

**EXPLANATORY MEMORANDUM TO
THE KAUPTHING SINGER AND FRIEDLANDER LIMITED (DETERMINATION OF
COMPENSATION) ORDER 2008**

2008/3250

AND

**THE HERITABLE PLC (DETERMINATION OF COMPENSATION)
ORDER 2008**

2008/3251

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 Kaupthing Singer & Friedlander Limited (Determination of Compensation) Order 2008 (S.I. 2008/3250) ("the Kaupthing Compensation Order") provides that the amount of any compensation payable by the Treasury to Kaupthing Singer & Friedlander Limited in respect of the rights and liabilities transferred by the Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674)("the Kaupthing Transfer Order") is determined as nil.

2.2 The Heritable plc (Determination of Compensation) Order 2008 (S.I. 2008/3251) ("the Heritable Compensation Order") provides that the amount of any compensation payable by the Treasury to Heritable plc in respect of the rights and liabilities transferred by the Heritable plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644)("the Heritable Transfer Order") is determined as nil.

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

3.1 This is the first exercise of the powers provided by section 7(1)(a) of the Banking (Special Provisions) Act 2008 ("the Act").

4. **Legislative Background**

4.1 Section 7(1)(a) of the Act requires the Treasury to make an order determining the amount of any compensation payable to an authorised UK deposit taker affected by an order made under section 6 of the Act.

4.2 The Heritable Transfer Order, which was made under section 6 of the Act, transferred the retail deposits in Heritable to a company wholly owned by the Treasury. Those deposits were subsequently transferred to ING Direct N.V. ("ING") by the Transfer of Rights and Liabilities to ING Order 2008 (SI 2008/2666).

4.3 The Kaupthing Transfer Order, which was also made under section 6 of the Act, transferred the retail deposits held with Kaupthing in certain accounts, known as “Edge accounts”, to a company wholly owned by the Bank of England. Those deposits were subsequently transferred, in the same Order, to ING.

4.4. The Kaupthing Compensation Order and the Heritable Compensation Order provide that no compensation is payable to Kaupthing Singer & Friedlander Ltd or Heritable plc in relation to the transfers made under the Kaupthing Transfer Order and the Heritable Transfer Order respectively.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Services Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Kaupthing Singer & Friedlander Limited (Determination of Compensation) Order 2008 and the Heritable plc (Determination of Compensation) Order 2008 are compatible with the Convention Rights.

7. Policy background

7.1 In the interests of maintaining the financial stability of the UK financial system and to protect retail depositors, the Treasury, using powers under the Act, transferred retail deposits and associated rights in the UK subsidiaries of two Icelandic banks to companies wholly owned by the Treasury and by the Bank of England respectively. The two subsidiaries concerned were Heritable (a subsidiary of Landsbanki) and Kaupthing (a subsidiary of Kaupthing Singer & Friedlander). The retail deposits were subsequently transferred to ING. This action was taken to protect savers’ money and provide certainty for retail depositors.

7.2 As set out in the Act, the Treasury is required to make an order determining the amount of any compensation that is payable to an authorised UK deposit taker that has been affected by an order made under the Act.

7.3 For Heritable and Kaupthing the compensation to be assessed relates to the removal of significant liabilities, i.e. the retail deposit books of both banks and related rights.

7.4 The subsequent transfers of the retail deposits to ING were backed by matching amounts of cash provided by the Treasury and the Financial Services Compensation Scheme (FSCS). The Transfer Orders provide that the amounts payable by the FSCS to ING constitute the payment of compensation to each qualifying claimant under the rules of the FSCS. The amounts paid by the Treasury relate to retail deposit amounts not covered by the FSCS.

7.5 Heritable and Kaupthing are required to pay back the total of all costs and liabilities owed to the public sector in transferring the liabilities. The amount owed by

Heritable to the FSCS is approximately £500m and to the Treasury is approximately £45m. The amount owed by Kaupthing to the FSCS is approximately £2.5bn and to the Treasury is approximately £550m.

7.6 The Government negotiated reductions in the amounts to be paid to ING by the FSCS and the Treasury for the transfer of the retail deposit books. The Transfer Orders provide that that reductions (£1million for Heritable and £5 million for Kaupthing Singer & Friedlander) are to be subtracted from the total amounts owed to the public sector by Heritable and Kaupthing respectively (see article 13 of the Heritable Transfer Order and articles 14 and 16 of the Kaupthing Transfer Order). The Government's claims in the administration of Heritable and Kaupthing will accordingly be reduced by these amounts.

7.7 It is considered that the transfer of the retail deposit books to ING was only possible because the Government had taken the deposit books into public ownership and large amounts of public money from both the FSCS and the Treasury had been paid to match the deposits. Without such intervention, the Government consider that the deposit books would have been unsaleable and of negative value.

7.8 Given that the transfers were made up primarily of liabilities, that without significant amounts of public support the Government consider it would not have been possible to transfer those liabilities to a third party and that the amounts to be repaid to the public sector by Heritable and Kaupthing have been reduced by £1m and £5m respectively to reflect the reductions in the amounts of the matching assets paid by the Treasury and the FSCS to ING, the Government consider that no compensation should be payable for the transfers of the liabilities and associated rights. The compensation orders therefore provide in each case that the amount of compensation payable is to be determined as nil.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or the voluntary sector.

8.2 There is no impact on the public sector.

9. Contact

9.1 Victoria Gibbs, at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.
Tel: 020-7270 4427 or e-mail: Victoria.Gibbs@hm-treasury.x.gsi.gov.uk can answer any queries regarding these instruments.