

**EXPLANATORY MEMORANDUM TO
THE HERITABLE BANK PLC TRANSFER OF CERTAIN RIGHTS AND
LIABILITIES ORDER 2008**

2008 No. 2644

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 ("the Order") transfers the retail deposits in Heritable to Deposits Management Ltd, a company wholly owned by the Treasury for the purposes of the Banking (Special Provisions) Act 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 It was not possible in the case of this Order to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. The Order was made at 9.27 a.m. on 7th October 2008, came into force at 9.30 am on that day and then was laid before Parliament on that day.

3.2 It is important that the transfer of certain rights and liabilities in Heritable Bank has effect as soon as possible following the making of the Order. It is in everyone's interest for the transfer of these rights and liabilities to be effected as swiftly as possible to avoid uncertainty.

4. Legislative Background

4.1 The Order is made under the Banking (Special Provisions) Act 2008, in exercise of the power in section 6 to transfer rights and liabilities of an authorised UK deposit-taker to a company wholly owned by the Treasury. By virtue of section 2(8), the power is only exercisable for a period of one year from the passing of the Act.

4.2 Section 2 of the Act requires that, before making an Order under section 3, the Treasury must consider that it is desirable to make the Order for either or both of the purposes set out in section 2(2). The Treasury considers it desirable to make the Order for the purpose set out in section 2(2)(a), that is, to maintain the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the Order were not made.

4.3 In addition to providing for the transfer of rights and liabilities relating to retail deposits, the Order also, among other things, makes provision in connection with repayment of those deposits, and accrued interest, by Deposits Management Ltd; and

makes provision in relation to the interests, rights and liabilities of third parties relating to the rights and liabilities transferred.

4.4 The Order also provides for the interaction of the transfer described in paragraph 4.3 above with the Financial Services Compensation Scheme (“FSCS”). In particular, it provides for certain payments to be made to Deposits Management Ltd by the FSCS and the Treasury in connection with that transfer, and for the payments by the FSCS to Deposits Management Ltd to constitute the payment of compensation to persons eligible to claim from the FSCS (for the purposes of the relevant provisions of the Financial Services and Markets Act 2000 and the relevant sections of the FSA Handbook).

4.5 The Order also makes provision which applies if Heritable is placed into administration after the transfer. It imposes particular objectives on the administrator relating to the Order and the operation of transferred accounts by Deposits Management Ltd. It also provides that the administrator may have regard to objectives relating to the stability of, and public confidence in, the financial and banking systems of the United Kingdom. It imposes obligations and restrictions in relation to certain contracts with Heritable.

4.6 In accordance with the requirement in section 7(1) of the Act, the Treasury intends to make an Order which will provide for determining the amount of any compensation payable by the Treasury to Heritable.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is necessary.

7. Policy background

7.1 The purpose of the Act is to enable the Government to act to secure the continued stability of the UK financial system and to protect the public interest.

7.2 The purpose of the Order is to transfer the retail deposits of Heritable into a period of public ownership in Order to be able to pay out retail depositors in an Orderly manner.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 020-7270 4558 or e-mail: public.enquiries@hm-treasury.gsi.gov.uk for any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HMT	Title: Impact Assessment of the The Heritable Bank Plc Transfer Certain Rights and Liabilities Order 2008	
Stage: Implementation	Version: 1	Date: 7 October 2008
Related Publications: The Banking (Special Provisions) Act 2008		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries:

Telephone:

What is the problem under consideration? Why is government intervention necessary?

Protecting the public interest and maintaining stability of the UK financial system in circumstances where the Financial Services Authority has determined that a deposit taker is no longer meeting its threshold conditions for authorisation.

What are the policy objectives and the intended effects?

To support financial stability; to protect depositors' money; and to protect the interests of the taxpayer.

What policy options have been considered? Please justify any preferred option.

The purpose of the Order is to transfer the retail deposit book of Heritable into temporary public ownership in order to rapidly payout retail depositors. The Government has considered a number of options and considers this to be the best solution having weighed up the various competing considerations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Government will review the costs and benefits of this action after all retail depositors of Heritable have been paid out.

Ministerial Sign-off For Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

.....Date: 7th October
2008