

# Banking Act 2009

# CHAPTER 1

# **BANKING ACT 2009**

# PART 1

# SPECIAL RESOLUTION REGIME

# CHAPTER 1

# INTRODUCTION

- 1 Overview
- 2 Interpretation: "bank"
- 3 Interpretation: other expressions

# CHAPTER 2

### PRE-RESOLUTION POWERS OF THE BANK OF ENGLAND

- 3A Removal of impediments to the exercise of stabilisation powers etc
- 3B Safeguards relating to directions under section 3A

# CHAPTER 3

### SPECIAL RESOLUTION ACTION

# Objectives and code

- 4 Special resolution objectives
- 5 Code of practice
- 6 Code of practice: procedure

Mandatory write-down, conversion etc of capital instruments

- 6A Cases where mandatory write-down, conversion, etc applies
- 6B Mandatory write-down, conversion, etc of capital instruments
- 6C Mandatory reduction instruments: implementation of requirements of section 6B
- 6D Mandatory reduction instruments: supplementary matters

Valuation before mandatory write-down of capital or stabilisation action

6E Pre-resolution valuation

### Exercise of powers: general

- 7 General conditions
- 7A Effect on other group members, financial stability in EUetc
- 8 Specific Condition: private sector purchaser, bridge bank or asset management vehicle
- 8ZA Specific conditions: asset management vehicle
  - 8A Specific condition: bail-in
  - 9 Specific conditions: temporary public ownership
  - 10 Banking Liaison Panel

### The stabilisation options

- 11 Private sector purchaser
- 11A Private sector purchaser: marketing
- 12 Bridge bank
- 12ZA Asset management vehicle
- 12A Bail-in option
- 12AA Bail-in: sequence of write-down and conversion of capital instruments and liabilities
  - 12B Bail-in administrators
    - 13 Temporary public ownership

### Transfer of securities

- 14 Interpretation: "securities"
- 15 Share transfer instrument
- 16 Share transfer order
- 17 Effect
- 18 Continuity
- 19 Conversion and delisting
- 20 Directors and senior managers
- 21 Ancillary instruments: production, registration, &c.
- 22 Termination rights, &c.
- 23 Incidental provision
- 24 Procedure: instruments
- 25 Procedure: orders
- 26 Supplemental instruments
- 26ZA Onward share transfer instruments
  - 26A ... reverse share transfer instruments
    - 27 Supplemental orders
    - 28 Onward transfer
    - 29 Reverse share transfer orders

- 29A Interpretation: "resolution company"
  - 30 Resolution company: share transfers
  - 31 Resolution company: reverse share transfer
  - 32 Interpretation: general

### Transfer of property

- 33 Property transfer instrument
- 34 Effect
- 35 Transferable property
- 36 Continuity
- 36A Directors and senior managers
- 37 Licences
- 38 Termination rights, &c.
- 39 Foreign property
- 39A Banks which are recognised central counterparties
- 39B Property transfer instrument: delisting
- 40 Incidental provision
- 41 Procedure
- 41A Transfer of property subsequent to resolution instrument42 Supplemental instruments
- 42A Private sector purchaser: reverse property transfer
- 43 Onward transfer
- 44 Resolution company: reverse property transfer
- 44A Bail in: reverse property transfer
- 44B Property transfer instruments: special bail-in provision
- 44BA Property transfer instruments and special bail-in provision: supplementary matters
  - 44C Report on special bail-in provision
  - 44D Bridge bank: supplemental property transfer powers
  - 44E Bridge bank: supplemental reverse property transfer powers
  - 45 Temporary public ownership: property transfer
  - 46 Temporary public ownership: reverse property transfer
  - 47 Restriction of partial transfers
  - 48 Power to protect certain interests
  - 48A Creation of liabilities

### Bail-in option

- 48B Special bail-in provision
- 48C Meaning of "protected deposit"
- 48D General interpretation of section 48B
- 48E Report on special bail-in provision
- 48F Power to amend definition of "excluded liabilities"
- 48G Priority between creditors
- 48H Business reorganisation plans
- 48I Bail-in administrator: further functions
- 48J Bail-in administrator: supplementary
- 48K Bail-in administrator: money
- 48L Powers in relation to securities
- 48M Termination rights, etc
- 48N Directors and senior managers
- 480 Directions in or under resolution instrument
- 48P Orders for safeguarding certain financial arrangements

- 48Q Continuity
- 48R Execution and registration of instruments etc
- 48S Resolution instruments: general matters
- 48T Procedure
- 48U Supplemental resolution instruments
- 48V Onward transfer
- 48W Reverse transfer
- 48WA Bail-in option: recovery of expenses

### Replacement of provisional valuation

- 48X Replacement of Bank's provisional valuation
- 48Y Consequences of a replacement valuation

### Termination rights etc

48Z Termination rights etc

### Compensation

- 49 Orders
- 50 Sale to private sector purchaser
- 51 Transfer to temporary public ownership
- 52 Transfer to resolution company
- 52A Bail-in option
- 53 Onward and reverse transfers etc
- 54 Independent valuer: compensation scheme order or bail-in compensation order
- 55 Independent valuer: supplemental
- 56 Independent valuer: money
- 57 Valuation principles
- 58 Resolution fund
- 59 Third party compensation: discretionary provision
- 60 Third party compensation: mandatory provision
- 60A Further mandatory provision: bail-in provision
- 60B Principle of no less favourable treatment
- 61 Sources of compensation
- 62 Procedure

### Independent valuer: valuation under section 6E or 48X

62A Independent valuer: sections 6E and 48X

### Resolution administrator

- 62B Resolution administrator
- 62C Resolution administrator: further functions
- 62D Resolution administrator: supplementary
- 62E Resolution administrator: money

### Incidental functions

- 63 General continuity obligation: property transfers
- 64 Special continuity obligations: property transfers
- 65 Continuity obligations: onward property transfers
- 66 General continuity obligation: share transfers

**Changes to legislation:** Banking Act 2009 is up to date with all changes known to be in force on or before 28 August 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)

- 67 Special continuity obligations: share transfers
- 68 Continuity obligations: onward share transfers
- 69 Continuity obligations: consideration and terms
- 70 Continuity obligations: termination
- 70A Suspension of obligations
- 70B Restriction of security interests
- 70C Suspension of termination rights
- 70D Suspension: general provisions
- 71 Pensions
- 72 Enforcement
- 73 Disputes
- 74 Tax
- 75 Power to change law

#### Treasury

- 76 International obligation notice: general
- 77 International obligation notice: resolution company
- 78 Public funds: general
- 78A Pre-conditions for financial assistance: duty of Bank to give information
- 79 Public funds: resolution company
- 79A Private sector purchaser: report
- 80 Resolution company: report
- 80A Transfer for bail-in purposes: report
- 81 Temporary public ownership: report
- 81A Accounting information to be included in reports under sections 80, 80A(2)(b) and 81

#### Groups

- 81AA Cases where mandatory write-down, conversion etc applies: banking group companies
- 81B Sale to commercial purchaser and transfer to bridge bank
- 81ZBA Transfer to asset management vehicle
- 81BA Bail-in option
- 81C Section 81B or 81ZBA: supplemental
- 81CA Section 81BA: supplemental
  - 81D Interpretation: "banking group company" &c.
  - 82 Temporary public ownership
  - 83 Supplemental

#### **CHAPTER 4**

### INFORMATION, INVESTIGATION AND ENFORCEMENT

### Powers to gather information

- 83ZA Information
- 83ZB Reports by skilled persons

### Appointment of investigators

- 83ZC Appointment of persons to carry out general investigations
- 83ZD Appointment of person to carry out investigations in particular cases
- 83ZE Investigations etc in support of foreign resolution authorities

### Conduct of investigations

- 83ZF Investigations: general
- 83ZG Powers of persons appointed under section 83ZC
- 83ZH Powers of persons appointed as a result of section 83ZD
- 83ZI Admissibility of statements made to investigators

### Information and documents: supplemental provision

- 83ZJ Information and documents: supplemental provision
- 83ZK Protected items
- 83ZL Entry of premises under warrant
- 83ZM Retention of documents obtained under section 83ZL
- 83ZN Offences etc
- 83ZO Prosecution of offences under section 83ZN
- 83ZP Offences under section 83ZN by bodies corporate etc

### Enforcement of relevant requirements

- 83ZQ Injunctions: prevent failure to comply with relevant requirement
- 83ZR Regulatory sanctions
- 83ZS Determination of sanctions
- 83ZT Procedure: warning notice
- 83ZU Procedure: decision notice
- 83ZV Procedure: general
- 83ZW Appeal
- 83ZX Injunctions: failure to comply with certain section 83ZR sanctions
- 83ZY Publication
- 83ZZ Co-operation
- 83Z1 Delegation of enforcement functions

### Enforcement of share transfer orders

83Z2 Enforcement: share transfer orders

### CHAPTER 5

### SPECIAL CASES

### Banks not regulated by PRA

83A Modifications of Part

### Building societies, &c.

- 84 Application of Part 1: general
- 84ZA Bridge bank: share transfer instruments
  - 84A Bail-in option: building societies
  - 84B Further provision: conversion of building society into company
  - 84C Further provision: transfer of business of building society to company
  - 84D Transfer to a bridge bank or Bail-in option: modifications of this Act and other legislation
    - 85 Temporary public ownership
    - 86 Distribution of assets on dissolution or winding up
    - 87 Interpretation
    - 88 Consequential provision

89 Credit unions

### Investment firms

89A Application to investment firms

### Recognised central counterparties

- 89B Application to recognised central counterparties
- 89C Recognised central counterparty rules
- 89D Recognised central counterparty membership
- 89E Recognition of transferee company
- 89F Recognised central counterparty compensation orders
- 89G Interpretation: "recognised central counterparty" &c.

### **CHAPTER 6**

### THIRD-COUNTRY RESOLUTION ACTIONS

### Third-country resolution actions

- 89H Recognition of third-country resolution actions
- 891 Effect of recognition of third-country resolution action by Bank of England
- 89J Third-country instruments: supplementary provision

### CHAPTER 6A

### RESOLUTION OF UK BRANCHES OF THIRD-COUNTRY INSTITUTIONS

89JA Resolution of UK branches of third-country institutions

### CHAPTER 7

### GENERAL PROVISIONS

- 89K Insolvency Proceedings
- 89L Restrictions on disclosure of confidential information
- 89M Giving of notices, documents etc under Part 1

### PART 2

### BANK INSOLVENCY

### Introduction

- 90 Overview
- 91 Interpretation: "bank"
- 92 Interpretation: "the court"
- 93 Interpretation: other expressions

### Bank insolvency order

- 94 The order
- 95 Application
- 96 Grounds for applying

- 97 Grounds for making
- 98 Commencement

### Process of bank liquidation

- 99 Objectives
- 100 Liquidation committee
- 101 Liquidation committee: supplemental
- 102 Objective 1: (a) or (b)?
- 103 General powers, duties and effect
- 104 Additional general powers
- 105 Status of bank liquidator

### Tenure of bank liquidator

- 106 Term of appointment
- 107 Resignation
- 108 Removal by court
- 109 Removal by creditors
- 110 Disqualification
- 111 Release
- 112 Replacement

### Termination of process, &c.

- 113 Company voluntary arrangement
- 114 Administration
- 115 Dissolution
- 116 Dissolution: supplemental

### Other processes

- 117 Bank insolvency as alternative order
- 118 Voluntary winding-up
- 119 Exclusion of other procedures
- 120 Notice to PRA of preliminary steps
- 120A Notice to the regulators and the Bank of England of preliminary steps
- 121 Disqualification of directors
- 122 Application of insolvency law

### Miscellaneous

- 123 Role of FSCS
- 124 Transfer of accounts
- 125 Rules
- 126 Fees
- 127 Insolvency Services Account
- 128 Evidence
- 129 Co-operation between courts
- 129A Banks not regulated by PRA
  - 130 Building societies
  - 131 Credit unions
  - 132 Partnerships
  - 133 Scottish partnerships
  - 134 Northern Ireland

### 135 Consequential provision

### PART 3

### BANK ADMINISTRATION

#### Introduction

- 136 Overview
- 137 Objectives
- 138 Objective 1: supporting private sector purchaser or resolution company
- 139 Objective 1: duration
- 140 Objective 2: "normal" administration

#### Process

- 141 Bank administration order
- 142 Application
- 143 Grounds for applying
- 144 Grounds for making
- 145 General powers, duties and effect
- 145A Power to direct bank administrator
- 146 Status of bank administrator
- 147 Administrator's proposals
- 148 Sharing information

### Multiple transfers

- 149 General application of this Part
- 150 Resolution company to private purchaser
- 151 Property transfer from resolution company
- 152 Property transfer from temporary public ownership
- 152A Property transfer from transferred institution

### **Termination**

- 153 Successful rescue
- 154 Winding-up or voluntary arrangement

### Miscellaneous

- 155 Disqualification of directors
- 156 Application of other law
- 157 Other processes
- 157A Banks not regulated by PRA
- 158 Building societies
- 159 Credit unions
- 159A Application to investment firms
- 160 Rules
- 161 Fees
- 162 Evidence
- 163 Partnerships
- 164 Scottish partnerships
- 165 Co-operation between courts
- 166 Interpretation: general
- 167 Northern Ireland

been made appear in the content and are referenced with annotations. (See end of Document for details)

### 168 Consequential provision

### PART 4

#### FINANCIAL SERVICES COMPENSATION SCHEME

- 169 Overview
- 170 Contingency funding
- 171 Special resolution regime
- 172 Investing in National Loans Fund
- 173 Borrowing from National Loans Fund
- 174 Procedure for claims
- 175 Rights in insolvency
- 176 Information
- 177 Payments in error
- 178 Regulations
- 179 Delegation of functions
- 180 Functions under this Act

### PART 5

### INTER-BANK PAYMENT SYSTEMS

#### Introduction

- 181 Overview
- 182 Interpretation: "... payment system"
- 183 Interpretation: other expressions

### Recognised systems

- 184 Recognition order
- 185 Recognition criteria
- 186 Procedure
- 186A Amendment of recognition order
- 187 De-recognition

### Regulation

- 188 Principles
- 189 Codes of practice
- 190 System rules
- 191 Directions
- 192 Role of FCA and PRA

### Enforcement

- 193 Inspection
- 194 Inspection: warrant
- 195 Independent report
- 196 Compliance failure
- 197 Publication
- 198 Penalty
- 199 Closure
- 200 Management disqualification
- 201 Warning
- 202 Appeal

### 202A Injunctions

### Miscellaneous

- 203 Fees
- 203A Records
- 203B Annual report
- 204 Information
- 205 Pretending to be recognised
- 206 Saving for informal oversight
- 206A Services forming part of recognised ... payment systems
- 206B International obligations

### PART 6

#### BANKNOTES: SCOTLAND AND NORTHERN IRELAND

#### Introduction

207 Overview

#### Key terms

- 208 "Banknote"
- 209 "Issue"
- 210 "Authorised bank"
- 211 "Commencement"

#### Authorisation to issue

- 212 Repeal of old authorising enactments
- 213 Authorisation to issue banknotes
- 214 Consequential repeals and amendments
- 214A Power to designate banks as "authorised banks"

### Regulations and rules

- 215 Banknote regulations
- 216 Banknote rules

### Specific issues

- 217 Backing assets
- 218 Information
- 219 Ceasing the business of issuing notes
- 220 Insolvency, &c.

### Enforcement

- 221 Offence: unlawful issue
- 222 Financial penalty
- 223 Termination of right to issue
- 224 Application to court

### Bank of England

- 225 Organisation
- 226 Discretionary functions

### 227 Exemption

### PART 7

### MISCELLANEOUS

### Treasury support for banks

- 228 Consolidated Fund
- 229 National Loans Fund
- 230 "Financial institution"
- 231 Reports

### Investment banks

- 232 Definition
- 233 Insolvency regulations
- 234 Regulations: details
- 235 Regulations: procedure
- 236 Review

### Banking (Special Provisions) Act 2008

237 Compensation: valuer

### Bank of England

- 238 UK financial stability
- 239 Number of directors
- 240 Meetings
- 241 Chair of court
- 242 Quorum
- 243 Tenure
- 244 Immunity
- 245 Weekly return
- 246 Information
- 247 Bank of England Act 1946

### Financial Services Authority

- 248 Variation of permission
- 249 Functions
- 250 Information

### Central banks

- 251 Financial assistance to building societies
- 252 Registration of charges
- 253 Registration of charges: Scotland

### Funds attached rule (Scotland)

254 Abolition for cheques

### Financial collateral arrangements

- 255 Regulations
- 256 Supplemental

### State aid

256A State aid

256B Bank of England" and "Prudential Regulation Authority"

### PART 8

### GENERAL

- 257 "Financial assistance"
- 258 "Enactment"
- 258A "Investment firm"
- 259 Statutory instruments
- 260 Money
- 261 Index of defined terms
- 262 Repeal
- 263 Commencement
- 264 Extent
- 265 Short title

## Status:

Point in time view as at 19/12/2018.

### Changes to legislation:

Banking Act 2009 is up to date with all changes known to be in force on or before 28 August 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.