

**EXPLANATORY MEMORANDUM TO**

**THE DUNFERMLINE BUILDING SOCIETY COMPENSATION SCHEME,  
RESOLUTION FUND AND THIRD PARTY COMPENSATION ORDER 2009**

**2009 No. 1800**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury ("the Treasury") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 ("the Order") makes provision for the compensation arrangements to be put in place in respect of the transfers of property, rights and liabilities from Dunfermline Building Society ("Dunfermline") to (a) Nationwide Building Society, and (b) a Bank of England controlled bridge bank, by virtue of the Dunfermline Building Society Property Transfer Instrument ("the Transfer Instrument").<sup>1</sup> The Transfer Instrument was made by the Bank of England in exercise of the powers conferred by sections 11(2) (private sector purchaser) and 12(2) (bridge bank) of the Banking Act 2009 (c. 1) ("the Act").

2.2 Article 3 of the Order specifies the compensation payable to Dunfermline in respect of the transfer of the property, rights and liabilities to Nationwide.

2.3 Articles 4 and 5 of the Order make provision for an independent valuer to be appointed to perform certain functions in accordance with the terms of the Order. The Treasury intend to exercise their powers under section 55 (independent valuer: supplemental) and section 56 (independent valuer: money) of the Act the day after the date on which the Order is made, to make the Dunfermline Building Society Independent Valuer Order 2009, which will include provision for matters such as the remuneration of, and payment of allowances to, the independent valuer; staff; records and accounts; procedure; and the treatment of information obtained by the independent valuer.

2.4 Articles 6 to 8 of, and Schedule 1 to, the Order make provision for the resolution fund arrangements to be put in place in respect of the transfer of the property, rights and liabilities to the bridge bank. Article 6(1) requires the Treasury to put in place arrangements to establish the Dunfermline Resolution Account into which moneys arising, for example, as a result of the sale of the shares of the bridge bank, are to be paid. Part 3 of Schedule 1 makes

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<sup>1</sup> The Transfer Instrument is available at:  
[http://www.bankofengland.co.uk/financialstability/role/risk\\_reduction/srr/resolutions/DunfermlineCombinedTransferInstrument.pdf](http://www.bankofengland.co.uk/financialstability/role/risk_reduction/srr/resolutions/DunfermlineCombinedTransferInstrument.pdf)

provision for arrangements for making payments from, and entitlements to, moneys in the Dunfermline Resolution Account.

2.5 Article 9(2) of, and Part 2 of Schedule 2 to, the Order make provision for an independent valuer to determine the compensation, if any, payable to third parties affected by the application of section 38(6) of the Act (by virtue of paragraph 6 of the Transfer Instrument).

2.6 Article 9(3) of, and Part 3 of Schedule 2 to, the Order make provision for an independent valuer to determine the compensation, if any, payable to pre-transfer creditors of Dunfermline.

2.7 Article 10 specifies that the Treasury must pay any compensation determined to be payable in accordance with the Order. However, paragraph 13 of Schedule 2 to the Order makes clear that the Treasury need not pay any compensation determined by an independent valuer to be payable (and set out in an assessment notice made under paragraph 4 or 10 of Schedule 2) where an order has been made in accordance with section 55(6) of the Act and has come into force,

- enabling a person affected by a determination set out in the assessment notice to require the independent valuer to redetermine his or her decision,
- enabling a person who remains dissatisfied with a revised assessment notice to refer the matter to a court or tribunal,

and a person affected by the determination of the independent valuer requires the valuer to reconsider his or her decision or makes a reference to a court or tribunal and the matter is outstanding.

2.8 As noted in paragraph 2.3, the Treasury intends to make the Dunfermline Building Society Independent Valuer Order 2009, which will include provision for the reconsideration by the independent valuer of his or her determinations and for references to the Financial Services and Markets Tribunal.<sup>2</sup>

2.9 Article 11 of the Order provides that the independent valuer appointed in accordance with the Order must undertake the function specified in regulation 8(1) of the Financial Services and Markets Act 2000 (Contribution to Costs of the Special Resolution Regime) Regulations 2009 (S.I. 2009/807). Regulation 8(1) requires an independent valuer to assess the recoveries the Financial Services Compensation Scheme (the FSCS) would have made had Dunfermline entered into insolvency immediately before the transfers to Nationwide and to the bridge bank took place. This determination is relevant to the assessment of the amount the FSCS may be required to contribute to the costs of the resolution of Dunfermline.

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<sup>2</sup> The Financial Services and Markets Tribunal is an independent body established under section 132 of the Financial Services and Markets Act 2000. The Tribunal's website is available at the following address: <http://www.tribunals.gov.uk/Finance/FinancialServicesMarkets.htm>.

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

3.1 None.

### **4. Legislative Context**

4.1 Where the Bank of England (“the Bank”) exercises its powers under the Act to transfer property, rights and liabilities of a bank or building society to a private sector purchaser or to a bridge bank, the Treasury is required to put in place compensation arrangements (section 50 (sale to a private sector purchaser) and section 52 (transfer to bridge bank)).

4.2 On 30 March 2009, the Bank of England exercised its powers under sections 11(2) and 12(2) of the Act to transfer property, rights and liabilities from Dunfermline to a private sector purchaser and to a bridge bank. As such, the Treasury is required to make various provision for compensation:

- Section 50(2) of the Act requires the Treasury to make a compensation scheme order where the Bank of England has made a property transfer instrument to effect a transfer to a private sector purchaser (in this case to Nationwide).
- Section 52(2) of the Act requires the Treasury to make a resolution fund order where the Bank has made a property transfer to a bridge bank.
- Sections 50(4) and 52(4) require the Treasury to make a third party compensation order where the Bank has effected transfers of some, rather than all, of the property, rights and liabilities of a building society (as applied by section 84 of the Act (application of Part 1: general [to building societies])). In exercise of its powers under section 60 of the Act (third party compensation: mandatory provision), the Treasury has made regulations about the third party compensation arrangements in the case of partial property transfers: The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (S.I. 2009/319), which set out detailed provision which must or may be made in third party compensation orders in certain cases.

4.2 For administrative reasons, the provisions for the compensation scheme order, the resolution fund order, and the third party compensation order have been combined into one instrument. The instrument also makes provision for an independent valuer to perform the function specified in relation 8(1) of the Financial Services and Markets Act 2000 (Contribution to Costs of the Special Resolution Regime) Regulations 2009 (see paragraph 2.9 above).

4.3 As noted in paragraph 2.3, the Treasury intend to exercise their powers under section 55 and 56 of the Act to make further provision regarding the independent valuer.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Financial Services Secretary, Lord Myners, has made the following statement regarding Human Rights:

“In my view the provisions of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 are compatible with the Convention rights.”

## **7. Policy background**

7.1 Part 1 of the Act which came into force on 21 February 2009 creates a special resolution regime (SRR) which gives the Tripartite Authorities – the Treasury, Bank of England and the Financial Services Authority (FSA) - tools for dealing with failing banks and building societies.

7.2 The Bank of England exercised its powers on 30 March 2009 to transfer some of Dunfermline’s business to Nationwide in order to protect depositors and safeguard financial stability, as well as to protect the interests of the taxpayer. The Bank of England also transferred Dunfermline’s social housing book (and related deposits) to a bridge bank, wholly owned by the Bank of England, where the business was to be held until a longer term solution could be identified.

7.3 Sections 49 to 62 of the Act make provision for the compensation arrangements to be put in place where the Bank of England or the Treasury have exercised their transfer powers (the powers to transfer the shares or some or all of the business of a bank or building society). This is necessary to secure the compatibility of the actions with the European Convention on Human Rights.

7.4 The Order sets out the compensation arrangements to be put in place in respect of the transfers of property, rights and liabilities from Dunfermline to Nationwide and to the bridge bank.

## **8. Consultation outcome**

8.1 The compensation provisions of the Act were subject to consultation, and were developed in consultation with stakeholders, the Bank of England and the FSA. Given that the Order is made in exercise of the powers conferred by the Act, and the need to make this Order as soon as possible following the transfers to Nationwide and to the bridge bank, no public consultation has been carried out. However, the Bank of England has been consulted.

## **9. Guidance**

9.1 The Treasury does not proposed to issue specific guidance in relation to the Order. However, under section 5 of the Act (code of practice), the Treasury are obliged to issue a code of practice about the use of the stabilisation powers including compensation arrangements, which is available at: [http://www.hm-treasury.gov.uk/bankingact09\\_codeofpractice.htm](http://www.hm-treasury.gov.uk/bankingact09_codeofpractice.htm)

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is zero.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply small business.

## **12. Monitoring & review**

12.1 The Treasury will keep the Order under review.

## **13. Contact**

Jamil Mohamed, Financial Stability Resolution Team, HM Treasury can answer any queries on this instrument. Jamil is contactable by email: [Jamil.Mohamed@hm-treasury.x.gsi.gov.uk](mailto:Jamil.Mohamed@hm-treasury.x.gsi.gov.uk) and by telephone 0207 270 6434 or in writing at HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.