



# Banking Act 2009

## 2009 CHAPTER 1

### PART 7

#### MISCELLANEOUS

##### *Treasury support for banks*

#### **228 Consolidated Fund**

- (1) There shall be paid out of money provided by Parliament expenditure incurred—
  - (a) by the Treasury for any purpose in connection with Parts 1 to 3 of this Act,
  - (b) by the Treasury, or by the Secretary of State with the consent of the Treasury, in respect of, or in connection with giving, financial assistance to or in respect of a bank or other financial institution (other than in respect of loans made in accordance with section 229), or
  - (c) by the Treasury in respect of financial assistance to the Bank of England.
- (2) For the purpose of subsection (1)(b) expenditure is incurred in respect of financial assistance in respect of banks or other financial institutions if it is incurred in respect of an activity, transaction or arrangement, or class of activity, transaction or arrangement, which is expected to facilitate any part of the business of one or more banks or other financial institutions; and for that purpose it does not matter—
  - (a) whether or not that is the sole or principal expected effect of the activity, transaction or arrangement, or
  - (b) whether the sole or principal motive for the activity, transaction or arrangement is (i) its effect on banks or other financial institutions, (ii) its effect on the economy as a whole, (iii) its effect on a particular industry or sector of the economy, or (iv) its effect on actual or potential customers of banks or other financial institutions.
- (3) In this section “financial assistance” has the meaning given by section 257 (and an order under that section may restrict or expand the effect of subsection (2)).
- (4) This section has effect in relation to expenditure whether incurred—

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- (a) before or after Royal Assent, and
  - (b) in pursuance of obligations entered into before or after Royal Assent.
- (5) Expenditure which could be paid out of money provided by Parliament under subsection (1) shall be charged on and paid out of the Consolidated Fund if the Treasury are satisfied that the need for the expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament.
- (6) Where money is paid in reliance on subsection (5) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

#### Commencement Information

**I1** S. 228 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 5

## 229 National Loans Fund

- (1) Where the Treasury propose to make a loan to or in respect of a bank or other financial institution, they may arrange for money to be paid out of the National Loans Fund.
- (2) The Treasury may make arrangements under subsection (1) only where they think it necessary to make the loan urgently in order to protect the stability of the financial systems of the United Kingdom.
- (3) The Treasury shall determine—
- (a) the rate of interest on a loan, and
  - (b) other terms and conditions.
- (4) Sums received by the Treasury in respect of loans by virtue of this section shall be paid into the National Loans Fund.
- (5) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this section.
- (6) Where money is paid in reliance on subsection (1) the Treasury shall as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the institution to or in respect of which it is paid).
- (7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under subsection (6).

#### Commencement Information

**I2** S. 229 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 5

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## 230 “Financial institution”

- (1) The Treasury may by order provide that a specified institution, or an institution of a specified class, is or is not to be treated as a financial institution for the purposes of section 228 or 229.
- (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

- I3** S. 230 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 5](#)
- I4** S. 230 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 5](#)

## 231 Reports

- (1) The Treasury shall prepare reports about any arrangements entered into which involve or may require reliance on section 228(1).
- (2) A report must be prepared in respect of—
  - (a) the period beginning with 1st April 2009 and ending with 30th September 2009, and
  - (b) each successive period of 6 months;but no report is required for a period in respect of which there is nothing to record.
- (3) The Treasury shall lay each report before the House of Commons as soon as is reasonably practicable.
- (4) A report must not—
  - (a) specify individual arrangements, or
  - (b) identify, or enable the identification of, individual beneficiaries.
- (5) The Treasury must aim to give as much information as possible in a report, subject to subsection (4) and other considerations of public interest.

### Commencement Information

- I5** S. 231 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 5](#)

### *Investment banks*

## 232 Definition

- (1) In this group of sections “investment bank” means an institution which satisfies the following conditions.
- (2) Condition 1 is that the institution has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of—
  - (a) safeguarding and administering investments,

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- (b) dealing in investments as principal, or
  - (c) dealing in investments as agent.
- (3) Condition 2 is that the institution holds client assets.
- (4) In this group of sections “client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust and whether or not the undertaking has been complied with).
- (5) Condition 3 is that the institution is incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) The Treasury may by order—
- (a) provide that a specified class of institution, which has a permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, is to be treated as an investment bank for the purpose of this group of sections;
  - (b) provide that a specified class of institution is not to be treated as an investment bank for the purpose of this group of sections;
  - (c) provide that assets of a specified kind, or held in specified circumstances, are to be or not to be treated as client assets for the purpose of this group of sections;
  - (d) amend a provision of this section in consequence of provision under paragraph (a), (b) or (c).

#### Commencement Information

- I6** S. 232 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)
- I7** S. 232 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

### 233 Insolvency regulations

- (1) The Treasury may by regulations (“investment bank insolvency regulations”)—
- (a) modify the law of insolvency in its application to investment banks;
  - (b) establish a new procedure for investment banks where—
    - (i) they are unable, or are likely to become unable, to pay their debts (within the meaning of section 93(4)), or
    - (ii) their winding up would be fair (within the meaning of section 93(8)).
- (2) Investment bank insolvency regulations may, in particular—
- (a) apply or replicate (with or without modifications) or make provision similar to provision made by or under the Insolvency Act 1986 or Part 2 or 3 of this Act;
  - (b) establish a new procedure either (i) to operate for investment banks in place of liquidation or administration (under the Insolvency Act 1986), or (ii) to operate alongside liquidation or administration in respect of a particular part of the business or affairs of investment banks.
- (3) In making investment bank insolvency regulations the Treasury shall have regard to the desirability of—
- (a) identifying, protecting, and facilitating the return of, client assets,
  - (b) protecting creditors' rights,

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- (c) ensuring certainty for investment banks, creditors, clients, liquidators and administrators,
  - (d) minimising the disruption of business and markets, and
  - (e) maximising the efficiency and effectiveness of the financial services industry in the United Kingdom.
- (4) A reference to returning client assets includes a reference to—
- (a) transferring assets to another institution, and
  - (b) returning or transferring assets equivalent to those which an institution undertook to hold for clients.

#### Commencement Information

- 18** S. 233 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)
- 19** S. 233 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

### 234 Regulations: details

- (1) Investment bank insolvency regulations may provide for a procedure to be instituted—
- (a) by a court, or
  - (b) by the action of one or more specified classes of person.
- (2) Investment bank insolvency regulations may—
- (a) confer functions on persons appointed in accordance with the regulations (which may, in particular, (i) be similar to the functions of a liquidator or administrator under the Insolvency Act 1986, or (ii) involve acting as a trustee of client assets), and
  - (b) specify objectives to be pursued by a person appointed in accordance with the regulations.
- (3) Investment bank insolvency regulations may make the application of a provision depend—
- (a) on whether an investment bank is, or is likely to become, unable to pay its debts,
  - (b) on whether the winding up of an investment bank would be fair, or
  - (c) partly on those and partly on other considerations.
- (4) Investment bank insolvency regulations may make provision about the relationship between a procedure established by the regulations and—
- (a) liquidation or administration under the Insolvency Act 1986,
  - (b) bank insolvency or bank administration under Part 2 or 3 of this Act, and
  - (c) provision made by or under any other enactment in connection with insolvency.
- (5) Regulations by virtue of subsection (4) may, in particular—
- (a) include provision for temporary or permanent moratoria;
  - (b) amend an enactment.
- (6) Investment bank insolvency regulations may include provision—
- (a) establishing a mechanism for determining which assets are client assets (subject to section 232);

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- (b) establishing a mechanism for determining that assets are to be, or not to be, treated as client assets (subject to section 232);
  - (c) about the treatment of client assets;
  - (d) about the treatment of unsettled transactions (and related collateral);
  - (e) for the transfer to another financial institution of assets or transactions;
  - (f) for the creation or enforcement of rights (including rights that take preference over creditors' rights) in respect of client assets or other assets;
  - (g) indemnifying a person who is exercising or purporting to exercise functions under or by virtue of the regulations;
  - (h) for recovery of assets transferred in error.
- (7) Provision may be included under subsection (6)(f) only to the extent that the Treasury think it necessary having regard to the desirability of protecting both—
- (a) client assets, and
  - (b) creditors' rights.
- (8) Investment bank insolvency regulations may confer functions on—
- (a) a court or tribunal,
  - (b) the Financial Services Authority,
  - (c) the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000),
  - (d) the scheme manager of that Scheme, and
  - (e) any other specified person.
- (9) Investment bank insolvency regulations may include provision about institutions that are or were group undertakings (within the meaning of section 1161(5) of the Companies Act 2006) of an investment bank.
- (10) Investment bank insolvency regulations may replicate or apply, with or without modifications, a power to make procedural rules.
- (11) Investment bank insolvency regulations may include provision for assigning or apportioning responsibility for the cost of the application of a procedure established or modified by the regulations.

#### Commencement Information

**I10** S. 234 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

**I11** S. 234 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

## 235 Regulations: procedure

- (1) Investment bank insolvency regulations shall be made by statutory instrument.
- (2) Investment bank insolvency regulations may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) The Treasury must consult before laying draft investment bank insolvency regulations before Parliament.

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- (4) If the power to make investment bank insolvency regulations has not been exercised before the end of the period of 2 years beginning with the date on which this Act is passed, it lapses.
- (5) An order under section 232(6)—
  - (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

**I12** S. 235 in force at 17.2.2009 for specified purposes by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

**I13** S. 235 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296](#), arts. 2, 3, [Sch. para. 6](#)

### 236 Review

- (1) The Treasury shall arrange for a review of the effect of any investment bank insolvency regulations.
- (2) The review must be completed during the period of 2 years beginning with the date on which the regulations come into force.
- (3) The Treasury shall appoint one or more persons to conduct the review; and a person appointed must have expertise in connection with the law of insolvency or financial services.
- (4) The review must consider, in particular—
  - (a) how far the regulations are achieving the objectives specified in section 233(3), and
  - (b) whether the regulations should continue to have effect.
- (5) The review must result in a report to the Treasury.
- (6) The Treasury shall lay a copy of the report before Parliament.
- (7) If a review recommends further reviews—
  - (a) the Treasury may arrange for the further reviews, and
  - (b) subsections (3) to (6) (and this subsection) shall apply to them.

#### Commencement Information

**I14** S. 236 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 6](#)

### *Banking (Special Provisions) Act 2008*

### 237 Compensation: valuer

Without prejudice to the generality of section 12 of the Banking (Special Provisions) Act 2008 (consequential and supplementary provision), it is declared that the power under section 9 of that Act to make provision for the appointment of a valuer

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includes power to replicate, or to make provision of a kind that may be made under, section 55(1) to (3) of this Act.

#### Commencement Information

**I15** S. 237 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 7

### *Bank of England*

VALID FROM 01/06/2009

#### **238 UK financial stability**

(1) After section 2 of the Bank of England Act 1998 (functions of court of directors) insert—

##### **“2A Financial Stability Objective**

- (1) An objective of the Bank shall be to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom (the “Financial Stability Objective”).
- (2) In pursuing the Financial Stability Objective the Bank shall aim to work with other relevant bodies (including the Treasury and the Financial Services Authority).
- (3) The court of directors shall, consulting the Treasury, determine and review the Bank's strategy in relation to the Financial Stability Objective.

##### **2B Financial Stability Committee**

- (1) There shall be a sub-committee of the court of directors of the Bank (the “Financial Stability Committee”) consisting of—
  - (a) the Governor of the Bank, who shall chair the Committee (when present),
  - (b) the Deputy Governors of the Bank, and
  - (c) 4 directors of the Bank, appointed by the chair of the court of directors (designated under paragraph 13 of Schedule 1).
- (2) The Committee shall have the following functions—
  - (a) to make recommendations to the court of directors, which they shall consider, about the nature and implementation of the Bank's strategy in relation to the Financial Stability Objective,
  - (b) to give advice about whether and how the Bank should act in respect of an institution, where the issue appears to the Committee to be relevant to the Financial Stability Objective,
  - (c) in particular, to give advice about whether and how the Bank should use stabilisation powers under Part 1 of the Banking Act 2009 in particular cases,
  - (d) to monitor the Bank's use of the stabilisation powers,



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- (e) to monitor the Bank's exercise of its functions under Part 5 of the Banking Act 2009 (inter-bank payment systems), and
  - (f) any other functions delegated to the Committee by the court of directors for the purpose of pursuing the Financial Stability Objective.
- (3) The Treasury may appoint a person to represent the Treasury at meetings of the Committee; and the Treasury's representative—
- (a) may not vote in proceedings of the Committee,
  - (b) shall in all other respects be a member of the Committee, and
  - (c) may be replaced by the Treasury.
- (4) The Committee may co-opt other non-voting members.
- (5) The chair of the court of directors may replace members of the Committee appointed under subsection (1)(c).

### **2C Financial Stability Committee: supplemental**

- (1) The Committee shall determine its own procedure (including quorum).
- (2) If a member of the Committee has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—
- (a) he shall disclose his interest to the Committee when it considers the dealing or business, and
  - (b) he shall have no vote in proceedings of the Committee in relation to any question arising from its consideration of the dealing or business, unless the Committee has resolved that the interest does not give rise to a conflict of interest.
- (3) The Committee may delegate a function under section 2B(2)(b) to (e) to two or more of its members, excluding—
- (a) the Treasury representative, and
  - (b) co-opted non-voting members.”
- (2) At the end of section 2 of the Bank of England Act 1998 add—
- “(5) Sections 2A and 11 set objectives for the Bank in relation to financial stability and monetary policy; and subsections (2) to (4) above are subject to those sections.”

VALID FROM 01/06/2009

### **239 Number of directors**

- (1) Section 1 of the Bank of England Act 1998 (court of directors) is amended as follows.
- (2) In subsection (2) omit “16”.
- (3) After subsection (2) insert—
- “(2A) The number of directors must not exceed 9.”

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- (4) The directors immediately before the day on which this section comes into force shall vacate office on that day (without prejudice to re-appointment).

VALID FROM 01/06/2009

#### 240 Meetings

- (1) Paragraph 12 of Schedule 1 to the Bank of England 1998 (court of directors: meetings) is amended as follows.
- (2) In sub-paragraph (1) for “once a month” substitute “ 7 times in each calendar year ”.
- (3) For sub-paragraph (2) substitute—
- “(2) Either of the following may summon a meeting at any time on giving such notice as the circumstances appear to require—
- (a) the Governor of the Bank (or in his absence a Deputy Governor), and
- (b) the chair of the court.”

VALID FROM 01/06/2009

#### 241 Chair of court

- (1) For paragraph 13(3) of Schedule 1 to the Bank of England Act 1998 (court of directors: chairing meetings) substitute—
- “(3) The Chancellor of the Exchequer may designate—
- (a) a member of the court to chair its meetings (“the chair of the court”), and
- (b) one or more members of the court as deputies to chair its meetings in the absence of the chair of the court.”
- (2) For section 3(4) of that Act (sub-committee: chair) substitute—
- “(4) The chair of the court (designated under paragraph 13 of Schedule 1) shall chair meetings of the sub-committee (when present).”

VALID FROM 01/06/2009

#### 242 Quorum

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 3 (functions delegated to sub-committee)—
- (a) omit subsection (3),
- (b) in subsection (7) for “(3)” substitute “ (4) ”, and
- (c) at the end of subsection (7) add “ (including quorum) ”.

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- (3) In paragraph 13 of Schedule 1 (court of directors: proceedings)—
- (a) omit sub-paragraph (2),
  - (b) in sub-paragraph (6) for “(2)” substitute “ (3) ”, and
  - (c) at the end of sub-paragraph (6) add “ (including quorum) ”.

VALID FROM 01/06/2009

#### 243 Tenure

- (1) At the end of paragraph 1 of Schedule 1 to the Bank of England Act 1998 (Governor and Deputies: appointment) add—
- “(3) A person may not be appointed as Governor more than twice.
  - (4) A person may not be appointed as Deputy Governor more than twice.”
- (2) At the end of paragraph 6 of that Schedule (re-appointment) insert “ (subject to paragraph 1(3) and (4)) ”.
- (3) After paragraphs 1 and 2 of Schedule 3 to that Act (Monetary Policy Committee: appointment) insert—
- “2A A person may not be appointed as a member of the Committee under section 13(2)(c) more than twice.”
- (4) At the end of paragraph 6 of that Schedule (re-appointment) insert “ (subject to paragraph 2A) ”.

#### 244 Immunity

- (1) The Bank of England has immunity in its capacity as a monetary authority.
- (2) In this section—
- (a) a reference to the Bank of England is a reference to the Bank and anyone who acts or purports to act as a director, officer, servant or agent of the Bank,
  - (b) “immunity” means immunity from liability in damages in respect of action or inaction, and
  - (c) a reference to the Bank's capacity as a monetary authority includes a reference to functions exercised by the Bank for the purpose of or in connection with—
    - (i) acting as the central bank of the United Kingdom, or
    - (ii) protecting or enhancing the stability of the financial systems of the United Kingdom.
- (3) The immunity does not extend to action or inaction—
- (a) in bad faith, or
  - (b) in contravention of section 6(1) of the Human Rights Act 1998.

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**Commencement Information**

**I16** S. 244 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 8

**245 Weekly return**

Section 6 of the Bank Charter Act 1844 (Bank to produce weekly account) shall cease to have effect.

**Commencement Information**

**I17** S. 245 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 8

**246 Information**

- (1) The Bank of England may disclose information that it thinks relevant to the financial stability of—
  - (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) Information about the business or other affairs of a specified or identifiable person may be disclosed under subsection (1) only to—
  - (a) the Treasury;
  - (b) the Financial Services Authority;
  - (c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000);
  - (d) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the Financial Services Authority in relation to financial stability;
  - (e) the European Central Bank.
- (3) This section—
  - (a) overrides a contractual or other requirement to keep information in confidence, and
  - (b) is without prejudice to any other power to disclose information.

**Commencement Information**

**I18** S. 246 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 8

**247 Bank of England Act 1946**

Nothing in this Act affects the generality of section 4 of the Bank of England Act 1946 (directions and relations with other banks).

**Commencement Information**

**I19** S. 247 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 8

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## Financial Services Authority

### 248 Variation of permission

At the end of section 45(1)(c) of the Financial Services and Markets Act 2000 (variation of permission to carry on regulated activities) add “ (whether of the services of the authorised person or of the services of other authorised persons) ”.

#### Commencement Information

**I20** S. 248 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 9

### 249 Functions

- (1) A reference in an enactment to functions conferred on the Financial Services Authority by or under the Financial Services and Markets Act 2000 (or any part of it) includes a reference to functions conferred on the Authority by or under this Act.
- (2) A reference in an enactment to functions of the Financial Services Authority includes a reference to functions conferred by or under this Act (irrespective of whether the enactment was passed or made before or after the commencement of this Act).
- (3) The Treasury may by order disapply subsection (1) or (2) to a specified extent; and 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) At the end of section 1 of the Financial Services and Markets Act 2000 (the Authority) add—

“(4) Section 249 of the Banking Act 2009 provides for references to functions of the Authority (whether generally or under this Act) to include references to functions conferred on the Authority by that Act (subject to any order under that section).”

#### Commencement Information

**I21** S. 249 in force at 17.2.2009 for specified purposes by S.I. 2009/296, arts. 2, 3, Sch. para. 9

**I22** S. 249 in force at 21.2.2009 in so far as not already in force by S.I. 2009/296, arts. 2, 3, Sch. para. 9

### 250 Information

- (1) The Financial Services Authority shall collect information that it thinks is or may be relevant to the stability of—
  - (a) individual financial institutions, or
  - (b) one or more aspects of the financial systems of the United Kingdom.
- (2) The Authority may perform its function under subsection (1) by the exercise of the power in section 165 of the Financial Services and Markets Act 2000 (power to require information—as qualified by section 249 above) or in any other way.

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### Commencement Information

**I23** S. 250 in force at 21.2.2009 by [S.I. 2009/296](#), art. 3, [Sch. para. 9](#)

## Central banks

### 251 Financial assistance to building societies

- (1) The Treasury may by order modify the Building Societies Act 1986 for the purpose of facilitating, or in connection with, the provision of financial assistance to building societies by—
  - (a) the Treasury,
  - (b) the Bank of England,
  - (c) another central bank of a Member State of the European Economic Area, or
  - (d) the European Central Bank.
- (2) An order may affect any provision of the Building Societies Act 1986 which appears to the Treasury otherwise capable of preventing, impeding or affecting the provision of financial assistance; including, in particular, provision—
  - (a) about the establishment, constitution or powers of building societies,
  - (b) restricting or otherwise dealing with raising funds or borrowing,
  - (c) restricting or otherwise dealing with what may be done by or in relation to building societies,
  - (d) about security, or
  - (e) about the application of insolvency law or other legislation relating to companies.
- (3) An order—
  - (a) may disapply or modify a provision;
  - (b) may (but need not) take the form of textual amendment.
- (4) Incidental provision of an order (included in reliance on section 259(1)(c)) may, in particular—
  - (a) impose conditions, limits or other restrictions on what may be done in reliance on a provision of the order;
  - (b) confer a discretion on the Treasury, the Bank of England or another person or class of person.
- (5) Incidental or consequential provision of an order (included in reliance on section 259(1)(c)) may disapply or modify an enactment, whether by textual amendment or otherwise.
- (6) 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.
- (7) The Treasury may by order create exceptions to or otherwise modify the effect of section 9B of the Building Societies Act 1986 (restriction on creation of floating charges); and—

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- (a) the Treasury may make an order only if they think it is likely to help building societies to use, give effect to or take advantage of financial assistance of the kind specified in subsection (1),
  - (b) an order may have effect in relation to transactions between building societies and persons not listed in subsection (1),
  - (c) an order shall be made by statutory instrument, and
  - (d) an order may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (8) In this section, “financial assistance” has the meaning given by section 257.

#### Commencement Information

**I24** S. 251 in force at 17.2.2009 for specified purposes by [S.I. 2009/296, arts. 2, 3, Sch. para. 10](#)

**I25** S. 251 in force at 21.2.2009 in so far as not already in force by [S.I. 2009/296, arts. 2, 3, Sch. para. 10](#)

## 252 Registration of charges

- (1) Part 25 of the Companies Act 2006 (registration of charges) does not apply to a charge if the person interested in it is—
- (a) the Bank of England,
  - (b) the central bank of a country or territory outside the United Kingdom, or
  - (c) the European Central Bank.
- (2) The reference in subsection (1) to Part 25 of the Companies Act 2006 includes a reference to—
- (a) Part 12 of the Companies Act 1985 (which has effect until the commencement of Part 25 of the 2006 Act),
  - (b) Part 13 of the Companies (Northern Ireland) Order 1986 (which has effect until the commencement of Part 25 of the 2006 Act), and
  - (c) any provision about registration of charges made under section 1052 of the Companies Act 2006 (overseas companies).

#### Commencement Information

**I26** S. 252 in force at 21.2.2009 by [S.I. 2009/296, art. 3, Sch. para. 11](#)

## 253 Registration of charges: Scotland

(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.

- (2) In section 38 (creation of floating charges)—
- (a) in subsection (3), after “to” insert “ subsection (3A) and ”, and
  - (b) after that subsection insert—

“(3A) If a floating charge is granted in favour of a central institution, it is created only when the document granting the floating charge is executed by the company granting the charge.”

(3) In section 39 (advance notice of floating charges), after subsection (3) add—

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“(4) This section does not apply where a company proposes to grant a floating charge in favour of a central institution.”

(4) In section 42 (assignment of floating charges), after subsection (3) add—

“(4) This section does not apply where a floating charge is assigned (whether in whole or to a specified extent) to or by a central institution.”

(5) In section 43 (alteration of floating charges)—

- (a) in subsection (4), for “But paragraph” substitute “ Paragraph ”, and
- (b) after that subsection insert—

“(4A) Paragraph (b) of subsection (3) above does not apply in respect of an alteration if—

- (a) the holder of the floating charge is a central institution, or
- (b) the holder of the floating charge is not a central institution but the alteration is to be made in connection with a floating charge which is held (or which has been or is to be held) by a central institution.”

(6) In section 44 (discharge of floating charges), after subsection (3) add—

“(4) This section does not apply where the floating charge to be discharged (whether in whole or to a specified extent) is or has been held by a central institution.”

(7) In section 47 (interpretation), after “Part—” insert—

““central institution” means—

- (a) the Bank of England,
- (b) the central bank of a country or territory outside the United Kingdom, or
- (c) the European Central Bank;”

#### Commencement Information

**I27** S. 253 in force at 21.2.2009 by S.I. 2009/296, art. 3, Sch. para. 11

VALID FROM 12/04/2009

#### *Funds attached rule (Scotland)*

#### **254 Abolition for cheques**

- (1) A reference to the “funds attached” rule is a reference to the rule of law in Scotland by virtue of which a bill of exchange, when presented to the drawee for payment, operates as an assignment of the sum for which it is drawn (or, if the drawee holds insufficient funds, of those funds) in favour of the holder of the bill.
- (2) The “funds attached” rule is abolished for cheques presented for payment after the commencement of this section.



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- (3) Expressions used in this section have the same meaning as in the Bills of Exchange Act 1882.
- (4) In that Act—
  - (a) in section 53(2) (funds in hands of drawee: Scotland)—
    - (i) the words “Subject to section 75A of this Act,” cease to have effect, and
    - (ii) after “drawee of a bill” insert “ other than a cheque ”, and
  - (b) section 75A(countermanded cheques) ceases to have effect.
- (5) Section 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (countermanded cheques) ceases to have effect.

VALID FROM 25/05/2016

### *Financial collateral arrangements*

#### **255 Regulations**

- (1) The Treasury may make regulations about financial collateral arrangements.
- (2) “Financial collateral arrangements” are arrangements under which financial collateral is used as security in respect of a loan or other liability; and for that purpose—
  - (a) collateral may be in cash, securities or any other form,
  - (b) use as security may involve transfer of the collateral or the creation or transfer of any kind of right, interest or charge (fixed or floating) in respect of it, and
  - (c) in particular, use as security can include use under arrangements of a kind described commercially as “title transfer financial collateral arrangements”.
- (3) The regulations—
  - (a) may make any provision that the Treasury think necessary or desirable for the purpose of, or in connection with, implementation of the Financial Collateral Arrangements Directive (2002/47/EC) (or any replacement), but
  - (b) are not restricted to provision required in connection with the Directive, and may make any provision that the Treasury think necessary or desirable for the purpose of enabling financial collateral arrangements, whether or not with an international element, to be commercially useful and effective.
- (4) The regulations may, in particular—
  - (a) disapply or modify an enactment or rule of law about formalities or evidence,
  - (b) disapply or modify an enactment about insolvency, administration, receivership or any similar procedure,
  - (c) disapply or modify an enactment about property law,
  - (d) disapply or modify an enactment about companies or other commercial entities or groupings,

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- (e) provide for provisions of financial collateral arrangements to have effect despite a reorganisation, winding-up or other process affecting a party to the arrangements,
  - (f) make provision for the enforcement of financial collateral arrangements (which may include, in particular, provision—
    - (i) about sale, appropriation and set-off,
    - (ii) about the use of collateral while subject to the arrangements,
    - (iii) about “close out netting arrangements”, under which obligations under a number of contracts may be set off against each other in the event of default under a specified contract,
    - (iv) permitting a person to foreclose or exercise another right under the arrangements with or without an order of a court,
    - (v) permitting or requiring the disclosure of information, and
    - (vi) for enforcement after the commencement of, and despite, reorganisation, winding-up or another process),
  - (g) make provision for the choice of law according to which, or under which, matters arising under financial collateral arrangements are to be determined, and
  - (h) apply to persons whether or not provisions of the Directive apply to them.
- (5) The regulations may, in particular—
- (a) do anything done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003,
  - (b) provide for those regulations, or a specified provision, to be treated as having had effect despite any lack of vires,
  - (c) provide for anything done under or in reliance on those regulations to be treated as having had effect despite any lack of vires, and
  - (d) make any provision which the Treasury think necessary or desirable to achieve or restore certainty and stability in connection with the matters to which those regulations relate.

## **256 Supplemental**

- (1) Regulations under section 255—
- (a) shall be made by statutory instrument, and
  - (b) shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the regulations are made.
- (2) The lapse of regulations under subsection (1)(b)—
- (a) does not invalidate anything done under or in reliance on the regulations before the lapse and at a time when neither House has declined to approve the regulations, and
  - (b) does not prevent the making of new regulations (in new terms).

**Status:**

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