



# Banking Act 2009

## 2009 CHAPTER 1

### PART 2

#### BANK INSOLVENCY

##### *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.

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- (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.
- (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

**I1** 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

**I2** 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

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- (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) ”;
- (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.

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**Commencement Information**

**I3** 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.”

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**Commencement Information**

**I4** 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).

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#### Commencement Information

**I5** 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”)—

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

#### Commencement Information

**I6** 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

**I7** S. 129 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 2](#)

### [<sup>F1</sup>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.

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| Section 96  | [ <sup>F2</sup> (a) Read subsection (2)(a) as “the FCA has informed the Bank of England that the FCA is satisfied that Condition 1 in section 7 is met,”.<br>(b) Treat the references to the PRA in subsection (3) as references to the FCA.<br>(ba) Read subsection (3)(a) as “the Bank of England—(i) has informed the FCA that it is satisfied that Condition 2 in section 7 is met, and (ii) has consented to the application,]<br>(c) The FCA must consult the PRA before applying for a bank insolvency order. |
| 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 | (a) Treat the reference to two individuals in subsection (2) (a) as a reference to one individual.<br>(b) Ignore subsection (2)(b).<br>(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 | (a) Treat the reference to the PRA in subsections (1) and (2) as a reference to the FCA.<br>[ <sup>F3</sup> (b) Treat the reference in subsection (2) to the FCA as a reference to the Bank of England.]<br><sup>F4</sup> (c) .....  |
| 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 | (a) Treat the reference to the PRA in subsection (2) as a reference to the FCA.<br>[ <sup>F5</sup> (b) Treat the reference in subsection (2) to the FCA as a reference to the Bank of England.]  |
| Section 120 | (a) Treat the references to the PRA in subsections (5), (7) and (10) as references to the FCA.<br>(b) Ignore the duty to inform the FCA in subsection (10) (a).]   |

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**Textual Amendments**

- F1** 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.](#)

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- F2** Words in s. 129A(2) Table substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 59\(2\)](#) (with [Sch. 3](#)); S.I. 2017/43, reg. 2(g)
- F3** Words in s. 129A(2) Table substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 59\(3\)\(a\)](#) (with [Sch. 3](#)); S.I. 2017/43, reg. 2(g)
- F4** Words in s. 129A(2) Table omitted (1.3.2017) by virtue of [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 59\(3\)\(b\)](#) (with [Sch. 3](#)); S.I. 2017/43, reg. 2(g)
- F5** Words in s. 129A(2) Table substituted (1.3.2017) by [Bank of England and Financial Services Act 2016 \(c. 14\), s. 41\(3\), Sch. 2 para. 59\(4\)](#) (with [Sch. 3](#)); S.I. 2017/43, reg. 2(g)

### 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;
  - (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

- I8** S. 130 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2
- I9** 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.

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- (3) An order—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Provision made under or by virtue of this Part may make special provision in relation to the application of this Part to credit unions.

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**Commencement Information**

- I10** S. 131 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2
- I11** 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.
- (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.

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**Modifications etc. (not altering text)**

- C1** 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)

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**Commencement Information**

- I12** 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.

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**Commencement Information**

- I13** S. 133 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2
- I14** 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](#)

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## 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.

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### Modifications etc. (not altering text)

- C2** 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**
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### Commencement Information

- I15** 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.

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### Commencement Information

- I16** S. 135 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, Sch. para. 2
- I17** 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**



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(8A)(8B) inserted by [2012 c. 21 s. 96\(3\)](#)
- s. 8(2)(d) and word inserted by [2012 c. 21 s. 96\(4\)\(b\)](#)