

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSFER OF RIGHTS AND LIABILITIES TO ING ORDER 2008**

**S.I. 2008/2666**

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 Transfer of Rights and Liabilities to ING Order 2008 ("the Order") transfers retail deposits held by Deposits Management (Heritable) Ltd, a company owned by the Treasury, to ING Direct N.V., a company incorporated in the Netherlands ("ING").

**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 10.00 a.m. on 8th October 2008, came into force at 10.10 a.m. on that day and then was laid before Parliament on that day.

3.2 In accordance with the proviso to section 4(1) of the Statutory Instruments Act 1946, Her Majesty's Treasury have notified the Speaker of the House of Lords and the Speaker of the House of Commons that the Order came into force before it was laid before Parliament. It is important that the transfer had effect as soon as possible following the making of the Order. It is in everyone's interest for the transfer 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 to make a further transfer following a transfer to the public sector. Section 2 of the Act requires that, before making an order under section 6, 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.

4.2 The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (SI 2008/2644)(the Heritable Order) transferred the retail deposits in Heritable Bank plc to Deposit Management (Heritable) Ltd, a Treasury-owned company.

4.3 This Order transfers those retail deposits to ING. In addition to providing for the transfer of the rights and liabilities relating to retail deposits the Order also, among other things, provides for a payment to be made by Deposit Management (Heritable) Ltd to

ING in connection with the transfer; clarifies how certain liabilities are to be assessed under the Heritable Order for the purposes of the Financial Services Compensation Scheme; and modifies the obligations placed by the Heritable Order on the administrator of Heritable Bank plc to take account of the further transfer to ING.

## **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 retail deposits formerly held at Heritable Bank plc from public ownership to ING.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

## **9. Contact**

9.1 Hannah Gurga at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 0207 270 4345 or e-mail: [Hannah.gurga@hm-treasury.x.gsi.gov.uk](mailto:Hannah.gurga@hm-treasury.x.gsi.gov.uk) can answer any queries regarding the instrument.



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>HMT</b>	<b>Title:</b> <b>Impact Assessment of the transfer of Heritable deposit book to ING Direct</b>	
<b>Stage:</b> Implementation	<b>Version:</b> 1	<b>Date:</b> 8 October 2008
<b>Related Publications:</b> 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 Heritable's deposit book to ING Direct. The Government has considered a number of options and, having weighed up the various competing considerations, has assessed this to be the best solution for protecting depositors and ensuring retail consumer confidence.

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

The rest of Heritable's business has been placed into administration. The Government will review the costs and benefits of this action in light of the outcome of the administration process.

**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: 8<sup>th</sup> October 2008