

# Banking (Special Provisions) Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Treasury, are published separately as Bill 73 – 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 (Special Provisions) Bill are compatible with the Convention rights.

# Banking (Special Provisions) Bill

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Make provision to enable the Treasury in certain circumstances to make an order relating to the transfer of securities issued by, or of property, rights or liabilities belonging to, an authorised deposit-taker; to make further provision in relation to building societies; and for connected purposes.

**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:—

*Introduction*

**1 Meaning of “authorised UK deposit-taker”**

- (1) In this Act “authorised UK deposit-taker” means a UK undertaking that under Part 4 of FSMA 2000 has permission to accept deposits.
- (2) That expression does not, however, include such an undertaking with permission to accept deposits only for the purposes of, or in the course of, an activity other than accepting deposits. 5

**2 Cases where Treasury’s powers are exercisable**

- (1) The power of the Treasury to make an order under—
- (a) section 3 (transfer of securities issued by an authorised UK deposit-taker), or
  - (b) section 6 (transfer of property, rights and liabilities of an authorised UK deposit-taker),
- is exercisable in relation to an authorised UK deposit-taker if (and only if) it appears to the Treasury to be desirable to make the order for either or both of the following purposes. 10
- This is subject to subsection (7). 15
- (2) The purposes are—

- (a) maintaining the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the order were not made;
- (b) protecting the public interest in circumstances where financial assistance has been provided by the Treasury to the deposit-taker for the purpose of maintaining the stability of the UK financial system. 5
- (3) The reference in subsection (2)(b) to the provision of financial assistance by the Treasury to the deposit-taker includes –
- (a) any case where the Bank of England has provided financial assistance to the deposit-taker and – 10
- (i) the Treasury have assumed a liability in respect of the assistance,
- (ii) the liability is of a kind of which the Treasury are expected to give relevant notice, and
- (iii) the Treasury have given relevant notice of the liability; 15
- (b) any case where the Chancellor of the Exchequer has announced that the Treasury (whether acting alone or with the Bank of England) would, if necessary, put in place relevant guarantee arrangements in relation to the deposit-taker (as well as any case where any such arrangements have been put in place, whether or not following such an announcement). 20
- (4) For the purposes of subsection (3) the Treasury give “relevant notice” of a liability if –
- (a) they lay a Minute before the House of Commons containing information about the liability, or 25
- (b) they give written notice containing such information to the person who chairs the House of Commons Committee of Public Accounts and the person who chairs the House of Commons Treasury Committee.
- (5) It is immaterial whether the notice or announcement mentioned in subsection (3) is given or made before or after the passing of this Act. 30
- (6) In this Act “relevant guarantee arrangements”, in relation to any authorised UK deposit-taker, means any guarantee arrangements for protecting some or all of the depositors or other creditors of the deposit-taker.
- (7) Where an order has been made under section 3 or 6 in relation to any authorised UK deposit-taker, subsection (1) does not apply in relation to any subsequent exercise of the power to make an order under either of those sections in relation to that deposit-taker. 35
- (8) The power of the Treasury to make an order under section 3 or 6 in relation to an authorised UK deposit-taker may not be exercised after the end of the period of one year beginning with the day on which this Act is passed. 40
- (9) Subsection (8) does not affect the continuation in force or effect of any order made or other thing done by virtue of either of those sections before the end of that period.
- (10) In this section “the UK financial system” means the financial system in the United Kingdom. 45
- (11) Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to Committee of Public Accounts) applies for the purposes of this section, but as if –

- (a) the references in that section to that Act were to this Act, and
- (b) the references in that section to the House of Commons Committee of Public Accounts included the House of Commons Treasury Committee.

*Transfer of securities*

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### 3 Transfer of securities

- (1) The Treasury may, in relation to all or any securities of a specified description that have been issued by an authorised UK deposit-taker, by order make provision for or in connection with, or in consequence of, the transfer of the securities to any of the following— 10
  - (a) the Bank of England;
  - (b) a nominee of the Treasury;
  - (c) a company wholly owned by the Bank of England or the Treasury;
  - (d) any body corporate not within paragraph (c).
- (2) Schedule 1 specifies particular kinds of provisions that may be included in an order under this section. 15
- (3) Where an order providing for the transfer of any securities has been made under this section, the power to make an order under this section may be subsequently exercised so as to make provision in connection with, or in consequence of, the transfer (including provision of a kind specified in Schedule 1) even though the order does not itself provide for the transfer of any securities. 20
- (4) Where an order under this section or section 6 (“the initial order”) has been made in relation to an authorised UK deposit-taker, the power to make an order under this section may be subsequently exercised in relation to that deposit-taker whether or not any transfer of securities provided for by the order is to the person to whom any transfer was made by or under the initial order. 25
- (5) For the purposes of this section any provision made by an order under this section in relation to any transaction or event taking place while securities transferred by such an order are held by a person within subsection (1)(a), (b) or (c) is to be regarded as provision made in consequence of the transfer. 30

### 4 Extinguishment of subscription rights

- (1) This section applies where the Treasury make, or have made, an order under section 3 providing for the transfer of securities issued by an authorised UK deposit-taker. 35
- (2) The Treasury may by order make provision for and in connection with, or in consequence of, the extinguishment of rights of any specified description to subscribe for, or otherwise acquire, securities of— 40
  - (a) the deposit-taker, or
  - (b) any of its subsidiary undertakings.
- (3) Subsection (2) applies whether the rights have been granted by the deposit-taker or otherwise.

- (4) Where an order providing for the extinguishment of any rights has been made under this section, the power to make an order under this section may be subsequently exercised so as to make provision in connection with, or in consequence of, the extinguishment of those rights even though the order does not itself provide for any rights to be extinguished. 5

## 5 Compensation etc. for securities transferred etc.

- (1) The Treasury must by order –
- (a) *in relation to an order under section 3 that transfers securities only to the public sector, make a scheme for determining the amount of any compensation payable by the Treasury to persons who held the securities immediately before they were so transferred;* 10
  - (b) *in relation to an order under section 3 that transfers securities only to a private sector body, make provision for determining the amount of any consideration payable by the body to persons who held the securities immediately before they were so transferred;* 15
  - (c) *in relation to an order under section 3 that transfers securities both to the public sector and a private sector body, make provision for determining –*
    - (i) *the amount of any compensation payable by the Treasury, and*
    - (ii) *the amount of any consideration payable by the private sector body concerned,* 20*to persons who held the securities immediately before they were so transferred.*
- (2) The Treasury must by order make provision for determining the amount of any compensation payable to persons whose rights are extinguished by virtue of an order under section 4 (a “section 4 order”) and –
- (a) *in any case where the section 4 order is made in consequence of an order under section 3 that transfers securities only to the public sector, the order must provide for any compensation to be payable by the Treasury;* 25
  - (b) *in any case where the section 4 order is made in consequence of an order under section 3 that transfers securities only to a private sector body, the order must provide for any compensation to be payable by the private sector body concerned;* 30
  - (c) *in any case where the section 4 order is made in consequence of an order under section 3 that transfers securities both to the public sector and a private sector body, the order must make provision for determining the amount of any compensation payable by the Treasury or the private sector body concerned (or both).* 35
- (3) An order under this section may also make provision for extending provisions of the order, in any specified circumstances, to persons otherwise affected by any provision made in an order under section 3 or 4.
- (4) In determining the amount of any compensation payable by the Treasury by virtue of any provision in an order under this section, it must be assumed –
- (a) that all financial assistance provided by the Bank of England or the Treasury to the deposit-taker in question has been withdrawn (whether by the making of a demand for repayment or otherwise), and
  - (b) that no financial assistance would in future be provided by the Bank of England or the Treasury to the deposit-taker in question (apart from ordinary market assistance offered by the Bank of England subject to its usual terms). 45

- (5) For the purposes of subsection (4) –
- (a) the references to the provision of financial assistance by the Treasury to the deposit-taker include any case where the Chancellor of the Exchequer announces that the Treasury (whether acting alone or with the Bank of England) would, if necessary, put in place relevant guarantee arrangements in relation to the deposit-taker (as well as any case where any such arrangements are put in place, whether or not following such an announcement); 5
  - (b) “ordinary market assistance” means assistance provided as part of the Bank’s standing facilities in the sterling money markets or as part of the Bank’s open market operations in those markets. 10
- (6) It is immaterial whether the announcement mentioned in subsection (5)(a) is made before or after the passing of this Act.
- (7) In this section –
- (a) any reference to any transfer of securities to the public sector is a reference to the transfer of any securities to any person within paragraphs (a) to (c) of subsection (1) of section 3; 15
  - (b) any reference to any transfer of securities to a private sector body is a reference to the transfer of any securities to any body corporate within paragraph (d) of that subsection. 20
- (8) An order under subsection (1) or (2) must be made within the period of 3 months beginning with –
- (a) the day on which the order under section 3 is made (in the case of an order under subsection (1)), or
  - (b) the day on which the order under section 4 is made (in the case of an order under subsection (2)). 25
- (9) But nothing in subsection (8) prevents the making at any time after the end of that period of a second or subsequent order under this section in relation to the order under section 3 or 4.

*Transfer of property etc.* 30

## 6 Transfer of property, rights and liabilities

- (1) The Treasury may by order make provision for or in connection with, or in consequence of, the transfer of property, rights and liabilities of an authorised UK deposit-taker to either (or each) of the following –
- (a) a company wholly owned by the Bank of England or the Treasury; 35
  - (b) a body corporate not within paragraph (a).
- (2) An order under this section may define the property, rights and liabilities to be transferred in one or more of the following ways –
- (a) by specifying or describing the property, rights and liabilities in question; 40
  - (b) by referring to all the property, rights and liabilities comprised in the whole or a specified part of the deposit-taker’s business;
  - (c) by identifying the manner in which the property, rights and liabilities to be transferred are to be determined.
- (3) Schedule 2 specifies particular kinds of provisions that may be included in an order under this section. 45



- (4) Where an order providing for the transfer of any property, rights or liabilities has been made under this section, the power to make an order under this section may be subsequently exercised so as to make provision in connection with, or in consequence of, the transfer (including provision of a kind specified in Schedule 2) even though the order does not itself provide for the transfer of any property, rights or liabilities. 5
- (5) Where an order under this section or section 3 (“the initial order”) has been made in relation to an authorised UK deposit-taker, the power to make an order under this section may be subsequently exercised in relation to that deposit-taker whether or not any transfer of property, rights or liabilities provided for by the order is to the person to whom any transfer was made by or under the initial order. 10
- (6) A second or subsequent order made under this section in relation to an authorised UK deposit-taker may make provision for any of the property, rights or liabilities transferred by or under a previous order under this section to be transferred back to the deposit-taker. 15
- (7) The provisions of this section and Schedule 2 apply for the purposes of subsection (6) with any necessary modifications.
- (8) For the purposes of this section any provision made by an order under this section in relation to any transaction or event taking place while property, rights or liabilities transferred by or under such an order are held by a company within subsection (1)(a) is to be regarded as provision made in consequence of the transfer. 20
- 7 Compensation etc. for property etc. transferred**
- (1) The Treasury must by order make provision— 25
- (a) *in relation to an order under section 6 providing for the transfer of property, rights or liabilities to a company within subsection (1)(a) of that section, for determining the amount of any compensation payable by the Treasury to the authorised UK deposit-taker concerned;*
- (b) in relation to an order under section 6 providing for the transfer of property, rights or liabilities to any other body, for determining the amount of any consideration payable by the transferee to the authorised UK deposit-taker concerned. 30
- (2) An order under this section may also make provision for extending provisions of the order, in any specified circumstances, to persons otherwise affected by any provision made in an order under section 6. 35
- (3) In determining the amount of any compensation payable by the Treasury by virtue of any provision in an order under this section, it must be assumed—
- (a) that all financial assistance provided by the Bank of England or the Treasury to the deposit-taker in question has been withdrawn (whether by the making of a demand for repayment or otherwise), and 40
- (b) that no financial assistance would in future be provided by the Bank of England or the Treasury to the deposit-taker in question (apart from ordinary market assistance offered by the Bank of England subject to its usual terms). 45
- (4) For the purposes of subsection (3)—

- (a) the references to the provision of financial assistance by the Treasury to the deposit-taker include any case where the Chancellor of the Exchequer announces that the Treasury (whether acting alone or with the Bank of England) would, if necessary, put in place relevant guarantee arrangements in relation to the deposit-taker (as well as any case where any such arrangements are put in place, whether or not following such an announcement); 5
  - (b) “ordinary market assistance” means assistance provided as part of the Bank’s standing facilities in the sterling money markets or as part of the Bank’s open market operations in those markets. 10
- (5) It is immaterial whether the announcement mentioned in subsection (4)(a) is made before or after the passing of this Act.
- (6) An order under subsection (1) must be made within the period of 3 months beginning with the day on which the order under section 6 is made.
- (7) But nothing in subsection (6) prevents the making at any time after the end of that period of a second or subsequent order under this section in relation to the order under section 6. 15

*Further transfers*

**8 Further transfers following transfer to public sector**

- (1) Subsection (2) applies where any securities issued by an authorised UK deposit-taker have been transferred to a person within section 3(1)(a) to (c) by an order under section 3. 20
- (2) In such a case the Treasury may by order make provision for and in connection with, or in consequence of, the transfer to a specified person of any of the following— 25
- (a) any of the securities transferred as mentioned in subsection (1);
  - (b) any securities issued by the deposit-taker at any time after the transfer mentioned in that subsection;
  - (c) any of the property, rights and liabilities of the deposit-taker;
  - (d) any of the property, rights and liabilities of any UK undertaking which is a subsidiary undertaking of the deposit-taker; 30
  - (e) where the securities so transferred were transferred to a company within section 3(1)(c)—
    - (i) any securities issued by the company;
    - (ii) any property, rights and liabilities of the company. 35
- (3) Subsection (4) applies where any property, rights or liabilities have been transferred to a company within section 6(1)(a) (“the company”) by or under an order under section 6.
- (4) In such a case the Treasury may by order make provision for and in connection with, or in consequence of, the transfer to a specified person of any of the following— 40
- (a) any property, rights and liabilities of the company;
  - (b) any property, rights and liabilities of any UK undertaking which is a subsidiary undertaking of the company;
  - (c) any securities issued by the company. 45

- (5) The following provisions apply in relation to an order under subsection (2) or (4) with any necessary modifications –
- (a) sections 3(2) to (4) and 4, together with Schedule 1, so apply in relation to an order making provision for or in connection with, or in consequence of, the transfer of any securities; 5
  - (b) section 6(2) to (5), together with Schedule 2, so apply in relation to an order making provision for or in connection with, or in consequence of, the transfer of any property, rights or liabilities.
- (6) The Treasury may by order make provision, in relation to any description of order under subsection (2) or (4), for determining the amount of any consideration payable by the transferee in respect of any securities, or any property, rights and liabilities, transferred by or under any such order under that subsection. 10
- (7) A person to whom anything is transferred by or under an order under section 3 or 6 is not to be regarded as precluded by subsection (2) or (4) from making any contractual or other disposition of, or relating to, anything falling within those subsections. 15

### *Supplementary*

## **9 Supplementary provision about compensation schemes etc.**

- (1) An order under section 5, 7 or 8(6) may in particular make provision – 20
- (a) for the manner in which any compensation or consideration is to be assessed, including provision as to methods of calculation, valuation dates and matters to be taken into, or left out of, account in making valuations;
  - (b) for the assessment to be made by an independent valuer appointed by the Treasury; 25
  - (c) as to the procedure in relation to the assessment of any compensation or consideration, including provision enabling any such valuer to make rules as to that procedure;
  - (d) for decisions relating to the assessment of any compensation or consideration to be reconsidered by the person who made those decisions (including any such provision as to procedure as is mentioned in paragraph (c)); 30
  - (e) for enabling persons to apply for decisions relating to the assessment of any compensation or consideration to be reviewed by the Financial Services and Markets Tribunal or a tribunal appointed by the Treasury for the purposes of the order; 35
  - (f) as to the powers of a relevant tribunal (that is to say, the Financial Services and Markets Tribunal or a tribunal appointed by the Treasury for the purposes of the order); 40
  - (g) as to the procedure for applying for any review to a relevant tribunal, including provision enabling the tribunal to make rules as to that procedure;
  - (h) as to remuneration and expenses of any independent valuer, or of any tribunal, appointed by the Treasury for the purposes of the order; 45
  - (i) as to the appointment of any staff of any such valuer (including provision as to their terms and conditions of employment and as to their pensions, allowances or gratuities).

- (2) The provision that may be made by virtue of subsection (1)(a) includes the making of assumptions as to any matter, including in particular the making of one or more of the following assumptions about the authorised UK deposit-taker in question –
- (a) that it is unable to continue as a going concern; 5
  - (b) that it is in administration;
  - (c) that it is being wound up.
- (3) Subsection (1)(a) is subject to sections 5(4) and 7(3), but those subsections do not –
- (a) prevent the inclusion of provision requiring the making of the assumptions mentioned in those subsections in any case where they are not required to be made by either of those subsections; or 10
  - (b) otherwise restrict the provision that may be made by virtue of subsection (1)(a).
- (4) In subsection (1)(a) the reference to valuation dates includes – 15
- (a) valuation dates falling before the day on which this Act is passed; and
  - (b) valuation dates falling before the day on which the relevant event takes place.
- (5) In subsection (1)(e) – 20
- (a) the reference to persons includes the Treasury; and
  - (b) the reference to decisions relating to the assessment of any compensation or consideration includes decisions following any such reconsideration as is mentioned in subsection (1)(d).
- (6) The provision that may be made by virtue of subsection (1)(f) – 25
- (a) includes provision enabling a relevant tribunal, where satisfied that the decision in question was not a reasonable decision, to send the matter back to the person who made the decision for reconsideration in accordance with such directions (if any) as it considers appropriate; but
  - (b) does not include provision enabling a relevant tribunal to substitute its own decision for that of the person who made the decision. 30
- (7) The power of any valuer or tribunal to make provision as to procedure by virtue of subsection (1)(c), (d) or (g) includes power to make different provision for different cases or circumstances.
- (8) In this section “the relevant event” means the transfer or (as the case may be) extinguishment of rights made by or under the order to which the order mentioned in subsection (1) relates. 35

## 10 Tax consequences

- (1) *The Treasury may by regulations make provision for or in connection with varying the way in which any relevant tax would, apart from the regulations, have effect in relation to, or in connection with, any of the following –* 40
- (a) *anything done for the purpose of, in relation to, or by or under or in consequence of, a relevant order;*
  - (b) *any securities, or any property, rights or liabilities, which are transferred, extinguished or otherwise affected by any provision made by or under a relevant order;* 45
  - (c) *any securities issued by, or any property, rights or liabilities of, any transferee which have not been transferred by or under a relevant order;*

- (d) *any securities issued by, or any property, rights or liabilities of, any relevant institution which have not been so transferred.*
- (2) *The provision that may be made by the regulations includes provision for or in connection with any of the following –*
- (a) *a tax provision not to apply, or to apply with modifications, in prescribed cases or circumstances;* 5
- (b) *anything done to have or not to have a specified consequence for the purposes of a tax provision in prescribed cases or circumstances;*
- (c) *any securities, or any property, rights or liabilities, to be treated in a specified way for the purposes of a tax provision in prescribed cases or circumstances (whether or not affected by any provision made by or under a relevant order);* 10
- (d) *the withdrawal of relief (whether or not granted by virtue of the regulations), and the charging of any relevant tax, in prescribed cases or circumstances;*
- (e) *requiring or enabling the Treasury to determine or to specify the method to be used for determining anything (including amounts or values, or times or periods of time) which needs to be determined for the purposes of any tax provision (whether or not modified by the regulations) as it applies in relation to, or in connection with, any of the matters mentioned in subsection (1)(a) to (d).* 15
- (3) *In this section –* 20
- “prescribed” means prescribed by or determined in accordance with regulations under this section;
- “relevant institution” means any body in relation to which a relevant order is made;
- “relevant order” means an order under section 3, 4, 6 or 8; 25
- “relevant tax” means corporation tax, income tax, capital gains tax, stamp duty, stamp duty reserve tax and stamp duty land tax;
- “tax provision” means any enactment relating to any relevant tax;
- “transferee” means any person to whom any securities, or any property, rights or liabilities, are transferred by or under a relevant order. 30

### *Building societies*

## **11 Modification of legislation applying in relation to building societies**

- (1) The Treasury may by order make such modifications of any enactment as they consider appropriate for or in connection with facilitating the provision of relevant financial assistance by the Bank of England to building societies. 35
- (2) In this section “relevant financial assistance” means any financial assistance provided for the purpose of maintaining the stability of the financial system in the United Kingdom.
- (3) An order under this section may in particular make provision for or in connection with modifying the operation of any of the following – 40
- (a) sections 5, 6 and 7 of, and Schedule 2 to, the Building Societies Act 1986 (c. 53) (establishment, constitution and powers, the lending limit and the funding limit);
- (b) any other provision of that Act which might otherwise prevent any relevant financial assistance from being provided by the Bank of England to building societies or affect the amount of any such assistance; 45

- (c) sections 8, 9A and 9B of the Building Societies Act 1986 (c. 53) (restrictions on raising funds and borrowing, on transactions involving derivative instruments etc. and on creation of floating charges);
  - (d) any other provision of that Act which might otherwise prevent building societies from entering into any transaction in connection with the provision of financial assistance by the Bank of England to building societies. 5
- (4) An order under this section may in particular –
- (a) disapply (to such extent as is specified) any specified statutory provision; 10
  - (b) provide for any specified statutory provision that would not otherwise apply in relation to building societies to apply in relation to them with specified modifications.
- (5) In this section “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986. 15

### *General*

## **12 Consequential and supplementary provision**

- (1) The Treasury may by order make –
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision, 20
- as they consider appropriate for the general purposes, or any particular purposes, of this Act or in consequence of any provision made by or under this Act, or for giving full effect to this Act or any such provision.
- (2) An order under this section may in particular –
- (a) disapply (to such extent as is specified) any specified statutory provision or rule of law; 25
  - (b) provide for any specified statutory provision to apply (whether or not it would otherwise apply) with specified modifications;
  - (c) make provision for or in connection with any of the matters mentioned in subsection (3). 30
- (3) Those matters are –
- (a) imposing a moratorium on the commencement or continuation of proceedings or other legal processes of any specified description in relation to any body or property of any such description;
  - (b) providing exceptions from any provision made in pursuance of paragraph (a), whether framed by reference to – 35
    - (i) the leave of the court or the consent of the Treasury or the Bank of England, or
    - (ii) instruments or transactions of specified descriptions, or otherwise; 40
  - (c) the dissolution of any relevant deposit-taker or of any UK undertaking which is a subsidiary undertaking of any relevant deposit-taker;
  - (d) exempting directors of any relevant deposit-taker, or of any group undertaking of any relevant deposit-taker, from liability in connection with acts or omissions in relation to the deposit-taker or undertaking; 45

- (e) *the payment of any compensation by the Treasury to persons affected by an order under this section.*
- (4) An order under this section may, in connection with the payment of any such compensation, make provision for any matter for which provision is or may be made by or under section 5, 7 or 9. 5
- (5) In this section “relevant deposit-taker” means any authorised UK deposit-taker in relation to which an order is being, or has been, made under section 3 or 6.

### 13 Orders and regulations: general

- (1) Orders and regulations under this Act are to be made by statutory instrument.
- (2) Such orders and regulations – 10
- (a) may make different provision for different cases or circumstances;
- (b) may make such supplementary, incidental, consequential, transitory, transitional or saving provision as the Treasury consider appropriate.
- (3) A statutory instrument containing an order under this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (4) A statutory instrument containing regulations under section 10 is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Nothing in any provision of this Act that authorises the making of any order or regulations, or the making of any particular kind of provision by any order or regulations, affects the generality of any other such provision of this Act. 20

### 14 Orders and regulations: retrospective provisions

- (1) Subsections (2) and (3) apply to any order made under section 3, 4, 6 or 12 (a “relevant order”).
- (2) A relevant order may – 25
- (a) provide for any provision made by the order to have retrospective effect as from any appropriate time or any specified later time;
- (b) make provision for or in connection with, or in consequence of, nullifying the effect of transactions or events taking place after the time in question.
- (3) “Appropriate time”, in relation to a relevant order, means – 30
- (a) the specified time on the date of a statement published by the Treasury of their intention to make an order that would have the same general effect as the relevant order;
- (b) the specified time on the date on which any transfer was effected by or under a previous relevant order. 35
- (4) It is immaterial whether the statement mentioned in subsection (3)(a) is published before or after the passing of this Act.
- (5) Regulations under section 10 may provide for any of their provisions to have retrospective effect as from any time which is not earlier than 3 months before the day on which this Act is passed. 40

## 15 Interpretation

(1) In this Act –

- “authorised UK deposit-taker” has the meaning given by section 1;
- “body corporate” includes a body incorporated outside the United Kingdom, but does not include the Bank of England; 5
- “company” means a company within the meaning of section 1 of the Companies Act 2006 (c. 46);
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
- “enactment” includes – 10
  - (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30),
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978; 15
- “financial assistance”, in relation to any person, includes –
  - (a) assistance provided by way of loan, guarantee or indemnity,
  - (b) assistance provided by way of any transaction which equates, in substance, to a transaction for lending money at interest (such as a transaction involving the sale and repurchase of securities or other assets), and 20
  - (c) assistance falling within paragraph (a) or (b) provided indirectly to or otherwise for the benefit of the person (including the provision of assistance within paragraph (a) or (b) to any group undertaking of that person), 25
    - whether provided in pursuance of an agreement or otherwise and whether provided before or after the passing of this Act;
- “FSMA 2000” means the Financial Services and Markets Act 2000 (c. 8); 30
- “group undertaking” has the meaning given by section 1161 of the Companies Act 2006;
- “indemnity” includes any undertaking or other arrangement entered into for the purpose of indemnifying any person or for any similar purpose;
- “liabilities” includes obligations; 35
- “modifications” includes omissions, additions and alterations, and “modify” has a corresponding meaning;
- “pension scheme” means a scheme or other arrangements for the provision of benefits to or in respect of people –
  - (a) on retirement, 40
  - (b) on death,
  - (c) on having reached a particular age,
  - (d) on the onset of any serious ill-health or incapacity, or
  - (e) in similar circumstances;
- “relevant guarantee arrangements”, in relation to any authorised UK deposit-taker, has the meaning given by section 2(6); 45
- “securities” includes –
  - (a) shares and stock,



- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, and
- (c) warrants or other instruments entitling the holder to subscribe for, or otherwise acquire, securities falling within paragraph (a) or (b), 5
- and see also subsection (2);
- “specified”, in relation to any order or regulations under this Act, means specified in the order or regulations;
- “statutory provision” means any provision made by or under an enactment (whenever passed or made); 10
- “subsidiary undertaking” has the meaning given by section 1162 of the Companies Act 2006 (c. 46);
- “UK undertaking” means an undertaking which is incorporated in, or formed under the law of any part of, the United Kingdom; 15
- “undertaking” has the meaning given by section 1161 of the Companies Act 2006 (except in the definition of “indemnity”);
- “wholly owned”, in relation to the Bank of England or the Treasury, is to be construed in accordance with subsection (6);
- “wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006. 20
- (2) In this Act any reference (however expressed) to securities issued by any authorised UK deposit-taker includes a reference to rights granted by the deposit-taker which form part of its own funds for the purposes of Section 1 of Chapter 2 of Title V of the Banking Consolidation Directive (and which would not otherwise be securities by virtue of subsection (1)). 25
- (3) In subsection (2) “the Banking Consolidation Directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).
- (4) For the purposes of this Act any undertaking that was an authorised UK deposit-taker immediately before the making of the first order under section 3 or 6 in relation to the undertaking is to be regarded as continuing to be an authorised UK deposit-taker, whether or not it would be one apart from this subsection. 30
- (5) For the purposes of this Act any reference (however expressed) to an undertaking which is – 35
- (a) a group undertaking of an authorised UK deposit-taker, or
- (b) a subsidiary undertaking of an authorised UK deposit-taker,
- includes, in relation to any time after the making of the first order under section 3 or 6 in relation to the deposit-taker (“the relevant time”), a reference to an undertaking which was a group or subsidiary undertaking of the deposit-taker immediately before the making of that order but is not one at the relevant time. 40
- (6) For the purposes of this Act –
- (a) a company is to be regarded as wholly owned by the Bank of England at any time if at that time – 45
- (i) it is a company of which no person other than the Bank or a nominee of the Bank is a member, or
- (ii) it is a wholly-owned subsidiary of a company within subparagraph (i); and

- (b) a company is to be regarded as wholly owned by the Treasury at any time if at that time –
  - (i) it is a company of which no person other than a nominee of the Treasury is a member, or
  - (ii) it is a wholly-owned subsidiary of a company within sub-paragraph (i). 5
- (7) This subsection makes transitional provision for the purposes of this Act in relation to expressions defined by subsection (1) by reference to provisions of the Companies Act 2006 (c. 46) (“the 2006 Act”) –
  - (a) in relation to any time before the commencement of section 1 of the 2006 Act, “company” means a company within the meaning of the Companies Act 1985 (c. 6) (“the 1985 Act”) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (“the 1986 Order”); 10
  - (b) in relation to any time before the commencement of section 1159 of the 2006 Act, “wholly-owned subsidiary” has the meaning given by section 736 of the 1985 Act or Article 4 of the 1986 Order; 15
  - (c) in relation to any time before the commencement of sections 1161 and 1162 of the 2006 Act, “group undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given by sections 258 and 259 of the 1985 Act or Articles 266 and 267 of the 1986 Order. 20

## 16 Financial provision

- (1) *There is to be paid out of money provided by Parliament –*
  - (a) *any expenditure incurred by the Treasury in connection with the provision of financial assistance to any authorised UK deposit-taker in relation to which an order is made under section 3 or 6;* 25
  - (b) *any expenditure incurred by the Treasury in connection with the provision of financial assistance to any person to whom any transfer is made under this Act;*
  - (c) *any expenditure incurred by the Treasury in connection with the giving of any relevant indemnity or the putting in place of relevant guarantee arrangements in relation to any particular authorised UK deposit-taker; and* 30
  - (d) *any other expenditure incurred by the Treasury by virtue of this Act.*
- (2) In subsection (1)(c) “relevant indemnity” means any indemnity given to –
  - (a) directors of any authorised UK deposit-taker in relation to which an order is made under section 3 or 6, 35
  - (b) directors of any body to which any transfer is made under this Act,
  - (c) directors of any body which is a group undertaking of any body to which any transfer is made under this Act,
  - (d) the Bank of England in respect of, or in connection with, any financial assistance provided by it to any body within any of paragraphs (a) to (c), or 40
  - (e) any person appointed by the Treasury as an independent valuer for the purposes of any order made under this Act.
- (3) It is immaterial whether the indemnity or arrangements mentioned in subsection (1) are given or put in place before or after the passing of this Act. 45

**17 Short title, commencement and extent**

- (1) This Act may be cited as the Banking (Special Provisions) Act 2008.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 3

#### TRANSFER ORDERS UNDER SECTION 3

##### *Provisions relating to securities transferred: general*

- |   |  |    |
|---|--|----|
| 1 | (1) An order under section 3 may make provision –  | 5  |
|   | (a) for securities to be transferred free from all trusts, liabilities and incumbrances;   |    |
|   | (b) for any transfer of securities to take effect despite –  |    |
|   | (i) the absence of any required consent or concurrence to or with the transfer,  | 10 |
|   | (ii) any other restriction relating to the transfer of the securities, or  |    |
|   | (iii) the absence of the delivery of any instrument representing securities transferable by delivery (a “bearer instrument”);  |    |
|   | (c) for the delivery of any such instruments to a specified person, and the issue to the transferee of instruments representing such securities;   | 15 |
|   | (d) for the transferee to be entitled to be entered in any register of securities without the need for delivery of any instrument of transfer;   |    |
|   | (e) for requiring the person maintaining any such register to register the transferee in the register;   | 20 |
|   | (f) for the transferee to be, as from the transfer date, entitled, or subject, to rights, privileges, advantages and liabilities arising from or relating to transferred securities, whether or not the transferee has been so registered or any bearer instrument representing the transferred securities has been delivered to the transferee; | 25 |
|   | (g) for deeming the transferee for any specified purposes to be the holder of the transferred securities at a time when the transferee has yet to be so registered or any such instrument has yet to be so delivered;  | 30 |
|   | (h) for securing that rights of holders of securities, and rights relating to securities that are held by persons other than –   |    |
|   | (i) the holders of the securities, or  |    |
|   | (ii) the transferee,   |    |
|   | cease to be exercisable by the holders of the securities or (as the case may be) such other persons;   | 35 |
|   | (i) <i>for requiring distributions or other relevant amounts payable by the relevant deposit-taker on or after the transfer date to be paid into the Consolidated Fund.</i>  |    |
|   | (2) Sub-paragraph (1)(h) applies to –  | 40 |

- (a) securities issued by the relevant deposit-taker (whether or not transferred by an order under section 3), or
  - (b) securities issued by any of its group undertakings;
- and, in relation to any transferred securities, any references in that provision to holders of securities are to former holders of them. 5

*Conversion of form in which securities held etc.*

- 2 (1) An order under section 3 may make provision –
- (a) for securities held in one form to be converted, in the specified manner, from that form into another specified form;
  - (b) for converting a specified class of securities into securities of another specified class; 10
  - (c) for matters consequential on any such conversion as is mentioned in paragraph (a) or (b).
- (2) Sub-paragraph (1) applies to securities issued by the relevant deposit-taker, whether or not transferred by an order under section 3. 15

*Delisting of securities*

- 3 (1) An order under section 3 may make provision for discontinuing the listing of securities issued by the relevant deposit-taker (whether or not the securities have been transferred by such an order).
- (2) In this paragraph “listing” has the meaning given by section 74(5) of FSMA 2000. 20

*Alteration of terms of securities or contracts etc.*

- 4 (1) An order under section 3 may make provision for varying or nullifying the terms, or the effect of terms, of –
- (a) securities issued by the relevant deposit-taker (whether or not transferred by such an order), 25
  - (b) securities issued by any of its group undertakings, or
  - (c) other relevant instruments.
- (2) The provision that may be made by virtue of sub-paragraph (1) includes provision –
- (a) for securing that transactions or events of any specified description have or do not have (directly or indirectly) such consequences as are specified, or are to be treated in the specified manner for any specified purposes; 30
  - (b) for discharging persons from further performance of obligations under relevant instruments, and for dealing with the consequences of persons being so discharged. 35
- (3) In this paragraph “relevant instrument” means any agreement, licence or other instrument to or by which any of the following is a party or bound –
- (a) the relevant deposit-taker, 40
  - (b) any of its group undertakings, or
  - (c) any person having a specified connection with the relevant deposit-taker or any of its group undertakings (whether framed by reference to a sale of assets by one to the other, or otherwise).

*Creation of new rights etc.*

- 5 An order under section 3 may make provision for the creation of new rights and liabilities as between the relevant deposit-taker and any of its group undertakings.

*Rights etc. under pension schemes*

5

- 6 (1) An order under section 3 may make provision—
- (a) as to the consequences of any transfer, by such an order, in relation to any pension scheme;
  - (b) in relation to any property, rights and liabilities of any relevant occupational pension scheme. 10
- (2) Such an order may—
- (a) modify any such rights and liabilities;
  - (b) apportion any such rights and liabilities between different persons;
  - (c) provide for property of, or accrued rights in, any relevant occupational pension scheme to be transferred to another occupational pension scheme without the consent of any person. 15
- (3) Provision made in pursuance of this paragraph may be made by means of modifications of a relevant occupational pension scheme or otherwise.
- (4) In this paragraph—
- “occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004 (c. 12);
  - “relevant occupational pension scheme” means an occupational pension scheme in relation to which—
- (a) the relevant deposit-taker, or
  - (b) any of its group undertakings, 25
- is or has been an employer.

*Provisions relating to directors of relevant deposit-taker etc.*

- 7 (1) An order under section 3 may make provision enabling the Treasury—
- (a) to remove or appoint directors of the relevant deposit-taker or any of its group undertakings; 30
  - (b) to determine, by agreement with persons so appointed by the Treasury, their remuneration and the other terms and conditions of their service contracts;
  - (c) to terminate, or vary the terms and conditions of, the service contracts of persons who (however appointed) are directors of the relevant deposit-taker or any of its group undertakings. 35
- (2) An order under section 3 may provide for anything done by the Treasury in accordance with provision made by virtue of sub-paragraph (1) to be treated as done by the relevant deposit-taker.
- (3) In this paragraph “service contract” has the meaning given by section 227 of the Companies Act 2006 (c. 46). 40

*Supplementary provisions*

- 8 (1) An order under section 3 may make provision—

- (a) for agreements made or other things done by or in relation to former holders of transferred securities to be treated as made or done by or in relation to the transferee;
- (b) for references to such persons in instruments or documents to have effect with specified modifications; 5
- (c) for anything that relates to anything transferred by an order under section 3, and is in the process of being done by or in relation to any such person immediately before it is transferred, to be continued by or in relation to the transferee.
- (2) An order under section 3 may require former holders of transferred securities to provide the transferee with such information and other assistance as is specified. 10
- (3) An order under section 3 may make provision for disputes as to specified matters arising under or by virtue of an order under that section to be determined in the specified manner. 15

*Interpretation*

- 9 (1) In this Schedule –
- “distributions or other relevant amounts” includes dividends, payments of interest, principal or capital, premiums and other payments arising in connection with securities transferred by an order under section 3; 20
- “former holder”, in relation to transferred securities, means a person holding the securities before the transfer date;
- “the relevant deposit-taker”, in relation to an order under section 3, means the authorised UK deposit-taker in relation to which the order is made; 25
- “remuneration” includes any benefit in kind;
- “register of securities” means a register of members or any other register of the holders of securities;
- “specified purposes” include the purposes of any specified statutory provision; 30
- “the transferee” means the person to whom securities are transferred by an order under section 3;
- “the transfer date” means (subject to sub-paragraph (2)) the date on which such a transfer takes place. 35
- (2) If an order under section 3 provides for any transfer to take place at a particular time on a particular date, then in relation to that transfer, references to the transfer date are to that time on that date.

## SCHEDULE 2

Section 6

## TRANSFER ORDERS UNDER SECTION 6

40

*Property, rights and liabilities that may be transferred by or under order*

- 1 The property, rights and liabilities that may be transferred by or under an order under section 6 include –

- (a) property, rights and liabilities that would not be capable of being assigned or otherwise transferred by the relevant deposit-taker;
- (b) property, rights and liabilities acquired or incurred in the period between the making of the order and the transfer date;
- (c) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date; 5
- (d) rights and liabilities under any pension scheme or under any other arrangement for the payment of pensions, allowances and gratuities;
- (e) property situated outside the United Kingdom and rights and liabilities under the law of a place outside the United Kingdom; 10
- (f) rights and liabilities under an enactment or Community instrument.

*Provisions relating to property, rights and liabilities transferred*

- 2 (1) An order under section 6 may make provision –
- (a) for any transfer of any interests or rights to take effect despite the absence of any required consent or concurrence to or with the transfer; 15
  - (b) for any transfer of any interests or rights to take effect as if –
    - (i) no associated liability existed in respect of any failure to comply with any other requirement, and
    - (ii) there were no associated interference with the interests or rights; 20
  - (c) for securing that in any specified circumstances –
    - (i) a person is not entitled to terminate, modify, acquire or claim an interest or right (or to treat an interest or right as terminated or modified) until it is transferred by or under the order, and 25
    - (ii) the entitlement is subsequently either not enforceable or enforceable only to the specified extent;
  - (d) for rights and liabilities –
    - (i) to be transferred so as to be enforceable by or against both the transferee and the transferor, and 30
    - (ii) where they are so enforceable, to be enforceable in different or modified respects by or against each of those persons;
  - (e) for interests, rights or liabilities of third parties in relation to anything to which an order under section 6 relates to be modified in the specified manner, including provision – 35
    - (i) for securing that transactions or events of any specified description do or do not have (directly or indirectly) such consequences as are specified, or are to be treated in the specified manner for any specified purposes; 40
    - (ii) for persons to be discharged from the further performance of contracts and for dealing with the consequences of persons being so discharged;
  - (f) for the manner in which –
    - (i) any property held in trust by the relevant deposit-taker before the transfer date (whether as sole or joint trustee) is to be held on or after that date, and 45
    - (ii) any powers, provisions and liabilities relating to any such property are to be exercisable or to have effect on or after that date; 50



- (g) for excluding from the transfer specified property, rights and liabilities comprised in the relevant deposit-taker’s business or a specified part of it;
  - (h) for the creation of rights, liabilities or interests in relation to property, rights or liabilities transferred from or retained by the relevant deposit-taker; 5
  - (i) for dealing with cases where securities of a subsidiary undertaking are transferred by or under the order;
  - (j) for enabling the relevant deposit-taker and the transferee (in accordance with the order) to agree on any modification of the order, so long as the order could originally have been made with that modification in accordance with the relevant provisions of this Act; 10
  - (k) for apportioning liabilities in respect of any tax or duty (in the United Kingdom or elsewhere) between the relevant deposit-taker and the transferee. 15
- (2) In sub-paragraph (1)(b) “associated liability” and “associated interference” mean respectively any liability or interference that would otherwise exist by virtue of any provision (of an enactment or agreement or otherwise) having effect in relation to the terms on which the relevant deposit-taker is entitled, or subject, to anything to which the transfer relates. 20
- (3) In sub-paragraph (1)(e) “third parties” means persons other than the relevant deposit-taker or the transferee under an order under section 6.

*Creation of new rights etc.*

- 3 An order under section 6 may make provision for the creation of new rights and liabilities as between the relevant deposit-taker and any of its group undertakings. 25

*Rights etc. under pension schemes*

- 4 (1) An order under section 6 may make provision –
- (a) as to the consequences of any transfer, by or under such an order, in relation to any pension scheme; 30
  - (b) in relation to any property, rights and liabilities of any relevant occupational pension scheme.
- (2) Such an order may –
- (a) modify any such rights and liabilities;
  - (b) apportion any such rights and liabilities between different persons; 35
  - (c) provide for property of, or accrued rights in, any relevant occupational pension scheme to be transferred to another occupational pension scheme without the consent of any person.
- (3) Provision made in pursuance of this paragraph may be made by means of modifications of a relevant occupational pension scheme or otherwise. 40
- (4) In this paragraph –
- “occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004 (c. 12);
  - “relevant occupational pension scheme” means an occupational pension scheme in relation to which – 45
    - (a) the relevant deposit-taker, or

- (b) any of its group undertakings,  
is or has been an employer.

*Foreign property etc.*

- 5 (1) An order under section 6 may make provision –
  - (a) for requiring or authorising the relevant deposit-taker or the transferee to take any specified steps –
    - (i) for securing the vesting in the transferee under the relevant foreign law of foreign property or foreign rights or liabilities, or
    - (ii) pending any such vesting of such property, rights or liabilities, or
    - (iii) otherwise in relation to such property, rights or liabilities;
  - (b) for the payment by a specified person of expenses incurred in connection with such property, rights or liabilities.
- (2) In this paragraph –
  - (a) “foreign law” means the law of a place outside the United Kingdom; and
  - (b) “foreign property” and “foreign rights or liabilities” mean respectively property and rights and liabilities as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to foreign law.

*Authorisations and permissions etc.*

- 6 (1) An order under section 6 may make provision for securing that, if on the transfer date the transferee satisfies the specified conditions, it is to be treated for the specified period –
  - (a) as an authorised person in relation to any specified regulated activities carried on by the relevant deposit-taker before that date, or
  - (b) as an authorised person who has a Part IV permission granted by the Financial Services Authority to carry on any such activities.
- (2) Where an order makes provision in accordance with sub-paragraph (1)(b), it may provide that any decision by the Financial Services Authority of a specified description is to have the effect of varying or cancelling (to any specified extent) the Part IV permission which the transferee is to be treated as having by virtue of that provision.
- (3) An order under section 6 may make provision –
  - (a) for securing that licences, permissions or approvals –
    - (i) relating to anything transferred by or under the order, and
    - (ii) in force or effective immediately before the transfer date, are to continue in force or in effect as from that date;
  - (b) for apportioning (by means of making modifications of the instruments concerned or otherwise) responsibility between the relevant deposit-taker and the transferee as regards compliance with requirements of licences, permissions or approvals.
- (4) In this paragraph “authorised person”, “Part IV permission” and “regulated activities” have the same meanings as in FSMA 2000.

*Supplementary provisions*

- 7 (1) An order under section 6 may make provision—
- (a) for the transferee to be treated for any purpose connected with the transfer as the same person in law as the relevant deposit-taker; 5
  - (b) for agreements made or other things done by or in relation to any relevant deposit-taker to be treated as made or done by or in relation to the transferee;
  - (c) for references in instruments or documents to the relevant deposit-taker, to any combination of bodies that includes that deposit-taker, or to any officer or employee of that deposit-taker, to have effect with specified modifications; 10
  - (d) for securing continuity of employment in the case of contracts of employment transferred by or under the order;
  - (e) for anything (including legal proceedings) that relates to anything transferred by or under the order, and is in the process of being done by or in relation to the relevant deposit-taker immediately before it is transferred, to be continued by or in relation to the transferee. 15
- (2) In sub-paragraph (1)(b), (c) and (e) any reference to the relevant deposit-taker includes a reference to any of its group undertakings.
- (3) An order under section 6 may require the relevant deposit-taker to provide the transferee with such information and other assistance as is specified. 20
- (4) An order under section 6 may make provision for disputes as to specified matters arising under or by virtue of an order under that section to be determined in the specified manner.

*Interpretation* 25

- 8 (1) In this Schedule—
- “the relevant deposit-taker”, in relation to an order under section 6, means the authorised UK deposit-taker in relation to which the order is made;
  - “specified purposes” include the purposes of any specified statutory provision; 30
  - “the transferee” means the person to whom property, rights or liabilities are transferred by or under an order under section 6;
  - “the transfer date” means (subject to sub-paragraph (2)) the date on which such a transfer takes place. 35
- (2) If provision is made by or under an order under section 6 for any transfer to take place at a particular time on a particular date, then in relation to that transfer—
- (a) references to the transfer date are to that time on that date; and
  - (b) references to things occurring before or on or after the transfer date are references to things occurring before or at or after that time on that date. 40
- (3) In this Schedule any reference to anything transferred by or under a particular order under section 6 includes a reference to anything transferred by or under any other order under that section. 45

# Banking (Special Provisions) Bill

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A

## B I L L

To make provision to enable the Treasury in certain circumstances to make an order relating to the transfer of securities issued by, or of property, rights or liabilities belonging to, an authorised deposit-taker; to make further provision in relation to building societies; and for connected purposes.

*Presented by Mr Chancellor of the Exchequer  
supported by  
The Prime Minister, Secretary David Miliband,  
Secretary Jack Straw, Mr Secretary Hutton,  
Yvette Cooper, Jane Kennedy,  
Angela Eagle and Kitty Ussher.*

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*Ordered, by The House of Commons,  
to be Printed, 19th February 2008.*

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