



Banking Act 2009

2009 CHAPTER 1

PART 2

BANK INSOLVENCY

Modifications etc. (not altering text)

- C1** Pt. 2 applied (with modifications) by 1986 c. 53, s. 90C (as inserted (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [art. 2](#))
- C2** Pt. 2 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [Sch. 1 para. 1](#)
- C3** Pt. 2 modified (29.3.2009) by [Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [Sch. 1 para. 6](#)
- C4** Pt. 2 restricted (7.1.2010) by [Banking Act 2009 \(Exclusion of Insurers\) Order 2010 \(S.I. 2010/35\)](#), [arts. 1, 2](#)
- C5** Pt. 2: amendment to earlier affecting provision [SI 2009/805, Sch. 1 \(7.4.2010\)](#) by [Building Societies \(Insolvency and Special Administration\) \(Amendment\) Order 2010 \(S.I. 2010/1189\)](#), [arts. 1\(2\), 2](#)
- C6** Pt. 2 applied (with modifications) (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), [reg. 1, Sch. 1 paras. 6, 7](#)

Introduction

90 Overview

- (1) This Part provides for a procedure to be known as bank insolvency.
- (2) The main features of bank insolvency are that—
 - (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,
 - (d) the bank liquidator then winds up the bank, and

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- (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> |
|---------------------|-----------------------------|
| Sections 90 to 93 | Introduction |
| Sections 94 to 98 | Bank insolvency order |
| Sections 99 to 105 | Process of bank liquidation |
| Sections 106 to 112 | Tenure of bank liquidator |
| Sections 113 to 116 | Termination of process, &c. |
| Sections 117 to 122 | Other processes |
| Sections 123 to 135 | Miscellaneous |

Commencement Information

II S. 90 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

91 Interpretation: “bank”

- (1) In this Part “bank” means a UK institution which has permission under [^{F1}Part 4A] 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—
- a building society within the meaning of section 119 of the Building Societies Act 1986,
 - a credit union within the meaning of section 31 of the Credit Unions Act 1979, or
 - 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)—
- shall be made by statutory instrument, and
 - may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) Section 130 makes provision for the application of this Part to building societies.
- (6) Section 131 makes provision for the application of this Part to credit unions.

Textual Amendments

F1 Words in s. 91(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 30](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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Commencement Information

- I2** S. 91 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2
- I3** S. 91 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

92 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.

Commencement Information

- I4** S. 92 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

93 Interpretation: other expressions

[^{F2}(1) In this Part—

- (a) “the PRA” means the Prudential Regulation Authority, and
- (b) “the FCA” means the Financial Conduct 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; and

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.

(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).

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Textual Amendments

- F2** S. 93(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 31](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

- I5** S. 93 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

Bank insolvency order

94 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.
- (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 98; 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”.

Commencement Information

- I6** S. 94 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

95 Application

- (1) An application for a bank insolvency order may be made to the court by—
 - (a) the Bank of England,
 - (b) the [^{F3}PRA], or
 - (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 125 below).

Textual Amendments

- F3** Word in s. 95(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 32](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

- I7** S. 95 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

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96 Grounds for applying

- (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
 - (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 [F⁴PRA] has informed the Bank of England that the [F⁴PRA] is satisfied that Conditions 1 and 2 in section 7 are met, and
 - (b) the Bank of England is satisfied—
 - (i) that the bank has eligible depositors, and
 - (ii) that Ground A or C applies.
- (3) The [F⁴PRA] may apply for a bank insolvency order only if—
 - (a) the Bank of England consents, and
 - (b) the [F⁴PRA] is satisfied—
 - (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
 - (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).

Textual Amendments

- F4** Word in s. 96 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 33](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I8** S. 96 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

97 Grounds for making

- (1) The court may make a bank insolvency order on the application of the Bank of England or the [F⁵PRA] if satisfied—
 - (a) that the bank has eligible depositors, and
 - (b) that Ground A or C of section 96 applies.
- (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 96 apply.
- (3) On an application for a bank insolvency order the court may—
 - (a) grant the application in accordance with subsection (1) or (2),

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- (b) adjourn the application (generally or to a specified date), or
- (c) dismiss the application.

Textual Amendments

F5 Word in s. 97(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 34](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

I9 S. 97 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

98 Commencement

- (1) A bank insolvency order shall be treated as having taken effect in accordance with this section.
- (2) In the case where—
 - (a) notice has been given to the [F⁶PRA] under section 120 of an application for an administration order or a petition for a winding up order, and
 - (b) the [F⁶PRA] or the Bank of England applies for a bank insolvency order in the period of 2 weeks specified in Condition 3 in that section,
 the 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.
- (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.

Textual Amendments

F6 Word in s. 98(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 35](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

I10 S. 98 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

Process of bank liquidation

99 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—
 - (a) has the relevant account transferred to another financial institution, or
 - (b) receives payment from (or on behalf of) the FSCS.

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- (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).

Commencement Information

111 S. 99 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

100 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.
- [^{F7}(2) The liquidation committee is to consist initially of—
 - (a) two individuals nominated by the Bank of England,
 - (b) one individual nominated by the PRA,
 - (c) one individual nominated by the FCA, and
 - (d) one individual nominated by the FSCS.]
- (3) The bank liquidator must report to the liquidation committee about any matter—
 - (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—
 - (a) must keep the liquidation committee informed of progress towards Objective 1 in section 99, and
 - (b) must notify the liquidation committee when in the bank liquidator's opinion Objective 1 in section 99 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—
 - (a) resolve that Objective 1 in section 99 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 103 below).
- (6) Where a liquidation committee passes a full payment resolution—
 - (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^{F8}, the PRA and the FCA],
 - (d) the FSCS may resign from the liquidation committee (in which case 3 or 5 new members may be elected under paragraph (b)), and

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- (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.
- (7) Subject to provisions of this section, rules under section 411 of the Insolvency Act 1986 (as amended by section 125 below) may make provision about—
- (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.

Textual Amendments

- F7** S. 100(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 36\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F8** Words in s. 100(6)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 36\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I12** S. 100 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)
- I13** S. 100 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

101 Liquidation committee: supplemental

- (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.
- (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.
- (5) If a liquidation committee fails to comply with section 100(5) the bank liquidator must apply to the court—
 - (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 103 below.
- (6) A nominating body under section 100(2) may replace its nominee at any time.
- (7) After the removal of the nominated members under section 100(6)(c) the [F⁹PRA, the FCA] and the Bank of England—
 - (a) may attend meetings of the liquidation committee,
 - (b) are entitled to copies of documents relating to the liquidation committee's business,

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- (c) may make representations to the liquidation committee, and
 - (d) may participate in legal proceedings relating to the bank insolvency.
- (8) Where a liquidation committee ceases to exist by virtue of section 100(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 100(6)(e) and has not been re-formed under subsection (8) above or under section 141(2) or 142(2) of the Insolvency Act 1986 (as applied by section 103 below)—
- (a) ignore a reference in this Part to the liquidation committee,
 - (b) for section 113(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 113(2)(b),
 - (iii) to make it available in accordance with section 113(2)(c), and
 - (iv) to be satisfied as specified in section 113(4)(b),
 - (c) ignore Condition 2 in section 114, and
 - (d) for section 115(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—
 - (i) produce a final report,
 - (ii) send copies in accordance with section 115(2)(b),
 - (iii) make it available in accordance with section 115(2)(c), and
 - (iv) notify the court and the registrar of companies of the intention to vacate office and to apply for release.

Textual Amendments

F9 Words in s. 101(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 37](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

I14 S. 101 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

102 Objective 1: (a) or (b)?

- (1) As soon as is reasonably practicable, a liquidation committee must recommend the bank liquidator to pursue—
- (a) Objective 1(a) in section 99,
 - (b) Objective 1(b) in section 99, 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—
- (a) the desirability of achieving Objective 1 as quickly as possible, and
 - (b) Objective 2 in section 99.

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- (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 103 below).
- (4) Where the liquidation committee has not made a recommendation the bank liquidator may apply to the court under section 101(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.

Commencement Information

I15 S. 102 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

103 General powers, duties and effect

- (1) A bank liquidator may do anything necessary or expedient for the pursuit of the Objectives in section 99.
- (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),
 - (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,
 - (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,
 - (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
 - (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.
- (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.

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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). |
| Section 128 | Avoidance of attachment, &c. | |
| Section 130 | Consequences of winding-up order | Ignore section 130(4). |
| Section 131 | Company's statement of affairs | (a) Treat references to the official receiver as references to the bank liquidator. (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. |
| Section 135 | Provisional appointment | (a) Treat the reference to the presentation of a winding-up petition as a reference to the making of an application for a bank insolvency order. (b) Subsection (2) applies in relation to England and Wales and Scotland (and subsection (3) does not apply). (c) Ignore the reference to the official receiver. (d) Only a person who is qualified to act as an insolvency practitioner and |

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| | | <p>who consents to act may be appointed.</p> <p>(e) A provisional bank liquidator may not pay dividends to creditors.</p> <p>(f) The appointment of a provisional bank liquidator lapses on the appointment of a bank liquidator.</p> |
| Section 141 | Liquidation Committee (England and Wales) | <p>The application of section 141 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 141 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii) the possibility of calling creditors' meetings under other provisions, and</p> <p>(c) the omission of references to the official receiver.</p> |
| Section 142 | Liquidation Committee (Scotland) | <p>The application of section 142 is subject to—</p> <p>(a) sections 100, 101 and 109 of this Act,</p> <p>(b) rules under section 411 (as applied by section 125 of this Act) which may, in particular, adapt section 142 to reflect (i) the fact that the bank liquidator is appointed by the court and (ii)</p> |

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| | | the possibility of calling creditors' meetings under other provisions, and |
| | | (c) the omission of references to the official receiver. |
| Section 143 | General functions of liquidator | (a) Section 143(1) is subject to Objective 1 in section 99 above. (b) Ignore section 143(2). |
| 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 115 below makes similar provision.</i> |
| Section 147 | Power to stay or sist proceedings | An application may be made only by— (a) the bank liquidator, (b) the [F10PRA], (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). |
| 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 125 may achieve a similar delegation to the bank liquidator.</i> |
| Section 149 | Debts due from contributories | |
| Section 150 | Power to make calls | |
| Section 152 | Order on contributory: evidence | |
| Section 153 | Exclusion of creditors | |

Status: Point in time view as at 05/06/2014.

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| | | |
|----------------------------|--|---|
| 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 99 above. |
| Section 156 | Payment of expenses of winding up | |
| Section 157 | Attendance at company meetings (Scotland) | |
| Section 158 | Power to arrest absconding contributory | |
| <i>Section 159</i> | <i>Powers to be cumulative</i> | <i>Section 159 is not applied—but subsection (5) above makes similar provision.</i> |
| 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. |
| Section 167 and Schedule 4 | General powers of liquidator | (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 101(3) above). (b) In exercising or considering whether to exercise a power under Schedule 4 |

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- the bank liquidator shall have regard to Objective 1 in section 99.
- (c) A reference to the liquidation committee is to the liquidation committee established by section 100.
- (d) The power in paragraph 4 of Schedule 4 includes the power to submit matters to arbitration.
- Some additional general powers are conferred by section 104 below.*
- | | | |
|-------------|------------------------------------|---|
| 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 100 or 102 above).</p> |
| Section 169 | Supplementary powers (Scotland) | <p>(a) Ignore section 169(1).</p> |

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| | | |
|--------------------|---|--|
| | | (b) Powers of the bank liquidator by virtue of section 169(2) are subject to Objective 1 in section 99 above. |
| 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 to a bank liquidator—but section 108 makes similar provision.</i> Section 172(1), (2) and (5) are applied to a provisional bank liquidator. |
| <i>Section 174</i> | <i>Release of liquidator</i> | <i>Section 174 is not applied—but section 115 makes similar provision.</i> |
| Section 175 | Preferential debts | |
| Section 176 | Preferential charge on goods restrained | |
| Section 176ZA | Expenses of winding up | |
| Section 176A | Share of assets for unsecured creditors | |
| Section 177 | Appointment of special manager | |
| Section 178 | Power to disclaim onerous property | |
| 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) | |
| Section 184 | Execution of writs (England and Wales) | |
| Section 185 | Effect of diligence (Scotland) | In the application of section 37(1) of the |

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| | | |
|-------------|---|---|
| | | 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. |
| Section 186 | Rescission of contracts by court | |
| 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 | |
| Section 192 | Information about pending liquidations | |
| Section 193 | Unclaimed dividends (Scotland) | |
| Section 194 | Resolutions passed at adjourned meetings | |
| 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 99. |
| Section 196 | Judicial notice of court documents | |
| 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) | |
| Section 200 | Affidavits | |
| Section 206 | Fraud in anticipation of winding up | |
| Section 207 | Transactions in fraud of creditors | |
| Section 208 | Misconduct in course of winding up | |

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| | | |
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| Section 209 | Falsification of company's books | |
| Section 210 | Material omissions | |
| Section 211 | False representations to creditors | |
| Section 212 | Summary remedy against directors, &c. | |
| Section 213 | Fraudulent trading | |
| 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 | |
| Section 218 | Prosecution of officers and members of company | <ul style="list-style-type: none"> (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). |
| Section 219 | Obligations under section 218 | |
| Section 231 | Appointment of 2 or more persons | |
| 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 |
| Section 237 | Section 236: enforcement by court | |
| Section 238 | Transactions at undervalue (England and Wales) | Anything done by the bank in connection |

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| | | |
|-------------|--------------------------------------|---|
| | | 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. |
| 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. |
| Section 240 | Sections 238 & 239: relevant time | |
| 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 [F11PRA] or the Secretary of State for a bank insolvency order, or (b) notice under section 120 below. |
| Section 242 | Gratuitous alienations (Scotland) | Anything done by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act is not a gratuitous alienation for the purpose of section 242 or any other rule of law. |
| Section 243 | Unfair preferences (Scotland) | Action taken by the bank in connection with the exercise of a stabilisation power under Part 1 of this Act does not amount to an unfair preference for the purpose of section 243 or any other rule of law. |
| Section 244 | Extortionate credit transactions | |
| Section 245 | Avoidance of floating charges | |
| Section 246 | Unenforceability of liens | |

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| | | |
|--|--|---|
| Sections 386 & 387, and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993) | Preferential debts | |
| 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. |
| Section 391 | Recognised professional bodies | An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency. |
| 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. |
| 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. |

Textual Amendments

- F10** Word in s. 103 Table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 38(a)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F11** Word in s. 103 Table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 17 para. 38(b)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

- C7** S. 103 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, **Sch. 1 para. 4**

Commencement Information

- I16** S. 103 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, **Sch. para. 2**

Status: Point in time view as at 05/06/2014.

Changes to legislation: Banking Act 2009, Part 2 is up to date with all changes known to be in force on or before 01 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

104 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.

Modifications etc. (not altering text)

C8 S. 104 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, [Sch. 1 para. 4](#)

Commencement Information

I17 S. 104 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

105 Status of bank liquidator

A bank liquidator is an officer of the court.

Commencement Information

I18 S. 105 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

Tenure of bank liquidator

106 Term of appointment

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

- (a) by resigning under section 107,
- (b) on removal under section 108 or 109,
- (c) on disqualification under section 110,
- (d) on the appointment of a replacement in accordance with section 112,
- (e) in accordance with sections 113 to 115, or
- (f) on death.

Commencement Information

I19 S. 106 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

107 Resignation

- (1) A bank liquidator may resign by notice to the court.

Status: Point in time view as at 05/06/2014.

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- (2) Rules under section 411 of the Insolvency Act 1986 (as applied by section 125 below) may restrict a bank liquidator's power to resign.
- (3) Resignation shall take effect in accordance with those rules (which shall include provision about release).

Commencement Information

- I20** S. 107 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)
- I21** S. 107 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

108 Removal by court

- (1) A bank liquidator may be removed by order of the court on the application of—
 - (a) the liquidation committee,
 - (b) the [^{F12}PRA], or
 - (c) the Bank of England.
- (2) Before making an application the [^{F13}PRA] must consult the Bank of England [^{F14}and the FCA].
- (3) Before making an application the Bank of England must consult the [^{F15}PRA and the FCA].
- (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.

Textual Amendments

- F12** Word in s. 108(1)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F13** Word in s. 108(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F14** Words in s. 108(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F15** Words in s. 108(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 39\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

- I22** S. 108 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

109 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 103 above) provided that the following conditions are met.
- (2) Condition 1 is that the liquidation committee has passed a full payment resolution.

Status: Point in time view as at 05/06/2014.

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- (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^{F16}, the PRA and the FCA]—
 - (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—
 - (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.

Textual Amendments

F16 Words in s. 109(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 40](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

I23 S. 109 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

110 Disqualification

- (1) If a bank liquidator ceases to be qualified to act as an insolvency practitioner, the appointment lapses.
- (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.

Commencement Information

I24 S. 110 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

111 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 103 above).

Commencement Information

I25 S. 111 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

Status: Point in time view as at 05/06/2014.

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112 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 109—
 - (a) a replacement may be appointed by resolution of the meeting, and
 - (b) failing that, subsection (1) above applies.

Commencement Information

I26 S. 112 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

Termination of process, &c.

113 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—
 - (a) shall present a final report on the bank liquidation to the liquidation committee,
 - (b) shall send a copy of the report to—
 - ^{F17}(i) the PRA,
 - (ia) the FCA,]
 - (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.
- (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 99(2)(a) or (b).
- (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.
- (8) The action that may be taken by the court under section 5(3) (effect of approval) includes suspension of the bank insolvency order.

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- (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.

Textual Amendments

F17 S. 113(2)(b)(i)(ia) substituted for s. 113(2)(b)(i) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 41](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

Commencement Information

I27 S. 113 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

114 Administration

- (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.
- (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 or have their accounts transferred during administration.

Commencement Information

I28 S. 114 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

115 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.
- (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—
 - ^{F18}(i) the PRA,
 - (ia) the FCA,
 - (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.
- (3) At the meeting the liquidation committee shall—

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- (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—
- (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—
- (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.
- (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 116).

Textual Amendments

F18 S. 115(2)(b)(i)(ia) substituted for s. 115(2)(b)(i) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 42](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

Commencement Information

I29 S. 115 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

116 Dissolution: supplemental

- (1) The Secretary of State may by direction defer the date of dissolution under section 115, on the application of a person who appears to the Secretary of State to be interested.
- (2) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (1).
- (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) 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 115 above at the same time as giving notice of any final distribution of the

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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.

- (7) A bank liquidator must retain sufficient sums to cover the expenses of the final meeting under section 115 above.

Commencement Information

I30 S. 116 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

Other processes

117 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.
- (2) A bank insolvency order may be made under subsection (1) only—
- on the application of the [^{F19}PRA] made with the consent of the Bank of England [^{F20}and the FCA], or
 - on the application of the Bank of England.

Textual Amendments

F19 Word in s. 117(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 43\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

F20 Words in s. 117(2)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 43\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

Commencement Information

I31 S. 117 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

118 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.

Commencement Information

I32 S. 118 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

119 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—
- paragraph 40 (dismissal of pending winding-up petition), and
 - paragraph 42 (moratorium on insolvency proceedings).

Status: Point in time view as at 05/06/2014.

Changes to legislation: Banking Act 2009, Part 2 is up to date with all changes known to be in force on or before 01 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) For that purpose—
- (a) a reference to an administration order is a reference to a bank insolvency order,
 - (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.

Commencement Information

I33 S. 119 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

120 Notice to [^{F21}PRA] 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.
- (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.
- (4) An administrator of a bank may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the [^{F22}PRA] has been notified—
 - (a) by the applicant for an administration order, that the application has been made,
 - (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.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed [^{F23}(in Scotland, lodged)] 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
 - (b) both—
 - (i) the [^{F22}PRA] 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.
- (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).

Status: Point in time view as at 05/06/2014.

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- (10) Where the [F22PRA] receives notice under Condition 1—
- (a) the [F22PRA] shall inform the Bank of England [F24and the FCA],
 - (b) the [F22PRA] 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
 - (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).

Textual Amendments

- F21** Word in s. 120 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F22** Word in s. 120 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F23** Words in s. 120(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F24** Words in s. 120(10)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 17 para. 44\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

- I34** S. 120 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

121 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,
 - (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.
- (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—

“21A Bank insolvency

Section 121 of the Banking Act 2009 provides for this Act to apply in relation to bank insolvency as it applies in relation to liquidation.”

Commencement Information

- I35** S. 121 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 2](#)

Status: Point in time view as at 05/06/2014.

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122 Application of insolvency law

- (1) The Secretary of State and the Treasury may by order made jointly—
 - (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) 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.

Commencement Information

I36 S. 122 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

I37 S. 122 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

Miscellaneous

123 Role of FSCS

- (1) For the purpose of co-operating in the pursuit of Objective 1 in section 99 the FSCS—
 - (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.
- (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
 - (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”.
- (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.
- (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.

Status: Point in time view as at 05/06/2014.

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- (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.

Commencement Information

I38 S. 123 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

124 Transfer of accounts

- (1) This section applies where a bank liquidator arranges, in pursuit of Objective 1 in section 99, for the transfer of eligible depositors' accounts from the bank to another financial institution.
- (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).
- (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.

Commencement Information

I39 S. 124 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

125 Rules

- (1) Section 411 of the Insolvency Act 1986 (company insolvency rules) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—
- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
 - (i) the Treasury, and
 - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
 - (b) in relation to Scotland, by the Treasury.”
- (3) In subsection (2)—
- (a) after “subsection (1),” insert “(1A) ”;

Status: Point in time view as at 05/06/2014.

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- (b) in paragraph (b), after “Secretary of State” insert “ or the Treasury ”.
- (4) 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 2009.”
- (5) 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 2009 ”.
- (6) In subsection (5), after “the Secretary of State” insert “ or the Treasury ”.
- (7) In paragraph 27 of Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules), after “Secretary of State” insert “ or the Treasury ”.
- (8) Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee) shall not apply to the first set of rules which is made in reliance on this section.

Commencement Information

I40 S. 125 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

126 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 2009 (bank insolvency) as in relation to Parts I to VII of this Act.”

Commencement Information

I41 S. 126 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

127 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).

Commencement Information

I42 S. 127 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

128 Evidence

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

Status: Point in time view as at 05/06/2014.

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“(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency),”.

Commencement Information

I43 S. 128 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

129 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).

(2) At the end of that section add—

“(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.”

Commencement Information

I44 S. 129 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

[^{F25} **129A Banks not regulated by PRA**

(1) In the application of this Part to an FCA-regulated bank the modifications specified in the Table apply.

(2) In this section—

“FCA-regulated bank” means a bank which does not carry on any activity which is a PRA-regulated activity for the purposes of the Financial Services and Markets Act 2000;

“immediate group” has the meaning given by section 421ZA of the Financial Services and Markets Act 2000;

“PRA-authorized person” has the meaning given by section 2B(5) of that Act.

TABLE OF MODIFICATIONS

| <i>Provision</i> | <i>Modification</i> |
|------------------|---|
| Section 95 | Treat the reference to the PRA in subsection (1) as a reference to the FCA. |
| Section 96 | (a) Treat the references to the PRA in subsections (2) and (3) as references to the FCA. (b) If the bank has as a member of its immediate group a PRA-authorized person the Bank of England must consult the PRA before applying for a bank insolvency order. (c) The FCA must consult the PRA before applying for a bank insolvency order. |

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| | |
|-------------|---|
| Section 97 | Treat the reference to the PRA in subsection (1) as a reference to the FCA. |
| Section 98 | Treat the references to the PRA in subsection (2) as references to the FCA. |
| Section 100 | <ul style="list-style-type: none"> (a) Treat the reference to two individuals in subsection (2) (a) as a reference to one individual. (b) Ignore subsection (2)(b). (c) Ignore the reference to the PRA in subsection (6)(c). |
| Section 101 | Ignore the reference to the PRA in subsection (7). |
| Section 103 | In the Table, in the entries relating to sections 147 and 241 of the Insolvency Act 1986, treat the reference to the PRA as a reference to the FCA. |
| Section 108 | <ul style="list-style-type: none"> (a) Treat the reference to the PRA in subsections (1) and (2) as a reference to the FCA. (b) Ignore the duty to consult the FCA in subsection (2). (c) Ignore the reference to the PRA in subsection (3). |
| Section 109 | Ignore the reference to the PRA in subsection (4). |
| Section 113 | Ignore subsection (2)(b)(i). |
| Section 115 | Ignore subsection (2)(b)(i). |
| Section 117 | <ul style="list-style-type: none"> (a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore the duty to obtain the consent of the FCA in subsection (2)(a). |
| Section 120 | <ul style="list-style-type: none"> (a) Treat the references to the PRA in subsections (5), (7) and (10) as references to the FCA. (b) Ignore the duty to inform the FCA in subsection (10) (a).] |

Textual Amendments

F25 S. 129A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 17 para. 45](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

130 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.
- (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;

Status: Point in time view as at 05/06/2014.

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- (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
 - (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.

Commencement Information

I45 S. 130 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2

I46 S. 130 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

131 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.
- (2) An order may—
 - (a) amend the Credit Unions 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;
 - (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.
- (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.

Commencement Information

I47 S. 131 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2

I48 S. 131 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

132 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.

Status: Point in time view as at 05/06/2014.

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- (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.

Modifications etc. (not altering text)

C9 S. 132(1): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 17 para. 23** (with arts. 28-31)

Commencement Information

I49 S. 132 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 2**

133 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—
- (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I50 S. 133 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2

I51 S. 133 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, **Sch. para. 2**

134 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,
- (c) references to the Secretary of State, except in section 122, are to be treated as references to the Department of Enterprise, Trade and Investment,
- (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,
- (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 103 above), and
- (g) the reference in section 132 to the Lord Chief Justice is a reference to the Lord Chief Justice in Northern Ireland.

Status: Point in time view as at 05/06/2014.

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Modifications etc. (not altering text)

C10 S. 134 applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, [Sch. 1 para. 4](#)

Commencement Information

I52 S. 134 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

135 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) passed before the commencement of this Part.
- (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.

Commencement Information

I53 S. 135 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2

I54 S. 135 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 2](#)

Status:

Point in time view as at 05/06/2014.

Changes to legislation:

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