
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking Act 2009 (c. 1) (“the Act”).

This Order makes provision in relation to the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (S.I. 2009/1800) (“the Dunfermline Compensation Order”).

The Dunfermline Compensation Order requires the independent valuer to assess the compensation, if any, payable to third parties affected by the application of section 38(6) of the Act⁽¹⁾ (by virtue of paragraph 6 of the Dunfermline Building Society Property Transfer Instrument 2009⁽²⁾), and to pre-transfer creditors of Dunfermline Building Society⁽³⁾. The Dunfermline Compensation Order also requires the independent valuer to make assessments in relation to the Dunfermline Resolution Account⁽⁴⁾ (established in accordance with article 6 of that Order) and the Financial Services Compensation Scheme⁽⁵⁾.

This Order makes various provisions in connection with the independent valuer.

Articles 3 and 4 make provision for the remuneration of, and payment of allowances to, the panel appointed in accordance with article 5(1)(b) of the Dunfermline Compensation Order, the independent valuer, and the person appointed in accordance with article 3(2) of this Order to monitor the operation of the arrangements for the remuneration and payment of allowances to the independent valuer.

Article 5 makes provision for the arrangements for the remuneration of, and payment of allowances to, any staff appointed by the independent valuer in exercise of the power conferred by section 55(4) of the Act.

Article 6 makes provision for the independent valuer’s records and accounts.

Article 8 makes provision for the making of rules as to the procedure to be adopted by the independent valuer.

Article 9 provides that the independent valuer may apply to the court to require a person to supply information relevant to the independent valuer’s functions under article 4(a) or (c) of the Dunfermline Compensation Order.

Article 10 provides that a person who supplies information to an independent valuer is not, by reason only of the provision of information to the independent valuer, liable in any proceedings relating to breach of an obligation of confidence.

Article 11 makes provision for the disclosure of information by the independent valuer.

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- (1) Section 38 of the Act deals with default events.
 - (2) The Transfer Instrument was made by the Bank of England in exercise of the powers conferred on it by sections 11(2)(b) and 12(2) of the Act. The Transfer Instrument is available on the Bank of England’s website: www.bankofengland.co.uk.
 - (3) “Pre-transfer creditor” is defined in section 60(3)(b) of the Act.
 - (4) Paragraph 7 of Schedule 1 to the Dunfermline Compensation Order requires the independent valuer to certify whether any costs of the Bank of England or the Treasury to be deducted from the Dunfermline Resolution Account have been reasonably and properly incurred for the purposes specified in paragraph 5(1)(a) of that Schedule.
 - (5) Article 11 of the Dunfermline Compensation Order requires the independent valuer to perform the function in regulation 8(1) of the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009 (S.I. 2009/807) to assess the amount the Financial Services Compensation Scheme would have recovered from the insolvency estate of Dunfermline Building Society had it entered into insolvency immediately before the transfers were made by the Bank of England.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 12 provides that a person affected by the determination of the independent valuer set out in an assessment notice issued under paragraph 4 or 10 of Schedule 2 to the Dunfermline Compensation Order may require the independent valuer to reconsider his or her determination and to produce a revised assessment notice.

Article 13 provides that a person affected by the determination of the independent valuer set out in a revised assessment notice may refer the matter to the Financial Services and Markets Tribunal (“the Tribunal”)(6).

Articles 14 to 27 provide that Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000 (c. 8) and the Financial Services and Markets Tribunal Rules 2001 (S.I. 2001/2476) apply to a reference to the Tribunal made under article 13, subject to the modifications set out in those articles. In particular, new functions are conferred on the President of the Tribunal (appointed from one of the members of chairman in accordance with paragraph 2(1) of Schedule 13 to the Financial Services and Markets Act 2000).

(6) The Financial Services and Markets Tribunal is an independent body established under section 132 of the Financial Services and Markets Act 2000. The Tribunal’s website is available at the following address: <http://www.tribunals.gov.uk/Finance/FinancialServicesMarkets.htm>.