986 (as applied by section 147 below).

### **130 Grounds for applying**

- (1) The Bank of England may apply for a bank administration order in respect of a bank if the following conditions are met. 35
- (2) Condition 1 is that the Bank of England has made or intends to make a property transfer instrument in respect of the bank in accordance with section 10(2) or 11(2).
- (3) Condition 2 is that the Bank of England is satisfied that the residual bank – 40
- (a) is unable to pay its debts, or

- (b) is likely to become unable to pay its debts as a result of the property transfer instrument which the Bank intends to make.

### 131 Grounds for making

- (1) The court may make a bank administration order if satisfied that the conditions in section 130 were met. 5
- (2) On an application for a bank administration order the court may –
  - (a) grant the application,
  - (b) adjourn the application (generally or to a specified date), or
  - (c) dismiss the application.

### 132 General powers, duties and effect 10

- (1) A bank administrator may do anything necessary or expedient for the pursuit of the Objectives in section 124.
- (2) The following provisions of this section provide for –
  - (a) general powers and duties of bank administrators (by application of provisions about administrators), and 15
  - (b) the general process and effects of bank administration (by application of provisions about administration).
- (3) The provisions set out in the Tables apply in relation to bank administration as in relation to administration, with –
  - (a) the modifications set out in subsection (4), 20
  - (b) any other modification specified in the Tables, and
  - (c) any other necessary modification.
- (4) The modifications are that –
  - (a) a reference to the administrator is a reference to the bank administrator,
  - (b) a reference to administration is a reference to bank administration, 25
  - (c) a reference to an administration order is a reference to a bank administration order,
  - (d) a reference to a company is a reference to the bank,
  - (e) a reference to the purpose of administration is a reference to the Objectives in section 124, and 30
  - (f) in relation to provisions of the Insolvency Act 1986 other than Schedule B1, the modifications in section 90 above apply (but converting references into references to bank administration rather than to bank insolvency).
- (5) Powers conferred by this Act, by the Insolvency Act 1986 (as applied) and the Companies Acts are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of a bank, or the estate of any contributory or debtor, for the recovery of any call or other sum. 35
- (6) A reference in an enactment or other document to anything done under a provision applied by this Part includes a reference to the provision as applied. 40

TABLE 1 OF APPLIED PROVISIONS  
SCHEDULE B1 TO THE INSOLVENCY ACT 1986

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>	
Para. 40(1)(a)	Dismissal of pending winding-up petition		5
Para. 41	Dismissal of administrative or other receiver		
Para. 42	Moratorium on insolvency proceedings	Ignore sub-paras. (4) and (5).	10
Para. 43	Moratorium on other legal process	<p>(a) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice consent of the bank administrator may not be given for the purposes of para. 43 without the approval of the Bank of England.</p> <p>(b) In the case of bank administration following transfer to a bridge bank, unless the Bank of England has given an Objective 1 Achievement Notice, in considering whether to give permission under sub-para. (6) to a winding-up the court must have regard to the Objectives in section 124.</p> <p>(c) In considering whether to give permission for the purposes of para. 43 the court must have regard to the Objectives in section 124.</p>	15 20 25 30
Para. 44(1)(a) and (5)	Interim moratorium		
Para. 46	Announcement of appointment	Ignore sub-para. (6)(b) and (c).	35
Paras. 47 & 48	Statement of affairs		

Provision of Schedule B1	Subject	Modification or comment	
Para. 49	Administrator's proposals	<p>(a) Para. 49 does not apply unless the Bank of England has given an Objective 1 Achievement Notice; <i>for bank administrator's proposals before the Bank of England has given an Objective 1 Achievement Notice, see section 134.</i></p> <p>(b) Treat the reference in sub-para. (1) to the purpose of administration as a reference to Objective 2.</p> <p>(c) Before making proposals under sub-para. (1) in the case of bank administration following transfer to a bridge bank, the bank administrator must consult the Bank of England about the chances of a payment to the residual bank from a scheme established by resolution fund order under section 44(3).</p> <p>(d) Treat the reference in sub-para. (2)(b) to the objective mentioned in para. 3(1)(a) or (b) as a reference to Objective 2(a).</p> <p>(e) Ignore sub-para.(3)(b).</p> <p>(f) Treat references in sub-para. (5) to the company's entering administration as references to satisfaction of the condition in para. (a) above.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
Paras. 50 - 58	Creditors' meeting	<p>(a) Treat references in para. 51(2) to the company's entering administration as references to the giving of an Objective 1 Achievement Notice.</p> <p>(b) The bank administrator may comply with a request under para. 56(1)(a) only if satisfied that it will not prejudice pursuit of Objective 1 in section 124.</p> <p>(c) A creditors' meeting may not establish a creditors' committee in reliance on para. 57 until the Bank of England has given an Objective 1 Achievement Notice.</p> <p>(d) Until that time the Bank of England shall have the functions of the creditors' committee.</p>	<p>35</p> <p>40</p> <p>45</p>
Para. 59	General powers	A bank administrator may not rely on para. 59 (or subsection (1) above) for the purpose of recovering property transferred by property transfer instrument.	50
Para. 60 and Schedule 1	General powers	<p>(a) The exercise of powers under Schedule 1 is subject to section 124(2).</p> <p>(b) In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice powers under the following paragraphs of Schedule 1 may be exercised only with the Bank of England's consent: 2, 3, 11, 14, 15, 16, 17, 18 and 21.</p>	<p>55</p> <p>60</p>

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>	
Para. 61	Directors		
Para. 62	Power to call meetings of creditors		5
Para. 63	Application to court for directions	<p>(a) Before the Bank of England has given an Objective 1 Achievement Notice, the bank administrator may apply for directions if unsure whether a proposed action would prejudice the pursuit of Objective 1; and before making an application in reliance on this paragraph the bank administrator must give notice to the Bank of England, which shall be entitled to participate in the proceedings.</p> <p>(b) In making directions the court must have regard to the Objectives in section 124.</p>	10 15 20
Para. 64.	Management powers.		
Para. 65	Distribution to creditors	In the case of administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice a bank administrator may make a distribution only with the Bank of England's consent.	25
Para. 66	Payments		
Para. 67	Taking custody of property		
Para. 68	Management	Before the approval of proposals under para. 53 a bank administrator shall manage the bank's affairs, business and property in accordance with principles agreed between the bank administrator and the Bank of England.	30 35
Para. 69	Agency		
Para. 70	Floating charges	The bank administrator may take action only if satisfied that it will not prejudice pursuit of Objective 1 in section 124.	
Para. 71	Fixed charges	The court may make an order only if satisfied that it will not prejudice pursuit of Objective 1 in section 124.	40
Para. 72	Hire-purchase property	In the case of administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice an application may be made only with the Bank of England's consent.	45
Para. 73	Protection for secured and preferential creditors	<p>(a) Treat a reference to proposals as including a reference to the principles specified in the modification of para. 68 set out above.</p> <p>(b) Para. 73(1)(a) does not apply until the Bank of England has given an Objective 1 Achievement Notice.</p>	50 55

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>	
Para. 74	Challenge to administrator's conduct	(a) The Bank of England may make an application to the court, on any grounds, including grounds of insufficient pursuit of Objective 1 in section 124 (in addition to applications that may anyway be made under para. 74). (b) Until the Bank of England has given an Objective 1 Achievement Notice, an order may be made on the application of a creditor only if the court is satisfied that it would not prejudice pursuit of Objective 1 in section 124.	5 10 15
Para. 75	Misfeasance	In addition to applications that may anyway be made under para. 75, an application may be made by the bank administrator or the Bank of England.	20
Para. 80	Termination: successful rescue	<i>See section 140.</i>	
Para. 84	Termination: no more assets for distribution	<i>See section 141.</i>	
Para. 85	Discharge of administration order		25
Para. 86	Notice to Companies Registrar of end of administration	<i>See section 140.</i>	
Para. 87	Resignation	A bank administrator may resign only by notice in writing— (a) to the court, copied to the Bank of England, or (b) in the case of a bank administrator appointed by the creditors' committee under para. 90, to the creditors' committee.	30 35
Para. 88	Removal	Until the Bank of England has given an Objective 1 Achievement Notice, an application for an order may be made only with the Bank of England's consent.	
Para. 89	Disqualification	The notice under sub-para. (2) must be given to the Bank of England.	40
Paras. 90 & 91	Replacement	(a) Until an Objective 1 Notice has been given, the Bank of England, and nobody else, may make an application under para. 91(1). (b) After that, either the Bank of England or a creditors' committee may apply. (c) Ignore para. 91(1)(b) to (e) and (2).	45
Para. 96	Substitution of floating charge-holder	Para. 96 applies to a bank administrator, but— (a) only after an Objective 1 Achievement Notice has been given, and (b) ignoring references to priority of charges.	50 55

<i>Provision of Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>	
Para. 98	Discharge	Discharge takes effect – (a) where the person ceases to be bank administrator before an Objective 1 Achievement Notice has been given, at a time determined by the Bank of England, and (b) otherwise, at a time determined by resolution of the creditors' committee (for which purpose ignore sub-para. (3)).	5 10
Para. 99	Vacation of office: charges and liabilities	In the application of sub-para. (3), payments may be made only – (a) in accordance with directions of the Bank of England, and (b) if the Bank is satisfied that they will not prejudice Objective 1 in section 124.	15
Paras. 100-103	Joint administrators	Until an Objective 1 Achievement Notice has been given, an application under para. 103 may be made only by the Bank of England.	20
Para. 104	Validity		
Para. 106 (and section 430 and Schedule 10)	Fines		25
Paras. 107 - 109	Extension of time limits	(a) Until an Objective 1 Achievement Notice has been given, an application under para. 107 may be made only with the Bank of England's consent. (b) In considering an application under para. 107 the court must have regard to Objective 1 in section 124. (c) In para. 108(1) "consent" means consent of the Bank of England.	30 35
Para. 110	<i>Amendment of provisions about time</i>	<i>An order under para. 110 may amend a provision of the Schedule as it applies by virtue of this section (whether or not in the same way as it amends the provision as it applies otherwise).</i>	40
Para. 111	Interpretation		
Paras. 112 - 116	Scotland		

TABLE 2 OF APPLIED PROVISIONS  
OTHER PROVISIONS OF THE INSOLVENCY ACT 1986

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 168(4) (and para. 13 of Schedule 4)	Discretion in managing and distributing assets	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice distribution may be made only – (a) with the Bank of England’s consent, or (b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.	5 10 15
Section 176A	Unsecured creditors	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice distribution may be made in reliance on s. 176A only – (a) with the Bank of England’s consent, or (b) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England.	20 25
Section 178	Disclaimer of onerous property	In the case of bank administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice notice of disclaimer may be given only with the Bank of England’s consent.	30
Section 188	Publicity		
Section 213	Fraudulent trading		35
Section 214	Wrongful trading	Ignore subsection (6).	
Section 233	Utilities		
Section 234	Getting in company’s property		
Section 235	Co-operation with liquidator		
Section 236	Inquiry into company’s dealings		40
Section 237	Section 236: enforcement by court		
Section 238	Transactions at undervalue (England and Wales)		
Section 239	Preferences (England and Wales)		45
Section 240	Ss. 238 & 239: relevant time		

<i>Section</i>	<i>Subject</i>	<i>Modification or comment</i>	
Section 241	Orders under ss. 238 & 239	(a) In considering making an order in reliance on section 241 the court must have regard to Objective 1 of section 124. (b) Ignore subsections (2A)(a) and (3) to (3C).	5
Section 242	Gratuitous alienations (Scotland)		
Section 243	Unfair preferences (Scotland)	In considering the grant of a decree under subsection (5) the court must have regard to Objective 1 of section 124.	10
Section 244	Extortionate credit transactions		
Section 245	Avoidance of floating charges		
Section 246	Unenforceability of liens		15
Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts		20
Section 389	Offence of acting without being qualified	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.	25
Section 390	Persons not qualified to act	Treat references to acting as an insolvency practitioner as references to acting as a bank administrator.	30
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of bank administration.	
Sections 423 - 425	Transactions defrauding creditors	(a) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 124. (b) In considering making an order in reliance on section 425 the court must have regard to Objective 1 of section 124.	35 40
Sections 430 - 432 & Schedule 10	Offences		
Section 433	Statements: admissibility	For section 433(1)(a) and (b) substitute a reference to a statement prepared for the purposes of a provision of this Part.	45

### 133 Status of bank administrator

A bank administrator is an officer of the court.

### 134 Administrator’s proposals

- (1) This section applies before the giving of an Objective 1 Achievement Notice (at which point paragraph 49 of Schedule B1 to the Insolvency Act 1986 applies in accordance with section 132).
- (2) The bank administrator must as soon as is reasonably practicable after appointment make a statement setting out proposals for achieving the Objectives in section 124. 5
- (3) The statement must say whether the bank administrator proposes to pursue Objective 2(a) or 2(b) in section 127.
- (4) The statement must have been agreed with the Bank of England. 10
- (5) But a bank administrator who is unable to agree a statement with the Bank of England may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (as applied by section 132); and the court may make any order, including dispensing with the need for the Bank of England’s agreement. 15
- (6) The bank administrator must send the statement to the FSA.
- (7) The bank administrator may revise the statement (and subsections (4) to (6) apply to a revised statement as to the original).
- (8) The statement shall be treated in the same way (subject to this section) as a statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986. 20

### 135 Sharing information

- (1) This section applies to bank administration following transfer to a bridge bank.
- (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 positions of the residual bank and the bridge bank. 25
- (3) While the residual bank is in bank administration the bridge bank must give the bank administrator on request information about the financial position of the bridge bank that the bank administrator requires for the purposes of pursuing Objective 1 in section 124. 30
- (4) Until the Bank of England has given an Objective 1 Achievement Notice, the bank administrator must –
  - (a) give the Bank of England information on request,
  - (b) allow the Bank of England access to records on request,
  - (c) give the bridge bank information on request, 35
  - (d) allow the bridge bank access to records on request,
  - (e) keep the Bank of England informed about, and allow the Bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 124, and 40
  - (f) keep the bridge bank informed about, and allow the bridge bank to participate in, any discussions between the bank administrator and another person which relate to, or are likely to affect, pursuit of Objective 1 in section 124.

- (5) The Treasury shall by regulations prescribe –
- (a) the classes of information that must be provided under subsections (2) to (4), and
  - (b) the classes of record to which access must be allowed under subsection (4). 5
- (6) Regulations under subsection (5) –
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Multiple transfers* 10

**136 General application of this Part**

- (1) This section applies where more than one property transfer instrument is made in respect of a bank.
- (2) For that purpose “property transfer instrument” includes –
- (a) supplemental instruments under section 39, 15
  - (b) onward property transfer instruments under section 40, and
  - (c) property transfer orders under section 41).
- (3) This Part applies to the bank with any modifications specified by the Treasury in regulations.
- (4) The regulations – 20
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**137 Bridge bank to private purchaser**

- (1) This section applies where the Bank of England gives a bank administrator – 25
- (a) an Objective 1 Achievement Notice in respect of a bridge bank, and
  - (b) notice that Objective 1 is still required to be pursued in respect of a commercial purchaser who has acquired all or part of the business of the bridge bank.
- (2) An Objective 1 Achievement Notice accompanied by a notice under subsection (1)(b) is referred to in this Part as an Objective 1 Interim Achievement Notice. 30
- (3) Where an Objective 1 Interim Achievement Notice is given, Objective 1 continues to apply –
- (a) in accordance with section 125(3), and
  - (b) with the commercial purchaser being treated as the “private sector purchaser”. 35
- (4) An Objective 1 Interim Achievement Notice in respect of the bridge bank –
- (a) has effect as between the bank administrator and the bridge bank, but
  - (b) has no other effect for the purposes of provisions of this Part which refer to the giving of an Objective 1 Achievement Notice. 40

- (5) When the Bank of England gives the bank administrator an Objective 1 Achievement Notice in respect of the commercial purchaser, section 126 and other provisions of this Part which refer to the giving of an Objective 1 Achievement Notice shall have effect.

**138 Property transfer from bridge bank** 5

- (1) This section applies where the Bank of England –
- (a) transfers all or part of the business of a bank to a bridge bank by making a property transfer instrument in accordance with section 11(2), and
  - (b) later makes or proposes to make an onward property transfer instrument under section 40(2) from the bridge bank. 10
- (2) If the transferee under the onward property transfer instrument is a company which is wholly owned by the Bank of England –
- (a) the transferee is treated as a bridge bank for the purposes of this Part, and
  - (b) the bridge bank under the original property transfer instrument is treated as a residual bank for the purposes of this Part. 15
- (3) In any other case, section 137 shall apply as if the Bank of England had given –
- (a) an Objective 1 Interim Achievement Notice in respect of the bridge bank under the original property transfer instrument, and
  - (b) a notice under section 137(1)(b) in respect of the transferee under the onward property transfer instrument. 20
- (4) Where a bank is put into bank administration in reliance on this section, the Bank of England may not give an Objective 1 Interim Achievement Notice.

**139 Property transfer from temporary public ownership**

- (1) This section applies where the Treasury – 25
- (a) make a share transfer order, in respect of securities issued by a bank, in accordance with section 12(2), and
  - (b) later make a property transfer order from the bank under section 41(2).
- (2) This Part applies to the transferor under the property transfer order as to the transferor under a property transfer instrument. 30
- (3) For that purpose this Part applies with any modifications specified by the Treasury in regulations; and the regulations –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 35

*Termination*

**140 Successful rescue**

- (1) This section applies if –
- (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator has pursued Objective 2(a) in section 127 and believes that it has been achieved. 40

- (2) The bank administrator may give a notice under paragraph 80 of Schedule B1 to the Insolvency Act 1986 (notice bringing administrator’s appointment to an end on achievement of objectives).
- (3) A bank administrator who gives a notice in accordance with subsection (2) must send a copy to the FSA. 5
- (4) Failure without reasonable excuse to comply with subsection (3) is an offence.

#### 141 Winding-up or voluntary arrangement

- (1) This section applies if –
- (a) the Bank of England has given an Objective 1 Achievement Notice, and
  - (b) the bank administrator pursues Objective 2(b) in section 127. 10
- (2) The bank administrator may –
- (a) give a notice under paragraph 84 of Schedule B1 to the Insolvency Act 1986 (no more assets for distribution), or
  - (b) make a proposal in accordance with section 1 of that Act (company voluntary arrangement). 15
- (3) Part 1 of that Act shall apply to a proposal made by a bank administrator, with the following modifications.
- (4) In section 3 (summoning of meetings) subsection (2) (and not (1)) applies.
- (5) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank administration order. 20
- (6) On the termination of a company voluntary arrangement the bank administrator may apply to the court to lift the suspension of the bank administration order.
- (7) The bank administrator may not act under subsection (2) above unless satisfied that the bank has received any funds it is likely to receive from any scheme under a resolution fund order under section 46. 25

#### *Miscellaneous*

#### 142 Disqualification of directors

- (1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986. 30
- (2) In the Disqualification Act –
- (a) a reference to liquidation includes a reference to bank administration,
  - (b) a reference to winding up includes a reference to making or being subject to a bank administration order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a bank administration order, and
  - (d) a reference to a liquidator includes a reference to a bank administrator. 35
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking) to a bank which is subject to a bank administration order, the responsible office-holder is the bank administrator. 40
- (4) After section 21A of the Disqualification Act (bank insolvency - inserted by

section 108 above) insert –

**“21B Bank administration**

Section 142 of the Banking Act 2008 provides for this Act to apply in relation to bank administration as it applies in relation to liquidation.”

- 143 Application of other law** 5
- (1) The Secretary of State and the Treasury may by order made jointly –
- (a) provide for an enactment about insolvency or administration to apply to bank administration (with or without specified modifications);
  - (b) amend, or modify the application of, an enactment about insolvency or administration in consequence of this Part. 10
- (2) In subsection (1) “enactment” includes –
- (a) subordinate legislation,
  - (b) an Act of the Scottish Parliament and an instrument under an Act of the Scottish Parliament, and
  - (c) Northern Ireland legislation. 15
- (3) An order under subsection (1) –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- 144 Other processes** 20
- (1) Before exercising an insolvency power in respect of a residual bank the FSA must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.
- (2) In subsection (1) –
- (a) “residual bank” means a bank all or part of whose business has been transferred to a commercial purchaser in accordance with section 10 or to a bridge bank in accordance with section 11, and 25
  - (b) “insolvency power” means –
    - (i) section 359 of the Financial Services and Markets Act 2000 (application for administration order), and 30
    - (ii) section 367 of that Act (winding-up petition).
- 145 Building societies**
- (1) The Treasury may by order provide for this Part to apply to building societies (within the meaning of section 119 of the Building Societies Act 1986) as it applies to banks, subject to modifications set out in the order. 35
- (2) An order may –
- (a) amend the Building Societies Act 1986 or any other enactment which relates, or in so far as it relates, to building societies;
  - (b) amend an enactment amended by this Part;
  - (c) replicate, with or without modifications, a provision of this Part; 40
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to building societies.

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- (3) An order –
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to building societies. 5
- 146 Credit unions**
- (1) The Treasury may by order provide for this Part to apply to credit unions (within the meaning of section 31 of the Credit Unions Act 1979) as it applies to banks, subject to modifications set out in the order. 10
- (2) An order may –
- (a) amend the Credit Union Act 1979, the Industrial and Providential Societies Act 1965 or any other enactment which relates, or in so far as it relates, to credit unions;
  - (b) amend an enactment amended by this Part; 15
  - (c) replicate, with or without modifications, a provision of this Part;
  - (d) apply a provision made under or by virtue of this Part, with or without modifications, to this Part as it applies to credit unions.
- (3) An order –
- (a) shall be made by statutory instrument, and 20
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.
- 147 Rules** 25
- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) In subsection (1) after “Part 2 of the Banking Act 2008 (bank insolvency orders)” (inserted by section 112 above) insert “, Part 3 of that Act (bank administration)”. 30
- (3) After subsection (2C) (inserted by section 112 above) insert –
- “(2D) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2008.” 35
- (4) In subsection (3) –
- (a) after “bank liquidator” (inserted by section 112 above) insert “or administrator”, and
  - (b) after “Part 2” (inserted by section 112 above) insert “or 3”.
- 148 Fees** 40
- After section 414(8A) of the Insolvency Act 1986 (fees orders - inserted by

section 113 above) insert –

“(8B) This section applies in relation to Part 3 of the Banking Act 2008 (bank administration) as in relation to Parts I to VII of this Act.”

#### **149 Partnerships**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State and the Lord Chief Justice, modify provisions of this Part in their application to partnerships. 5
- (2) For procedural purposes an order under subsection (1) shall be treated in the same way as an order under section 420 of the Insolvency Act 1986 (partnerships). 10
- (3) This section does not apply in relation to partnerships constituted under the law of Scotland.

#### **150 Scottish partnerships**

- (1) The Secretary of State may by order modify provisions of this Part in their application to partnerships constituted under the law of Scotland. 15
- (2) An order –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **151 Co-operation between courts**

- (1) Provisions of or by virtue of this Part are “insolvency law” for the purposes of section 426 of the Insolvency Act 1986 (co-operation between courts). 20
- (2) At the end of that section (after the subsection added by section 116) add –
  - “(14) Section 151 of the Banking Act 2008 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.” 25

#### **152 Interpretation: general**

- (1) In this Part “the court” means –
  - (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court. 30
- (2) In this Part “the FSA” means the Financial Services Authority.
- (3) For the purposes of a reference in this Part to inability to pay debts –
  - (a) a bank that is in default on an obligation to pay a sum due and payable under an agreement, is to be treated as unable to pay its debts, and
  - (b) section 123 of the Insolvency Act 1986 (inability to pay debts) also applies; and 35

for the purposes of paragraph (a) “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the bank. 40

- (4) Expressions used in this Part and in the Insolvency Act 1986 have the same meaning as in that Act.
- (5) Expressions used in this Part and in the Companies Act 2006 have the same meaning as in that Act.
- (6) A reference in this Part to action includes a reference to inaction. 5

### 153 Northern Ireland

In the application of this Part to Northern Ireland –

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Part amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland, 10
- (c) the reference in section 146 to section 31 of the Credit Unions Act 1979 is to be treated as a reference to Article 2 of the Credit Unions (Northern Ireland) Order 1985, and 15
- (d) in section 149 –
- (i) the reference to the Secretary of State is to be treated as a reference to the Department for Enterprise, Trade and Investment, and
- (ii) the reference to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland. 20

### 154 Consequential provision

- (1) The Treasury may by order make provision in consequence of this Part.
- (2) An order may, in particular, amend or modify the effect of an enactment (including a fiscal enactment and an Act of the Scottish Parliament) passed before the commencement of this Part. 25
- (3) An order –
- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 30

## PART 4

### FINANCIAL SERVICES COMPENSATION SCHEME

### 155 Overview

This Part makes a number of amendments in connection with the Financial Services Compensation Scheme provided for by Part 15 of the Financial Services and Markets Act 2000. 35

### 156 Contingency funding

- (1) After section 214 of the Financial Services and Markets Act 2000 (compensation

scheme: general) insert –

**“214A Contingency funding**

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid. 5
- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about –
  - (a) the number and size of funds; 10
  - (b) the circumstances and timing of their establishment;
  - (c) the classes of person from whom contributions to the funds may be levied;
  - (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person); 15
  - (e) refunds;
  - (f) the ways in which funds’ contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income); 20
  - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 86 of the Banking Act 2008, or (iii) for contributions under section 214B; 25
  - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.” 30
- (2) At the end of section 213(7) (compensation scheme: further provision) add “(except where limitations are expressly stated)”.
- (3) In section 218 (compensation scheme: annual report) –
  - (a) in subsection (1) after “to the Authority” insert “and the Treasury”, and
  - (b) at the end of subsection (2)(b) add “or in contingency fund regulations.” 35

**157 Special resolution regime**

After section 214A of the Financial Services and Markets Act 2000 (contingency funding - inserted by section 156 above) insert –

**“214B Contribution to costs of special resolution regime**

- (1) This section applies where – 40
  - (a) a stabilisation power under Part 1 of the Banking Act 2008 has been exercised in respect of a bank (within the meaning of that Part), and
  - (b) the Treasury think that the bank was, or but for the exercise of the stabilisation power would have become, unable to satisfy claims against it. 45

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- (2) Where this section applies –
- (a) the Treasury may require the scheme manager to contribute towards expenses connected with the exercise of the stabilisation power, and
  - (b) contributions shall be treated as expenditure under the scheme for all purposes (including levies, contingency funds and borrowing). 5
- (3) The Treasury shall make regulations –
- (a) specifying what expenses the scheme manager may be required to contribute towards under subsection (2), 10
  - (b) providing for independent verification of the nature and amount of expenses incurred (which may include provision about appointment and payment of an auditor), and
  - (c) providing for the method by which amounts to be contributed are to be determined. 15
- (4) The regulations must ensure that contributions required do not exceed the amount of compensation that would have been payable under the scheme if the stabilisation power had not been exercised and the bank had been unable to satisfy claims against it; and for that purpose the amount of compensation that would have been payable does not include – 20
- (a) amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered by the scheme from the bank, or
  - (b) any compensation actually paid to an eligible depositor of the bank. 25
- (5) The regulations must provide for the appointment of an independent valuer (who may be the person appointed as valuer under section 49 of the Banking Act 2008 in respect of the exercise of the stabilisation power) to calculate the amounts referred to in subsection (4)(a); and the regulations – 30
- (a) must provide for the valuer to be appointed by the Treasury or by a person designated by the Treasury,
  - (b) must include provision enabling the valuer to reconsider a decision, 35
  - (c) must provide a right of appeal to a court or tribunal,
  - (d) must provide for payment of the valuer,
  - (e) may replicate or apply a provision of section 49 or 50, and
  - (f) may apply or include any provision that is or could be made under that section. 40
- (6) The regulations may include provision –
- (a) about timing;
  - (b) about procedures to be followed;
  - (c) for discretionary functions to be exercised by a specified body or by persons of a specified class; 45
  - (d) about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

- (7) The compensation scheme may include provision about contributions under and levies in connection with this section, provided that it is not inconsistent with this section or regulations under it.”

## 158 Investing in National Loans Fund

After section 223 of the Financial Services and Markets Act 2000 (management expenses) insert – 5

### “223A Investing in National Loans Fund

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts. 10
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).
- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)). 15
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).”

## 159 Borrowing from National Loans Fund 20

After section 223A of the Financial Services and Markets Act 2000 (investing in National Loans Fund - inserted by section 158 above) insert –

### “223B Borrowing from National Loans Fund

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme. 25
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine – 30
- (a) the rate of interest on a loan, and
- (b) other terms and conditions.
- (4) The Treasury may make regulations – 35
- (a) about the amounts that may be borrowed under this section;
- (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section;
- (c) about the classes of person on whom those levies may be imposed;
- (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.” 40

**160 Procedure for claims**

- (1) After section 214(1) of the Financial Services and Markets Act 2000 (the compensation scheme: powers) insert –
- “(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so. 5
- (1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).
- (1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.” 10
- (2) In section 417(1) (definitions) at the appropriate place insert – 15
- “‘claim’, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);”.

**161 Rights in insolvency**

- (1) This section amends section 215 of the Financial Services and Markets Act 2000 (rights of scheme following insolvency). 20
- (2) For section 215(1) substitute –
- “(1) The compensation scheme may make provision –
- (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid; 25
- (b) giving the scheme manager a right of recovery in respect of those rights or obligations.”
- (3) In section 215(2) for “the relevant person’s insolvency” substitute “a person’s insolvency”. 30
- (4) The heading of section 215 becomes “Rights of the scheme in insolvency”.

**162 Information**

- (1) Before section 219 of the Financial Services and Markets Act 2000 (scheme manager’s power to require information) insert –
- “218A Authority’s power to require information 35**
- (1) The Authority may make rules enabling the Authority to require authorised persons to provide information, which may then be made available to the scheme manager by the Authority.
- (2) A requirement may be imposed only if the Authority thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme. 40
- (3) A requirement under this section may apply –

- (a) to authorised persons generally or only to specified persons or classes of person;
  - (b) to the provision of information at specified periods, in connection with specified events or in other ways.
- (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the Authority thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection. 5
- (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the Authority’s general rules.” 10
- (2) Section 219 is amended as follows.
- (3) In subsection (1) for “given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person” substitute “require a person”. 15
- (4) After subsection (1) insert –
  - “(1A) A requirement may be imposed only –
    - (a) on a person (P) against whom a claim has been made under the scheme, 20
    - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
    - (c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or 25
    - (d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
  - (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular –
    - (a) apply or replicate, with or without modifications, a provision of an enactment;
    - (b) confer discretion on a specified person).” 35
- (5) In subsection (3) for paragraphs (a) and (b) substitute “to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P”.
- (6) After subsection (3) insert –
  - “(3A) Where a stabilisation power under Part 1 of the Banking Act 2008 has been exercised in respect of a bank, the scheme manager may by notice in writing require the bank or the Bank of England to provide information that the scheme manager requires for the purpose of applying regulations under section 214B(3) above.” 40
- (7) In subsection (6) for “the relevant person” substitute “P”. 45
- (8) Omit subsection (8).

- (9) Omit subsection (10).

### 163 Payments in error

After section 223B of the Financial Services and Markets Act 2000 (borrowing from National Loans Fund - inserted by section 159 above) insert –

#### “223C Payments in error 5

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.”

### 164 Regulations

In section 429(2) of the Financial Services and Markets Act 2000 (parliamentary control of subordinate legislation: affirmative resolution) after “90B” insert “, 214A, 214B” 10

### 165 Delegation of functions

- (1) Before section 222 of the Financial Services and Markets Act 2000 (scheme manager: statutory immunity) insert – 15

#### “221A Delegation of functions

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).
  - (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent – 20
    - (a) is competent to discharge the function, and
    - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.
  - (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager). 25
- (2) In section 222(1) of that Act after “officer” insert “, scheme agent”.

### 166 Functions under this Act

At the end of Part 15 of the Financial Services and Markets Act 2000 add – 30

#### “224A Functions under the Banking Act 2008

A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2008.”

## PART 5

### INTER-BANK PAYMENT SYSTEMS

#### *Introduction*

#### **167 Overview**

This Part enables the Bank of England to oversee certain systems for payments between financial institutions. 5

#### **168 Interpretation: “inter-bank payment system”**

- (1) In this Part “inter-bank payment system” means arrangements designed to facilitate or control the transfer of money between financial institutions who participate in the arrangements. 10
- (2) The fact that persons other than financial institutions can participate does not prevent arrangements from being an inter-bank payment system.
- (3) In subsection (1) “financial institutions” means –
  - (a) banks, and
  - (b) building societies. 15
- (4) In subsection (1) “money” includes credit.
- (5) A system is an inter-bank payment system for the purposes of this Part whether or not it operates wholly or partly in relation to persons or places outside the United Kingdom.

#### **169 Interpretation: other expressions** 20

In this Part –

- (a) a reference to the “operator” of an inter-bank payment system is a reference to any person with responsibility under the system for managing or operating it,
- (b) a reference to the operation of a system includes a reference to its management, 25
- (c) “the UK financial system” has the meaning given to “the financial system” by section 3(2) of the Financial Services and Markets Act 2000 (market confidence),
- (d) a reference to the Bank of England’s role as a monetary authority is to be construed in accordance with section 222(2)(c), and 30
- (e) “the FSA” means the Financial Services Authority.

#### *Recognised systems*

#### **170 Recognition order**

- (1) The Treasury may by order (“recognition order”) specify an inter-bank payment system as a recognised system for the purposes of this Part. 35
- (2) A recognition order must specify in as much detail as is reasonably practicable the arrangements which constitute the inter-bank payment system.

- (3) The Treasury may not specify an inter-bank system operated solely by the Bank of England.

### 171 Recognition criteria

- (1) The Treasury may make a recognition order in respect of an inter-bank payment system only if satisfied that any deficiencies in the design of the system, or any disruption of its operation, would be likely – 5
- (a) to threaten the stability of, or confidence in, the UK financial system, or
  - (b) to have serious consequences for business or other interests throughout the United Kingdom.
- (2) In considering whether to specify a system the Treasury must have regard to – 10
- (a) the number and value of the transactions that the system presently processes or is likely to process in the future,
  - (b) the nature of the transactions that the system processes,
  - (c) whether those transactions or their equivalent could be handled by other systems, 15
  - (d) the relationship between the system and other systems, and
  - (e) whether the system is used by the Bank of England in the course of its role as a monetary authority.

### 172 Procedure

- (1) Before making a recognition order in respect of a payment system the Treasury must – 20
- (a) consult the Bank of England,
  - (b) notify the operator of the system, and
  - (c) consider any representations made.
- (2) The Treasury must also consult the FSA before making a recognition order in respect of a payment system the operator of which – 25
- (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000,
  - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or 30
  - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities).
- (3) In considering whether to make a recognition order in respect of a payment system the Treasury may rely on information provided by the Bank of England or the FSA. 35

### 173 De-recognition

- (1) The Treasury may revoke a recognition order.
- (2) The Treasury must revoke a recognition order if not satisfied that the criteria in section 171 are met in respect of the recognised inter-bank payment system. 40
- (3) Before revoking a recognition order the Treasury must –
- (a) consult the Bank of England,
  - (b) notify the operator of the recognised inter-bank payment system, and

- (c) consider any representations made.
- (4) The Treasury must also consult the FSA before revoking a recognition order in respect of a payment system the operator of which –
  - (a) is, or has applied to become, a recognised investment exchange within the meaning of section 285 of the Financial Services and Markets Act 2000, 5
  - (b) is, or has applied to become, a recognised clearing house within the meaning of that section, or
  - (c) has, or has applied for, permission under Part 4 of that Act (regulated activities). 10
- (5) The Treasury must consider any request by the operator of a recognised payment system for the revocation of its recognition order.

### *Regulation*

#### **174 Principles**

- (1) The Bank of England may publish principles to which operators of recognised inter-bank payment systems are to have regard in operating the systems. 15
- (2) Before publishing principles the Bank must obtain the approval of the Treasury.

#### **175 Codes of practice**

The Bank of England may publish codes of practice about the operation of recognised inter-bank payment systems. 20

#### **176 System rules**

- (1) The Bank of England may require the operator of a recognised inter-bank payment system –
  - (a) to establish rules for the operation of the system; 25
  - (b) to change the rules in a specified way or so as to achieve a specified purpose;
  - (c) to notify the Bank of any proposed change to the rules;
  - (d) not to change the rules without the approval of the Bank.
- (2) A requirement under subsection (1)(c) or (d) may be general or specific. 30

#### **177 Directions**

- (1) The Bank of England may give directions to the operator of a recognised inter-bank payment system.
- (2) A direction may –
  - (a) require or prohibit the taking of specified action in the operation of the system; 35
  - (b) set standards to be met in the operation of the system.

**178 Role of FSA**

In exercising powers under this Part the Bank of England shall have regard to any action that the FSA has taken or could take.

*Enforcement***179 Inspection**

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- (1) The Bank of England may appoint one or more persons to inspect the operation of a recognised inter-bank payment system.
- (2) The operator of a recognised inter-bank payment system must—
  - (a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the system is operated, and
  - (b) otherwise co-operate with an inspector.

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**180 Inspection: warrant**

- (1) A justice of the peace may on the application of an inspector issue a warrant entitling an inspector or a constable to enter premises if—
  - (a) any part of the management or operation of a recognised inter-bank payment system is conducted on the premises (whether by an operator of the system or by someone providing services used by an operator), and
  - (b) any of the following conditions is satisfied.
- (2) Condition 1 is that—
  - (a) a requirement under section 190 in connection with the payment system has not been complied with, and
  - (b) there is reason to believe that information relevant to the requirement is on the premises.
- (3) Condition 2 is that there is reason to suspect that if a requirement under section 190 were imposed in connection with the payment system in respect of information on the premises—
  - (a) the requirement would not be complied with, and
  - (b) the information would be destroyed or otherwise tampered with.
- (4) Condition 3 is that an inspector—
  - (a) gave reasonable notice of a wish to enter the premises, and
  - (b) was refused entry.
- (5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.
- (6) A warrant—
  - (a) permits an inspector or a constable to enter the premises,
  - (b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and
  - (c) permits a constable to use reasonable force.
- (7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.

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### 181 Independent report

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to appoint an expert to report on the operation of the system.
- (2) The Bank may impose a requirement only if it thinks –
  - (a) the operator is not taking sufficient account of principles published by the Bank under section 174, 5
  - (b) the operator is failing to comply with a code of practice under section 175, or
  - (c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part. 10
- (3) The Bank may impose requirements about –
  - (a) the nature of the expert to be appointed;
  - (b) the content of the report;
  - (c) treatment of the report (including disclosure and publication);
  - (d) timing. 15

### 182 Compliance failure

In this Part “compliance failure” means a failure by the operator of a recognised inter-bank payment system to –

- (a) comply with a code of practice under section 175,
- (b) comply with a requirement under section 176, 20
- (c) comply with a direction under section 177, or
- (d) ensure compliance with a requirement under section 181.

### 183 Publication

The Bank of England may publish details of a compliance failure by the operator of a recognised inter-bank payment system. 25

### 184 Penalty

- (1) The Bank of England may require the operator of a recognised inter-bank payment system to pay a penalty in respect of a compliance failure.
- (2) A penalty –
  - (a) must be paid to the Bank of England, and
  - (b) may be enforced by the Bank as a debt. 30

### 185 Closure

- (1) This section applies if the Bank of England think that a compliance failure threatens the stability of the UK financial system.
- (2) The Bank may give the operator of the inter-bank payment system concerned an order to stop operating the system (a “closure order”) –
  - (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently. 35
- (3) A closure order may apply to – 40

- (a) all activities of the payment system, or
  - (b) specified activities.
- (4) An operator who fails to comply with a closure order commits an offence.
- (5) A person guilty of an offence is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

### 186 Management disqualification

- (1) The Bank of England may by order prohibit a specified person from being an operator of a recognised inter-bank payment system – 10
- (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (2) The Bank may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised inter-bank payment system – 15
- (a) for a specified period,
  - (b) until further notice, or
  - (c) permanently.
- (3) A person who breaches a prohibition under subsection (1) or (2) commits an offence. 20
- (4) A person guilty of an offence is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine. 25

### 187 Warning

- (1) Before imposing a sanction on the operator of an inter-bank payment system the Bank of England must –
- (a) give the operator a notice (a “warning notice”),
  - (b) give the operator at least 21 days to make representations, and
  - (c) consider any representations made. 30
- (2) In subsection (1) “imposing a sanction” means –
- (a) publishing details under section 183,
  - (b) requiring the payment of a penalty under section 184,
  - (c) giving a closure order under section 185, or
  - (d) making an order under section 186. 35
- (3) Despite subsection (1), if satisfied that it is necessary the Bank may without notice –
- (a) give a closure order under section 185, or
  - (b) make an order under section 186. 40

## 188 Appeal

- (1) An appeal lies to the Financial Services and Markets Tribunal against the imposition of a sanction on the operator of an inter-bank payment system.
- (2) In subsection (1) the imposition of a sanction means –
  - (a) giving a warning notice of publication under section 183, 5
  - (b) giving a warning notice of a requirement to pay a penalty under section 184,
  - (c) giving a closure order under section 185, and
  - (d) making an order under section 186.
- (3) Part 9 of the Financial Services and Markets Act 2000 applies to appeals under this section; and for that purpose –
  - (a) a reference to the FSA is to be taken as a reference to the Bank of England, 10
  - (b) a reference to a decision notice is to be taken as a reference to the notice or order mentioned in subsection (2), and 15
  - (c) Part 9 is to be read with any other necessary modifications.

### *Miscellaneous*

## 189 Fees

- (1) The Bank of England may require operators of recognised inter-bank payment systems to pay fees. 20
- (2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.
- (3) Regulations under subsection (2) –
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (4) A requirement under subsection (1) may be enforced by the Bank as a debt.

## 190 Information

- (1) The Bank of England may by notice in writing require a person to provide information –
  - (a) which the Bank thinks will help the Treasury in determining whether to make a recognition order, or 30
  - (b) which the Bank otherwise requires in connection with its functions under this Part.
- (2) In particular, a notice may require the operator of a recognised inter-bank payment system to notify the Bank if events of a specified kind occur. 35
- (3) A notice may require information to be provided –
  - (a) in a specified form or manner;
  - (b) at a specified time;
  - (c) in respect of a specified period. 40
- (4) The Bank may disclose information obtained by virtue of this section to –

- 
- (a) the Treasury;
  - (b) the FSA;
  - (c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to inter-bank payment systems; 5
  - (d) the European Central Bank;
  - (e) the Bank for International Settlements.
- (5) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.
- (6) The Bank may publish information obtained by virtue of this section. 10
- (7) The Treasury may make regulations about the manner and extent of publication under subsection (6).
- (8) Regulations under this section –
- (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (9) It is an offence –
- (a) to fail without reasonable excuse to comply with a requirement under this section;
  - (b) knowingly or recklessly to give false information in pursuance of this section. 20
- (10) A person guilty of an offence is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine. 25
- 191 Pretending to be recognised**
- (1) It is an offence for the operator of a non-recognised inter-bank payment system –
- (a) to assert that the system is recognised, or
  - (b) to do anything which suggests that the system is recognised. 30
- (2) A person guilty of an offence is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.
- 192 Saving for informal oversight** 35
- (1) Nothing in this Part prevents the Bank of England from having dealings with the operators of payment systems to which this Part does not apply.
- (2) Nothing in this Part prevents the Bank from having dealings, other than through the provisions of this Part, with the operators of payment systems to which this Part does apply. 40

## PART 6

### BANKNOTES: SCOTLAND AND NORTHERN IRELAND

#### *Introduction*

#### **193 Overview**

- This Part – 5
- (a) repeals existing provisions about permission to issue banknotes in Scotland and Northern Ireland, and
  - (b) replaces the provisions, but only for banks which already have permission to issue banknotes.

#### *Key terms* 10

#### **194 “Banknote”**

- In this Part “banknote” means a promissory note, bill of exchange or other document which –
- (a) records an engagement to pay money,
  - (b) is payable to the bearer on demand, and 15
  - (c) is designed to circulate as money.

#### **195 “Issue”**

- (1) For the purposes of this Part a banknote is issued when it passes –
  - (a) from a person who holds it not as bearer but as a person carrying on the business of banking (“the issuing bank”), and 20
  - (b) to a person taking as bearer (“the bearer”).
- (2) In subsection (1)(a) the reference to a banknote passing from the issuing bank includes a reference to it passing –
  - (a) from the issuing bank’s agent, or
  - (b) from a person printing or preparing the banknote for, or taking it to, the issuing bank or its agent. 25
- (3) For the purposes of subsection (1)(b) it does not matter whether the bearer also holds the banknote for use in the business of banking.

#### **196 “Authorised bank”**

- In this Part “authorised bank” means a bank which immediately before commencement was authorised to issue banknotes in Scotland or Northern Ireland. 30

#### **197 “Commencement”**

- In this Part “commencement” means the date set for the coming into force of section 198 (under the commencement power in section 238). 35

*Authorisation to issue***198 Repeal of old authorising enactments**

The following shall cease to have effect—

- (a) section 1 of the Bank Notes (Scotland) Act 1845 (authorisation to issue banknotes), and 5
- (b) section 8 of the Bankers (Ireland) Act 1845 (authorisation to issue banknotes).

**199 Saving for existing issuers**

An authorised bank may continue to issue banknotes after commencement, but only— 10

- (a) in accordance with the provisions of this Part, and
- (b) in the Part of the United Kingdom in which it was authorised to issue banknotes before commencement.

**200 Consequential repeals and amendments**

- (1) In the Bankers (Ireland) Act 1845— 15
  - (a) sections 9 to 23 cease to have effect,
  - (b) in section 26 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 199 of the Banking Act 2008”, 20
  - (c) section 28 ceases to have effect, and
  - (d) Schedules A and B cease to have effect.
- (2) In the Bank Notes (Scotland) Act 1845—
  - (a) every section ceases to have effect except for sections 16, 18, 21 and 22, and 25
  - (b) in section 18 for “except the Bank Notes of such Bankers as are hereby authorised to continue to issue Bank Notes as aforesaid” substitute “except banknotes issued in reliance on section 199 of the Banking Act 2008”.
- (3) The following cease to have effect— 30
  - (a) section 12 of the Bank Charter Act 1844,
  - (b) section 9 of the Currency and Bank Notes Act 1928,
  - (c) sections 1 and 3 of, and the Schedule to, the Bankers (Northern Ireland) Act 1928, and
  - (d) in the Coinage Act 1971— 35
    - (i) section 12(4)(b) and (c), and
    - (ii) in Schedule 2 the entries relating to—
      - (a) the Bankers (Ireland) Act 1845,
      - (b) the Bank Notes (Scotland) Act 1845, and
      - (c) section 3 of the Bankers (Northern Ireland) Act 1928. 40

*Regulations and rules*

**201 Banknote regulations**

- (1) The Treasury shall make regulations about the treatment, holding and issuing of banknotes by authorised banks (“banknote regulations”).
- (2) Banknote regulations – 5
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**202 Banknote rules**

- (1) Banknote regulations may require or permit the Bank of England to make rules (“banknote rules”) about any aspect of the treatment, holding or issuing of banknotes by authorised banks. 10
- (2) In particular, banknote regulations may require or permit banknote rules to do anything which banknote regulations may do.
- (3) Banknote rules – 15
  - (a) may make provision generally or only for specified purposes, cases or circumstances, and
  - (b) may make different provision for different purposes, cases or circumstances.

*Specific issues* 20

**203 Backing assets**

- (1) Banknote regulations must require authorised banks to have backing assets.
- (2) “Backing assets” means assets of a kind specified by banknote regulations; and the regulations may, in particular, specify – 25
  - (a) banknotes issued by the Bank of England,
  - (b) current coins of the United Kingdom, and
  - (c) funds in a specified kind of account held with the Bank of England or with another specified institution or class of institution.
- (3) The regulations must – 30
  - (a) require banknote rules to include provision for determining the value of backing assets to be held,
  - (b) require backing assets in the form of banknotes to be held either –
    - (i) by the Bank of England, or
    - (ii) at one or more locations approved by the Bank of England, and
  - (c) require backing assets held in the form of coins to be held at one or more locations approved by the Bank of England. 35
- (4) The regulations may make other provision about backing assets; including, in particular – 40
  - (a) provision requiring a proportion of a bank’s backing assets to consist of assets of a specified kind;

- 
- (b) provision about the manner in which backing assets may or must be held;
  - (c) provision about ownership of and interests in backing assets;
  - (d) provision permitting backing assets to be held by an agent of an authorised bank. 5
- (5) Banknote regulations may make provision about the treatment of backing assets in relation to insolvency processes; in particular, the regulations may –
- (a) modify or disapply a provision or rule of law about an insolvency process;
  - (b) protect backing assets from being treated in the same way as other assets of the bank; 10
  - (c) provide for banknotes to be exchanged by bearers within a specified period;
  - (d) allow the Treasury to extend the period for exchange;
  - (e) provide for exchange to be funded from backing assets; 15
  - (f) provide for the Bank of England to acquire or control a bank’s backing assets for the purpose of administering arrangements for exchange.
- (6) In subsection (5) “insolvency process” means –
- (a) insolvency,
  - (b) bank insolvency, 20
  - (c) administration,
  - (d) bank administration,
  - (e) receivership,
  - (f) a composition between a bank and its creditors,
  - (g) a scheme of arrangement of a bank’s affairs, and 25
  - (h) a process under the law of a country or territory outside the United Kingdom which the Treasury identify, in banknote regulations, as serving a similar purpose to any of the processes listed in paragraphs (a) to (g).
- 204 Information 30**
- (1) Banknote regulations or rules may make provision about –
- (a) reports to be made by an authorised bank in respect of the treatment, holding or issue of banknotes or in respect of compliance with banknote regulations or rules, and
  - (b) information to be given by an authorised bank or an agent of an authorised bank. 35
- (2) Banknote regulations may make provision enabling the publication or disclosure of information provided in accordance with banknote regulations or rules.
- (3) Her Majesty’s Revenue and Customs shall transfer to the Bank of England any information acquired or held in connection with functions in respect of the issue of banknotes in Scotland or Northern Ireland. 40
- (4) The Bank of England may use information received in accordance with subsection (3) only for the purposes of its functions under or by virtue of this Part. 45

## 205 Ceasing the business of issuing notes

- (1) If an authorised bank at any time after commencement stops issuing banknotes, it may not resume issuing banknotes in reliance on section 199.
- (2) Banknote regulations or rules –
  - (a) may specify procedures to be followed by an authorised bank that intends to stop issuing banknotes, and 5
  - (b) may apply to an authorised bank for two years after it stops issuing banknotes.

## 206 Insolvency, &c.

- (1) Banknote regulations may make provision in connection with the application to an authorised bank of –
  - (a) the special resolution regime (under Parts 1 to 3), or
  - (b) an insolvency process within the meaning of section 203(6). 10
- (2) The regulations may, in particular –
  - (a) provide for the destruction of banknotes which have not been issued; 15
  - (b) provide for the destruction of banknotes which have been exchanged in accordance with section 203(5)(c);
  - (c) extinguish a claim to or interest in un-issued or exchanged banknotes.
- (3) If a property transfer instrument is made in respect of a bank for the purpose of a sale or transfer in accordance with section 10 or 11 –
  - (a) the bank loses the right to rely on section 199, and
  - (b) the purchaser or transferee cannot acquire that right (whether by virtue of the property transfer instrument or otherwise). 20
- (4) The fact that an authorised bank is taken into temporary public ownership in accordance with section 12 does not itself prevent the bank from relying on section 199. 25
- (5) If an authorised bank enters bank insolvency or insolvency it loses the right to rely on section 199.
- (6) Transitional provision of banknote regulations (included in reliance on section 234(1)(c)) may include provision for a case where a bank loses the right to rely on section 199; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case. 30
- (7) A reference in this section to the special resolution regime, to bank insolvency or to insolvency includes a reference to any provision of the law of a country or territory outside the United Kingdom which the Treasury identifies, in banknote regulations, as serving a similar purpose. 35

### *Enforcement*

## 207 Offence: unlawful issue

- (1) A person who issues banknotes in Scotland or Northern Ireland otherwise than in reliance on section 199 commits an offence. 40
- (2) A person guilty of an offence under subsection (1) is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) An offence under subsection (1) committed by a body corporate is also committed by an officer of the body (“O”) if the offence – 5
- (a) is committed with O’s consent or connivance, or
  - (b) is attributable to O’s negligence.
- (4) In subsection (3) “officer” means – 10
- (a) a director,
  - (b) a manager,
  - (c) a secretary or similar officer, and
  - (d) a person purporting to act as an officer within paragraphs (a) to (c).
- (5) Subsection (3) applies to a partnership constituted under the law of Scotland as to a body corporate; for which purpose “officer” means – 15
- (a) a partner, or
  - (b) a person purporting to act as a partner.
- (6) Proceedings for an offence under subsection (1) may be instituted – 20
- (a) in England and Wales, only by the Director of Public Prosecutions, and
  - (b) in Northern Ireland, only by the Director of Public Prosecutions for Northern Ireland.

## 208 Financial penalty

- (1) Banknote regulations may enable the Bank of England to impose a penalty on an authorised bank that fails to comply with banknote regulations or rules.
- (2) A penalty – 25
- (a) shall be paid to the Bank of England, and
  - (b) is enforceable by the Bank of England as a debt.

## 209 Termination of right to issue

- (1) The Treasury may determine – 30
- (a) that an authorised bank has failed to comply with banknote regulations or banknote rules, and
  - (b) that, having regard to the nature of the failure, the authorised bank should no longer be permitted to issue banknotes in reliance on section 199.
- (2) Before making a determination the Treasury must consult the Bank of England. 35
- (3) On making a determination the Treasury shall notify the authorised bank.
- (4) Upon receipt of the notice the authorised bank loses the right to rely on section 199.
- (5) If an authorised bank ceases to have permission under Part 4 of the Financial Services and Markets Act 2000 (regulated activities) to carry on the regulated activity of accepting deposits, it loses the right to rely on section 199 above. 40

- 
- (6) The reference in subsection (5) to Part 4 of the Financial Services and Markets Act 2000 includes a reference to any provision of the law of another country which the Treasury identify, in banknote regulations, as serving a similar purpose.
- (7) Transitional provision of banknote regulations (included in reliance on section 234(1)(c)) may include provision for a case where a bank loses the right to rely on section 199; in particular, the regulations may allow the bank to rely on the section for a specified transitional period or in respect of a specified class of transitional case. 5
- 210 Application to court** 10
- Banknote regulations may enable the Bank of England to apply to the High Court or Court of Session for –
- (a) relief in respect of failure to comply with banknote regulations or rules, or
- (b) any order designed to ensure, or facilitate monitoring of, compliance with a provision of banknote regulations or rules. 15
- Bank of England*
- 211 Organisation**
- Expenses incurred and sums received by the Bank of England in connection with its functions under this Part are to be treated as expenses and receipts of the Issue Department. 20
- 212 Discretionary functions**
- (1) Banknote regulations may confer a discretionary function on the Bank of England.
- (2) In particular, banknote regulations – 25
- (a) may require compliance with conditions to be imposed (whether generally or only for specified cases or circumstances) by the Bank of England, and
- (b) may make a permission or option subject to the approval of the Bank of England (which may be general or only for specified cases or circumstances). 30
- (3) Subsection (2) is in addition to express references in this Part to Bank of England approval.
- 213 Exemption**
- Section 207(1) does not prohibit the issue of banknotes by the Bank of England. 35

**PART 7**

## MISCELLANEOUS

*Treasury support for banks***214 Consolidated Fund**

- (1) *There shall be paid out of money provided by Parliament expenditure incurred by the Treasury –* 5
- (a) *for any purpose in connection with Parts 1 to 3 of this Act,*
  - (b) *in respect of, or in connection with giving, financial assistance to or in respect of a UK authorised institution (other than in respect of loans made in accordance with section 215), or* 10
  - (c) *in respect of financial assistance to the Bank of England.*
- (2) In this section –
- (a) “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent),
  - (b) “UK authorised institution” means a UK institution which has, or used to have, permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22), and 15
  - (c) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom. 20
- (3) This section has effect in relation to expenditure whether incurred –
- (a) before or after Royal Assent, and
  - (b) in pursuance of obligations entered into before or after Royal Assent.

**215 National Loans Fund**

25

- (1) *Where the Treasury propose to make a loan to or in respect of a UK authorised institution, they may arrange for money to be paid out of the National Loans Fund.*
- (2) In subsection (1) “UK authorised institution” has the same meaning as in section 214.
- (3) The Treasury may make arrangements under subsection (1) only where they think it necessary to make the loan urgently in order to protect the stability of the financial systems of the United Kingdom. 30
- (4) The Treasury shall determine –
- (a) the rate of interest on a loan, and
  - (b) other terms and conditions. 35
- (5) *Sums received by the Treasury in respect of loans by virtue of this section shall be paid into the National Loans Fund.*
- (6) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this section.

*Bank of England*

**216 UK financial stability**

- (1) After section 2 of the Bank of England Act 1998 (functions of court of directors) insert –

**“2A Financial Stability Objective** 5

- (1) An objective of the Bank shall be to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom (the “Financial Stability Objective”).
- (2) The court of directors shall, consulting the Treasury, determine and review the Bank’s strategy in relation to the Financial Stability Objective. 10

**2B Financial Stability Committee**

- (1) There shall be a sub-committee of the court of directors of the Bank (the “Financial Stability Committee”) consisting of – 15
- (a) the Governor of the Bank, who shall chair the Committee (when present),
  - (b) the Deputy Governors of the Bank, and
  - (c) 4 directors of the Bank, appointed by the chair of the court of directors (designated under paragraph 13 of Schedule 1).
- (2) The Committee shall have the following functions – 20
- (a) to make recommendations to the court of directors, which they shall consider, about the nature and implementation of the Bank’s strategy in relation to the Financial Stability Objective,
  - (b) to give advice about whether and how the Bank should act in respect of an institution, where the issue appears to the Committee to be relevant to the Financial Stability Objective, 25
  - (c) in particular, to give advice about whether and how the Bank should use stabilisation powers under Part 1 of the Banking Act 2008 in particular cases,
  - (d) to monitor the Bank’s use of the stabilisation powers, 30
  - (e) to monitor the Bank’s exercise of its functions under Part 5 of the Banking Act 2008 (inter-bank payment systems), and
  - (f) any other functions delegated to the Committee by the court of directors for the purpose of pursuing the Financial Stability Objective. 35
- (3) The Treasury may appoint a person to represent the Treasury at meetings of the Committee; and the Treasury’s representative – 40
- (a) may not vote in proceedings of the Committee,
  - (b) shall in all other respects be a member of the Committee, and
  - (c) may be replaced by the Treasury.
- (4) The Committee may co-opt other non-voting members.
- (5) The chair of the court of directors may replace members of the Committee appointed under subsection (1)(c).

**2C Financial Stability Committee: supplemental**

- (1) The Committee shall determine its own procedure (including quorum).
- (2) If a member of the Committee has any direct or indirect interest in any dealing or business with the Bank which falls to be considered by the Committee – 5
- (a) he shall disclose his interest to the Committee when it considers the dealing or business, and
- (b) he shall have no vote in proceedings of the Committee in relation to any question arising from its consideration of the dealing or business, unless the Committee has resolved that the interest does not give rise to a conflict of interest. 10
- (3) In any proceedings of the Committee, a member shall have no vote in relation to any question arising which touches or concerns him but shall withdraw and be absent during the debate of any matter in which he is concerned. 15
- (4) The Committee may delegate a function under section 2B(2)(b) to (e) to two or more of its members, excluding –
- (a) the Treasury representative, and
- (b) co-opted non-voting members.”
- (2) At the end of section 2 of the Bank of England Act 1998 add – 20
- “(5) Sections 2A and 11 set objectives for the Bank in relation to financial stability and monetary policy; and subsections (2) to (4) above are subject to those sections.”

**217 Number of directors**

- (1) Section 1 of the Bank of England Act 1998 (court of directors) is amended as follows. 25
- (2) In subsection (2) omit “16”.
- (3) After subsection (2) insert –
- “(2A) The number of directors must not exceed 9.”
- (4) The directors immediately before the day on which this section comes into force shall vacate office on that day (without prejudice to re-appointment). 30

**218 Meetings**

- (1) Paragraph 12 of Schedule 1 to the Bank of England 1998 (court of directors: meetings) is amended as follows.
- (2) In sub-paragraph (1) for “once a month” substitute “7 times in each calendar year”. 35
- (3) For sub-paragraph (2) substitute –
- “(2) Either of the following may summon a meeting at any time on giving such notice as the circumstances appear to require –
- (a) the Governor of the Bank (or in his absence a Deputy Governor), and 40

(b) the chair of the court.”

## 219 Chair of court

- (1) For paragraph 13(3) of Schedule 1 to the Bank of England Act 1998 (court of directors: chairing meetings) substitute –
- “**(3)** The Chancellor of the Exchequer may designate – 5
- (a) a member of the court to chair its meetings (“the chair of the court”), and
- (b) one or more members of the court as deputies to chair its meetings in the absence of the chair of the court.”
- (2) For section 3(4) of that Act (sub-committee: chair) substitute – 10
- “**(4)** The chair of the court (designated under paragraph 13 of Schedule 1) shall chair meetings of the sub-committee (when present).”

## 220 Quorum

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 3 (functions delegated to sub-committee) – 15
- (a) omit subsection (3),
- (b) in subsection (7) for “(3)” substitute “(4)”, and
- (c) at the end of subsection (7) add “(including quorum)”.
- (3) In paragraph 13 of Schedule 1 (court of directors: proceedings) – 20
- (a) omit sub-paragraph (2),
- (b) in sub-paragraph (6) for “(2)” substitute “(3)”, and
- (c) at the end of sub-paragraph (6) add “(including quorum)”.

## 221 Tenure

- (1) At the end of paragraph 1 of Schedule 1 to the Bank of England Act 1998 (Governor and Deputies: appointment) add – 25
- “**(3)** A person may not be appointed as Governor more than twice.
- (4) A person may not be appointed as Deputy Governor more than twice.”
- (2) At the end of paragraph 6 of that Schedule (re-appointment) insert “(subject to paragraph 1(3) and (4))”. 30
- (3) After paragraphs 1 and 2 of Schedule 3 to that Act (Monetary Policy Committee: appointment) insert –
- “**2A** A person may not be appointed as a member of the Committee under section 13(2)(c) more than twice.”
- (4) At the end of paragraph 6 of that Schedule (re-appointment) insert “(subject to paragraph 2A)”. 35

## 222 Immunity

- (1) The Bank of England has immunity in its capacity as a monetary authority.

- (2) In this section –
- (a) a reference to the Bank of England is a reference to the Bank and anyone who acts or purports to act as a director, officer, servant or agent of the Bank,
  - (b) “immunity” means immunity from liability in damages in respect of action or inaction, and 5
  - (c) a reference to the Bank’s capacity as a monetary authority includes a reference to functions exercised by the Bank for the purpose of or in connection with –
    - (i) acting as the central bank of the United Kingdom, or 10
    - (ii) protecting or enhancing the stability of the financial systems of the United Kingdom.
- (3) The immunity does not extend to action or inaction –
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998. 15

## 223 Weekly return

Section 6 of the Bank Charter Act 1844 (Bank to produce weekly account) shall cease to have effect.

## 224 Information

- (1) The Bank of England may disclose information that it thinks relevant to the financial stability of – 20
- (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the UK.
- (2) Information about the business or other affairs of a specified or identifiable person may be disclosed under subsection (1) only to – 25
- (a) the Treasury;
  - (b) the Financial Services Authority.
- (3) This section –
- (a) overrides a contractual or other requirement to keep information in confidence, and 30
  - (b) is without prejudice to any other power to disclose information.

## 225 Bank of England Act 1946

Nothing in this Act affects the generality of section 4 of the Bank of England Act 1946 (directions and relations with other banks).

*Financial Services Authority* 35

## 226 Variation of permission

At the end of section 45(1)(c) of the Financial Services and Markets Act 2000 (variation of permission to carry on regulated activities) add “(whether of the services of the authorised person or of the services of other authorised persons)”.

40

## 227 Functions

- (1) A reference in an enactment to functions conferred on the Financial Services Authority by or under the Financial Services and Markets Act 2000 (or any part of it) includes a reference to functions conferred on the Authority by or under this Act. 5
- (2) A reference in an enactment to functions of the Financial Services Authority includes a reference to functions conferred by or under this Act (irrespective of whether the enactment was passed or made before or after the commencement of this Act).
- (3) The Treasury may by order disapply subsection (1) or (2) to a specified extent; and an order – 10
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) At the end of section 1 of the Financial Services and Markets Act 2000 (the Authority) add – 15
  - “(4) Section 227 of the Banking Act 2008 provides for references to functions of the Authority (whether generally or under this Act) to include references to functions conferred on the Authority by that Act (subject to any order under that section).” 20

## 228 Information

- (1) The Financial Services Authority shall collect information that it thinks is or may be relevant to the stability of –
  - (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom. 25
- (2) The Authority may perform its function under subsection (1) by the exercise of the power in section 165 of the Financial Services and Markets Act 2000 (power to require information - as qualified by section 227 above) or in any other way.

### *Central banks*

## 229 Financial assistance to building societies 30

- (1) The Treasury may by order modify the Building Societies Act 1986 for the purpose of facilitating, or in connection with, the provision of financial assistance to building societies by –
  - (a) the Treasury,
  - (b) the Bank of England, 35
  - (c) another central bank of a Member State of the European Economic Area, or
  - (d) the European Central Bank.
- (2) An order may affect any provision of the Building Societies Act 1986 which appears to the Treasury otherwise capable of preventing, impeding or affecting the provision of financial assistance; including, in particular, provision – 40
  - (a) about the establishment, constitution or powers of building societies,
  - (b) restricting or otherwise dealing with raising funds or borrowing,

- 
- (c) restricting or otherwise dealing with what may be done by or in relation to building societies,
    - (d) about security, or
    - (e) about the application of insolvency law or other legislation relating to companies. 5
  - (3) An order –
    - (a) may disapply or modify a provision;
    - (b) may (but need not) take the form of textual amendment.
  - (4) Incidental provision of an order (included in reliance on section 234(1)(c)) may, in particular – 10
    - (a) impose conditions, limits or other restrictions on what may be done in reliance on a provision of the order;
    - (b) confer a discretion on the Treasury, the Bank of England or another person or class of person.
  - (5) Incidental or consequential provision of an order (included in reliance on section 234(1)(c)) may disapply or modify an enactment, whether by textual amendment or otherwise. 15
  - (6) An order –
    - (a) shall be made by statutory instrument, and
    - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament. 20
- 230 Registration of charges**
- Part 25 of the Companies Act 2006 (registration of charges) does not apply to a charge if the person entitled to it is –
- (a) the Bank of England, 25
  - (b) the central bank of a country or territory outside the United Kingdom, or
  - (c) the European Central Bank.
- Funds attached rule (Scotland)*
- 231 Abolition for cheques** 30
- (1) A reference to the “funds attached” rule is a reference to the rule of law in Scotland by virtue of which a bill of exchange, when presented to the drawee for payment, operates as an assignation of the sum for which it is drawn (or, if the drawee holds insufficient funds, of those funds) in favour of the holder of the bill. 35
  - (2) The “funds attached” rule is abolished for cheques presented for payment after the commencement of this section.
  - (3) Expressions used in this section have the same meaning as in the Bills of Exchange Act 1882.
  - (4) In that Act – 40
    - (a) in section 53(2) (funds in hands of drawee: Scotland) –

- (i) the words “Subject to section 75A of this Act,” cease to have effect, and
    - (ii) after “drawee of a bill” insert “other than a cheque”, and
  - (b) section 75A(countermanded cheques) ceases to have effect.
- (5) Section 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (countermanded cheques) ceases to have effect. 5

*Financial collateral arrangements*

**232 Regulations**

- (1) The Treasury may make regulations about financial collateral arrangements.
- (2) “Financial collateral arrangements” are arrangements under which financial collateral is used as security in respect of a loan or other liability; and for that purpose – 10
- (a) collateral may be in cash, securities or any other form,
  - (b) use as security may involve transfer of the collateral or the creation or transfer of any kind of right, interest or charge (fixed or floating) in respect of it, and 15
  - (c) in particular, use as security can include use under arrangements of a kind described commercially as “title transfer financial collateral arrangements”.
- (3) The regulations – 20
- (a) may make any provision that the Treasury think necessary or desirable for the purpose of, or in connection with, implementation of the Financial Collateral Arrangements Directive (2002/47/EC) (or any replacement), but
  - (b) are not restricted to provision required in connection with the Directive, and may make any provision that the Treasury think necessary or desirable for the purpose of enabling financial collateral arrangements, whether or not with an international element, to be commercially useful and effective. 25
- (4) The regulations may, in particular – 30
- (a) disapply or modify an enactment or rule of law about formalities or evidence,
  - (b) disapply or modify an enactment about insolvency, administration, receivership or any similar procedure,
  - (c) disapply or modify an enactment about property law, 35
  - (d) disapply or modify an enactment about companies or other commercial entities or groupings,
  - (e) provide for provisions of financial collateral arrangements to have effect despite a reorganisation, winding-up or other process affecting a party to the arrangements, 40
  - (f) make provision for the enforcement of financial collateral arrangements (which may include, in particular, provision –
    - (i) about sale, appropriation and set-off,
    - (ii) about the use of collateral while subject to the arrangements,

- (iii) about “close out netting arrangements”, under which obligations under a number of contracts may be set off against each other in the event of default under a specified contract,
  - (iv) permitting a person to foreclose or exercise another right under the arrangements with or without an order of a court, 5
  - (v) permitting or requiring the disclosure of information, and
  - (vi) for enforcement after the commencement of, and despite, reorganisation, winding-up or another process),
  - (g) make provision for the choice of law according to which, or under which, matters arising under financial collateral arrangements are to be determined, and 10
  - (h) apply to persons whether or not provisions of the Directive apply to them.
- (5) The regulations may, in particular –
- (a) do anything done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003, 15
  - (b) provide for those regulations, or a specified provision, to be treated as having had effect despite any lack of vires,
  - (c) provide for anything done under or in reliance on those regulations to be treated as having had effect despite any lack of vires, and 20
  - (d) make any provision which the Treasury think necessary or desirable to achieve or restore certainty and stability in connection with the matters to which those regulations relate.

### 233 Supplemental

- (1) Regulations under section 232 – 25
  - (a) shall be made by statutory instrument, and
  - (b) shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the regulations are made. 30
- (2) The lapse of regulations under subsection (1)(b) –
  - (a) does not invalidate anything done under or in reliance on the regulations before the lapse and at a time when neither House has declined to approve the regulations, and
  - (b) does not prevent the making of new regulations. 35

## PART 8

### GENERAL

### 234 Statutory instruments

- (1) A statutory instrument under this Act –
  - (a) may make provision that applies generally or only for specified purposes, cases or circumstances, 40
  - (b) may make different provision for different purposes, cases or circumstances, and
  - (c) may include incidental, consequential or transitional provision.

- (2) No statutory instrument under this Act shall be treated as a hybrid instrument under Standing Orders of either House of Parliament.
- (3) The Table lists the powers to make statutory instruments under this Act and the arrangements for Parliamentary scrutiny in each case.

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>	
<b>PART 1 - Special resolution regime</b>			5
2	Meaning of “bank”	Draft affirmative resolution	
24	Share transfer orders	Negative resolution	
42	Partial transfers	Draft affirmative resolution	
43	Protection of interests	Draft affirmative resolution	10
50	Independent valuer	Negative resolution	
51	Independent valuer: money	Negative resolution	
55	Third party compensation	Draft affirmative resolution	
56	Compensation orders	Draft affirmative resolution	
62	Transfers: enforcement	Negative resolution	15
64	Tax	Negative resolution (Commons only)	
65	Power to change law	Draft affirmative resolution (except for urgent cases)	
68	Public funds	Negative resolution (Commons only)	20
72	Building societies: orders	Negative resolution	
73	Building societies: assets	(As for orders under section 90B of the Building Societies Act 1986)	25
75	Building societies: consequential	Draft affirmative resolution	
76	Credit unions	Draft affirmative resolution	
<b>PART 2 - Bank insolvency</b>			
78	Meaning of “bank”	Draft affirmative resolution	
109	Application of insolvency law	Draft affirmative resolution	30
112	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)	
117	Building societies	Draft affirmative resolution	
118	Credit unions	Draft affirmative resolution	35
119	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)	
120	Scottish partnerships	Negative resolution	

<i>Section</i>	<i>Topic</i>	<i>Parliamentary scrutiny</i>	
122	Consequential provision	Draft affirmative resolution	
<b>PART 3 - Bank administration</b>			
135	Sharing information	Negative resolution	
136	Multiple original transfers	Draft affirmative resolution	5
139	Transfer from temporary public ownership	Draft affirmative resolution	
143	Application of other law	Draft affirmative resolution	
145	Building societies	Draft affirmative resolution	
146	Credit unions	Draft affirmative resolution	10
147	Rules	(Expansion of power in section 411 of the Insolvency Act 1986)	
149	Partnerships	(As for orders under section 420 of the Insolvency Act 1986)	15
150	Scottish partnerships	Negative resolution	
154	Consequential provision	Draft affirmative resolution	
<b>PART 4 - Financial Services Compensation Scheme</b>			
156	Contingency funding	Draft affirmative resolution	20
157	Special resolution regime	Draft affirmative resolution	
<b>PART 5 - Inter-bank payment systems</b>			
189	Fees regulations	Negative resolution	
190	Information	Negative resolution	
<b>PART 6 - Banknotes: Scotland and Northern Ireland</b>			25
201	Banknote regulations	Draft affirmative resolution	
<b>PART 7 - Miscellaneous</b>			
227	FSA - functions	Draft affirmative resolution	
229	Central banks: assistance to building societies	Draft affirmative resolution	30
232	Financial collateral arrangements	Affirmative resolution	
<b>PART 8 - General</b>			
237	Repeal of Banking (Special Provisions) Act 2008	None	
238	Commencement	None	35

**235 Money**

*Expenditure of the Treasury under, by virtue of or in connection with a provision of this Act shall be paid out of money provided by Parliament.*

## 236 Index of defined terms

The Table sets out expressions defined in this Act for general purposes.

<i>Expression</i>	<i>Section</i>	
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<i>Expression</i>	<i>Section</i>	
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Unable to pay debts	80 & 152	

**237 Repeal**

- (1) The Treasury may by order repeal the Banking (Special Provisions) Act 2008.
- (2) An order –
  - (a) may include savings, and
  - (b) shall be made by statutory instrument.
- (3) Subsection (2)(a) is without prejudice to the generality of, or the application to this section of, section 234.

15

**238 Commencement**

- (1) This Act shall come into force in accordance with provision made by the Treasury by order. 20
- (2) Subsection (1) does not apply to section 231, which comes into force at the end of the period of 2 months beginning with the date of Royal Assent.
- (3) An order under subsection (1) –
  - (a) may make provision generally or only in relation to specific provisions or purposes, 25
  - (b) may make different provision for different provisions or purposes,
  - (c) may include incidental or transitional provision (including savings), and
  - (d) shall be made by statutory instrument. 30
- (4) Where the Treasury or another authority are required to consult or take other action before exercising a power or fulfilling a duty to make legislation or to do any other thing under, by virtue of or in connection with this Act, the Treasury or other authority may rely on consultation or other action carried out before the commencement of the relevant provision of this Act. 35

**239 Extent**

- (1) This Act extends to –

- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
- (2) But –
- (a) section 231 extends to Scotland only, and
  - (b) an amendment of an enactment has the same extent as the enactment (or the relevant part).

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**240 Short title**

This Act may be cited as the Banking Act 2008.

# Banking Bill

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A

# B I L L

To make provision about banking.

*Presented by Mr Chancellor of the Exchequer  
supported by  
The Prime Minister, Secretary David Miliband,  
Secretary Jack Straw, Secretary Jacqui Smith,  
Mr Secretary Hutton, Yvette Cooper,  
Stephen Timms, Angela Eagle  
and Ian Pearson.*

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*Ordered, by The House of Commons,  
to be Printed, 7th October 2008.*

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