

2008 No. 3249

BANKS AND BANKING

The Bradford & Bingley plc Compensation Scheme Order 2008

Made - - - - 18th December 2008

Coming into force in accordance with article 1 (2)

This Order is made in exercise of the powers conferred by sections 5, 9, 12 and 13(2) of the Banking (Special Provisions) Act 2008^(a).

A draft of this Order has been laid before Parliament in accordance with section 13(3) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Treasury make the following Order:

1.—(1) This Order may be cited as the Bradford & Bingley plc Compensation Scheme Order 2008.

(2) This Order comes into force on the day after the day on which it is made.

2. The Bradford & Bingley plc Compensation Scheme set out in the Schedule to this Order shall have effect.

18th December 2008

Frank Roy
Dave Watts
Two of the Lords Commissioners of Her Majesty's Treasury

^(a) 2008 c. 2.

SCHEDULE

Article 2

The Bradford & Bingley plc Compensation Scheme

PART 1

General provisions

Citation

1. This Scheme may be cited as the Bradford & Bingley plc Compensation Scheme.

Interpretation

2. In this Scheme—

“the Act” means the Banking (Special Provisions) Act 2008;

“assessment notice” means a notice issued under paragraph 10;

“Bradford & Bingley” means Bradford & Bingley plc, company registered number 3938288;

“revised assessment notice” means a notice issued under paragraph 11;

“shares in Bradford & Bingley” means the ordinary shares issued by Bradford & Bingley;

“the Transfer Order” means the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008(a);

“the transfer time” means 8.00 a.m. on 29th September 2008;

“the Tribunal” means the Financial Services and Markets Tribunal;

“valuer” means the independent valuer appointed by the Treasury in accordance with paragraph 6.

PART 2

Determination of amount of compensation

Transfer of Bradford & Bingley shares

3.—(1) The amount of any compensation payable by the Treasury to persons who held shares in Bradford & Bingley immediately before they were transferred by the Transfer Order shall be determined in accordance with this paragraph.

(2) The amount of compensation payable to a person shall be an amount equal to the value immediately before the transfer time of all shares in Bradford & Bingley held immediately before the transfer time by that person.

(3) For the purposes of this Scheme, the holders of shares in Bradford & Bingley, and the class and number of shares held by them, shall be identified by reference to—

- (a) the Operator register of members of Bradford & Bingley; and
- (b) the issuer register of members of Bradford & Bingley,

following the reconciliation required by article 4(4) of the Transfer Order.

(a) SI 2008/2546.

(4) In sub-paragraph (3) “issuer register of members” and “Operator register of members” have the meanings given in the Uncertificated Securities Regulations 2001(a).

Extinguishment of subscription rights

4.—(1) The amount of any compensation payable by the Treasury to persons whose subscription rights were extinguished by virtue of article 5 of the Transfer Order shall be determined in accordance with this paragraph.

(2) The amount of compensation payable to a person shall be an amount equal to the value immediately before the transfer time of that person’s subscription rights.

(3) In this paragraph “subscription rights” means any right or other entitlement to receive shares in Bradford & Bingley (whether by subscription, conversion or otherwise) granted by—

- (a) a relevant undertaking; or
- (b) a person not within paragraph (a), where the right or entitlement is enjoyed by reason of or in connection with—
 - (i) any individual’s office or employment with a relevant undertaking; or
 - (ii) the services provided by any individual to a relevant undertaking.

(4) In sub-paragraph (3) “relevant undertaking” means Bradford & Bingley or any of its UK subsidiary undertakings that is a body corporate incorporated, or a partnership established, under the law of any part of the United Kingdom.

Modification of interests, rights and liabilities in relevant instruments

5.—(1) Subject to sub-paragraph (4), the amount of any compensation payable by the Treasury to persons whose rights were extinguished by virtue of the provision made in article 6 or 7 of the Transfer Order (referred to in this paragraph as “consequential rights”) shall be determined in accordance with this paragraph.

(2) The amount of compensation payable to a person shall be such compensation as may be just in respect of that person’s consequential rights.

(3) The determination of any compensation in respect of consequential rights shall take into account—

- (a) any diminution in the value of property; or
- (b) any increase in the burden of any liability,

which is attributable to the consequences specified in article 7(3) of the Transfer Order not arising.

(4) Compensation is payable in respect of a person’s consequential rights only if such compensation is required to be paid to comply with the Convention rights (within the meaning given by section 1 of the Human Rights Act 1998(b)).

PART 3

Independent valuer

Appointment of independent valuer

6.—(1) The Treasury shall appoint an independent valuer for the purposes of this Scheme.

(2) The valuer so appointed shall determine the amount of any compensation payable by the Treasury in accordance with Part 2 of this Scheme.

(a) S.I. 2001/3755; there are amending instruments but none is relevant.

(b) 1998 c. 42.

(3) The valuer is to hold and vacate office in accordance with the terms of his appointment.

(4) The Treasury may remove the valuer only on the ground of incapacity or serious misbehaviour.

(5) Before making any appointment under sub-paragraph (1) the Treasury must consult the Institute of Chartered Accountants in England and Wales.

Remuneration

7. The valuer shall be—

- (a) paid such remuneration; and
- (b) reimbursed such expenses;

as the Treasury may determine.

Appointment of staff

8.—(1) The valuer may appoint such staff as he or she may determine.

(2) The valuer shall determine the remuneration and other conditions of service of the persons appointed under this paragraph.

(3) The valuer may pay such pensions, allowances or gratuities to or in respect of the persons appointed under this paragraph as he or she may determine.

(4) The references in sub-paragraph (3) to pensions, allowances or gratuities to or in respect of the persons appointed under this paragraph include reference to pensions, allowances or gratuities by way of compensation in respect of any of those persons who suffer loss of employment.

(5) Any determination under sub-paragraphs (2) to (4) shall require the approval of the Treasury.

PART 4

Assessment of compensation by valuer

Procedure

9.—(1) The valuer may make such rules as to the procedure in relation to the assessment of any compensation (including the procedure for the reconsideration of any decisions relating to the assessment of compensation) as he or she considers appropriate.

(2) Rules made under sub-paragraph (1) may make different provision for different cases or circumstances.

Assessment notice

10.—(1) Where the valuer has assessed the amount of any compensation payable by the Treasury—

- (a) to any person; or
- (b) in respect of a class or description of shares or rights,

the valuer shall issue an assessment notice.

(2) An assessment notice shall contain the following information—

- (a) the date on which the notice is issued;
- (b) the amount of any compensation determined by the valuer as being payable; and
- (c) the reasons for the valuer's decision.

(3) The valuer shall send a copy of the assessment notice to the Treasury.

Reconsideration of assessment notice

11.—(1) If —

- (a) the Treasury; or
- (b) any person who is affected by the determination of the amount of any compensation which is contained in an assessment notice,

are dissatisfied with the assessment notice, the Treasury or any such person may require the valuer to reconsider the determination.

(2) Where the valuer is required to reconsider a determination in accordance with sub-paragraph (1) he or she shall issue a revised assessment notice.

(3) A revised assessment notice shall contain the following information—

- (a) the date on which the notice is issued;
- (b) either—
 - (i) notification that the valuer has upheld the assessment notice; or
 - (ii) notification that the valuer has varied the assessment notice;
- (c) the amount of any compensation determined by the valuer as being payable; and
- (d) the reasons for the valuer's decision.

(4) The valuer shall send a copy of the revised assessment notice to the Treasury.

Right to refer to the Tribunal

12. If—

- (a) the Treasury; or
- (b) any person who is affected by the determination of the amount of any compensation which is contained in the revised assessment notice,

are dissatisfied with the revised assessment notice, the Treasury or any such person may refer the matter to the Tribunal.

Payment of compensation

13.—(1) The Treasury shall pay the amount of any compensation determined by the valuer to be payable—

- (a) to any person; or
- (b) in respect of a class or description of shares or rights.

(2) The Treasury shall not be required to make a payment in accordance with sub-paragraph (1) until—

- (a) they have received a copy of the assessment notice or revised assessment notice, as the case may be; or
- (b) if there is a reference to the Tribunal, the matter has been finally disposed of.

PART 5

References to the Tribunal

Application of FSMA 2000

14.—(1) The provisions of—

- (a) Part 9 (hearing and appeals) of, and Schedule 13 (the Financial Services and Markets Tribunal) to, FSMA 2000(a); and
- (b) the Financial Services and Markets Tribunal Rules 2001(b);

shall apply in respect of any reference made under paragraph 12, subject to the modifications set out in this Part.

Modification of FSMA 2000

15. Part 9 of, and Schedule 13 to, FSMA 2000 are modified as follows.

16. In section 133 (proceedings: general provisions) and Schedule 13, for “the Authority” in each place it occurs substitute “the independent valuer appointed under paragraph 6 of the Schedule to the Bradford & Bingley plc Compensation Scheme Order 2008”.

17. In section 133—

(i) in subsection (1)(a) for “the decision notice or supervisory notice in question”, substitute “the revised assessment notice issued by the valuer under paragraph 11(2) of the Schedule to the Bradford & Bingley plc Compensation Scheme Order 2008”;

(ii) for subsection (4) substitute—

“(4) Where the Tribunal is satisfied that the decision as to the amount of compensation shown in the revised assessment notice was not a reasonable decision the Tribunal must remit the matter to the valuer for reconsideration in accordance with such directions (if any) as they consider appropriate.”;

(iii) omit subsections (5) to (9) and (12).

18. Omit sections 134 to 136.

Modification of Financial Services and Markets Tribunal Rules 2001

19. The Financial Services and Markets Tribunal Rules 2001 are modified as follows.

20. In each place where it occurs (other than in rule 2)—

- (a) for “Authority” substitute “respondent”;
- (b) for “Authority notice” substitute “revised assessment notice”;
- (c) for “statement of case” substitute “response document”.

21. In rule 2 (interpretation)—

- (a) omit the definitions for “the Authority”, “Authority notice”, “further material”, “protected item”, “reply” and “statement of case”;
- (b) in the definition of “party”, for “Authority”, in both places where it occurs, substitute “respondent”;
- (c) in the definition of “referred action” for “the act (or proposed act) on the part of the Authority” substitute “the revised assessment notice”;
- (d) for the definition of “response document” substitute ““response document” means a statement filed by the respondent under rule 5(1);”; and
- (e) in the appropriate place insert—

(a) Section 15 of the Act defines FSMA 2000 as meaning the Financial Services and Markets Act 2000 (c.8). Paragraphs 4 and 8 of Schedule 13 to FSMA 2000 were amended by the Constitutional Reform Act 2005 (c. 4), section 15(1) and Schedule 4, paragraph 286. Section 137 of FSMA is to be amended by the Constitutional Reform Act 2005, section 40 and Schedule 9, paragraph 70 from a date to be appointed. Schedule 13 to FSMA is to be amended by the Tribunal Courts and Enforcement Act 2007, section 50 and Schedule 10, paragraph 34 on a date to be appointed.

(b) S.I. 2001/2476.

““respondent” means the independent valuer appointed under paragraph 6 of the Schedule to the Bradford & Bingley plc Compensation Scheme Order 2008;”;

“revised assessment notice” means the revised assessment notice issued by the respondent under paragraph 11 of the Schedule to the Bradford & Bingley plc Compensation Scheme Order 2008;”.

22. In rule 4(6) (reference notice) omit “, a direction under rule 10(1)(e) (suspension of Authority’s action) or”.

23. In rule 5 (Authority’s statement of case)—

(a) for paragraphs (1) and (2) substitute—

“(1) The respondent shall file a written statement (“a response document”) dealing with any issues arising out of the reference notice that the respondent wishes the Tribunal to consider so that it is received by the Tribunal no later than 28 days after the day on which the respondent received the information sent by the Secretary in accordance with rule 4(9)(b).

(2) At the same time as it files the response document, the respondent shall send a copy to the applicant.”;

(b) omit paragraphs (3) and (4).

24. Omit rules 6 (applicant’s reply), 7 (secondary disclosure by the Authority), 8 (exceptions to disclosure), 11 (filling of subsequent notices in relation to the referred action), 12(2) (summoning of witnesses), 14(3)(c) (withdrawal of reference and unopposed references), 15 (references by third parties) and 23(4) (application for permission to appeal).

25. In rule 10 (particular types of directions) omit paragraphs (1)(e), (2)(a), (6) and (8).

26. After rule 10 (particular types of directions) insert—

“Same issues proceedings

10A.—(1) The President may, of his own motion or on application by a party, direct that a reference is heard as a lead case where—

(a) two or more references under paragraph 12 of the Schedule to the Bradford & Bingley plc Compensation Scheme Order 2008 have been made, but have not yet been determined by the Tribunal; and

(b) it appears to the President that those references give rise to common or related issues of fact or law (“same issues proceedings”).

(2) The President may—

(a) make such further directions as he considers appropriate for determination of the lead case; and

(b) direct that pending determination of the lead case all other same issues proceedings before the Tribunal shall be stayed.

(3) All parties in same issue proceedings must be allowed to make representations prior to the President making a direction under paragraph (1) or (2).

(4) Without prejudice generally to the parties’ rights of appeal and to paragraphs (5) to (7), the Tribunal’s determination of the same issues in the lead case shall be binding on the parties to each of the same issues proceedings unless the Tribunal or the President directs otherwise.

(5) Any party to any of the same issues proceedings may apply to the President for a direction that the determination of the same issues in the lead case does not apply to that party’s case.

(6) An application under paragraph (5) must be made not later than 21 days after the date on which that party received notice of the determination of the same issues in the lead case.

(7) Within 28 days beginning with the date of determination of the same issues in the lead case the President may make further directions in relation to—

- (a) the lead case and each of the same issues proceedings stayed pending the determination of the same issues in the lead case;
- (b) the extent to which the determination of the same issues in the lead case is binding on any subsequent proceedings; and
- (c) any further directions required as a result of an application under paragraph (5), including a direction as to any further hearing required in relation to those proceedings.

(8) Where a direction has been made for any proceedings to be heard as a lead case and those proceedings are withdrawn or discontinued either before or during the hearing, the President may direct—

- (a) that one of the remaining same issues proceedings be substituted as the lead case; and
- (b) the extent to which any directions made prior to substitution shall be binding in relation to the substituted proceedings.

(9) The Secretary must send notice of the directions to be made under paragraphs (1) and (2), a copy of the directions made under paragraphs (1), (2), (4), (5), (7) and (8) and the determination of the same issues in the lead case to all the parties to the same issues proceedings.

Joining of parties to proceedings

10B. If it appears to the President or the Chairman, whether on the application of a party or otherwise, that it is desirable that any person other than the respondent be made a party to any proceedings, he may direct that such person be joined as a party in the proceedings and may make such further directions for giving effect to, or in connection with, the direction as he thinks fit.”.

27. In rule 19(3) (procedure at hearings) omit “when taking the referred action”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking (Special Provisions) Act 2008 (c. 2).

It provides a Scheme for determining the amount of compensation, if any, payable by the Treasury to those whose securities were transferred, or whose rights were extinguished, by the Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546).

Article 2 of the Order provides that the Scheme, which is set out in the Schedule to the Order, shall have effect.

Paragraphs 3 to 5 of the Scheme provide for the manner in which any compensation is to be assessed.

Paragraphs 6 to 8 provide for the appointment of an independent valuer to determine the amount of compensation, if any, and make provision as to the remuneration of the valuer and for the appointment of staff by him.

Paragraph 9 provides that the valuer shall make such rules as to the procedure in relation to the determination of compensation as he considers appropriate, including rules on the procedure for requesting a reconsideration of an assessment notice.

Paragraph 10 provides for the issue of an assessment notice by the valuer. Paragraph 11 provides that a person affected by the determination in an assessment notice or the Treasury may request a reconsideration of the determination and a revised assessment notice.

Paragraph 12 provides that if a person affected by the decision in the revised assessment notice or the Treasury are dissatisfied with the revised assessment notice they may make a reference to the Financial Services and Markets Tribunal (“the Tribunal”) for the notice to be reviewed.

Paragraph 13 makes provision about the payment of any compensation by the Treasury.

Paragraphs 14 to 27 provide that the provisions of Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000 (c. 8) and of the Financial Services and Markets Tribunal Rules 2001 (S.I. 2001/2476) shall apply to a reference to the Tribunal under the Scheme, subject to the modifications set out in those paragraphs.

A Regulatory Impact Assessment of the effect of this instrument on the costs to business has been prepared. It may be obtained from the Financial Stability Resolution Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of the document have been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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£5.00