**EXPLANATORY MEMORANDUM TO**

**THE BANK ADMINISTRATION (SHARING INFORMATION) REGULATIONS 2009**

**2009 No. 314**

**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. Purpose of the instrument

2.1 These Regulations are made under sections 148(5) and 259 of the Banking Act 2009 ("the Act").

2.2 Regulations 5 to 10 make provision for the sharing of information between a bank administrator, the Bank of England and a bridge bank (a company wholly owned by the Bank of England).

2.3 These Regulations set out details of the information to be provided and records to be made available where a transfer of the business of a bank to a private sector purchaser or a bridge bank is effected using the powers in Part 1 of the Act (respectively, sections 11 (private sector purchaser) and 12 (bridge bank) of the Act) and the residual bank enters the bank administration procedure set out in Part 3 of the Act.

2.2 Regulation 4 sets out that Regulations 5 to 10 apply with the modifications specified in Tables 1 and 2 of the Schedule, to bank administration as applied by section 152 of the Act (property transfer from temporary public ownership). Section 152 applies bank administration where the Treasury:

- make a share transfer order, in respect of securities issued by a bank (or a bank's holding company), in accordance with section 13(2) of the Act (temporary public ownership), and
- later make a property transfer order from the bank in temporary public ownership under section 45(2) of the Act (temporary public ownership: property transfer).

2.3 Regulations have been made in exercise of the power conferred by sections 152(3) (Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (S.1. 2009/312) and provisions is made in Table 1 of the Schedule to those regulations modifying section 148 of the Act (sharing information) to cases where:

- a bank (or a bank's holding company) is transferred into temporary public ownership, and
- the Treasury later make a property transfer order to transfer the property, rights and liabilities ("the business") of a bank in temporary public ownership to a company wholly owned by the Treasury or a

nominee of the Treasury or to a company wholly owned by the Bank of England.

In such cases, Regulations 5 to 10 are modified to make provision for the sharing of information between a bank administrator, the Bank of England, the Treasury and the company wholly owned by the Bank of England or a company wholly owned by the Treasury (or a nominee of the Treasury), as the case may be.

2.4 These information sharing provisions will assist in the resolution of a failing bank and will ensure that a bank administrator has the necessary information to carry out his duties and functions under the bank administration.

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

3.1 Because of the unique circumstances surrounding the instrument, it has not in this case been possible to comply with the 21-day rule and the instrument will commence on 23rd February 2009.

3.2 The provisions in Part 1 of the Act (the special resolution regime) confer powers on the Authorities (the Bank of England and the Treasury) to resolve banks ("bank" is defined in section 2 of the Act). These powers come into force on 21st February 2009 and are intended to replace the powers under sections 3 and 6 of the Banking (Special Provisions) Act 2008 (c. 2), which are subject to a sunset clause and largely cease to be exercisable on 20th February 2009. Given the current financial instability, it is vital that powers to resolve failing banks and certain other financial institutions continue to be available and that there is no period of time where such powers cannot be exercised effectively.

3.3 The Banking Act 2009 received Royal Assent on 12th February 2009. It is necessary for this statutory instrument to be in force as soon as possible after 21st February to enable Parts 1 and Part 3 of the Act to be exercised in an effective manner, if required.

## 4. Legislative Context

4.1 The instrument is the first use of the powers of Her Majesty's Treasury to make regulations about the classes of information to be provided, and the classes of record to which access must be allowed, under sections 148(2) and (4) of the Act.

4.2 Where:

- part of the business of a bank is transferred by the Bank of England to a bridge bank using the powers in Part 1 of the Act and the residual bank (the bank from whom the property has been transferred) enters the bank administration procedure set out in Part 3 of the Act; or
- the Treasury transfers a bank (or a bank's holding company) into temporary public ownership in accordance with section 13(2) and later make a property transfer order to transfer the business of a bank to a company wholly owned by the Treasury, a nominee of the Treasury or a

company wholly owned by the Bank of England, as the case may be) and the residual bank (the bank from whom the property has been transferred) enters the bank administration procedure set out in Part 3 of the Act,

section 148 of the Act provides for the sharing of information between the relevant parties.

## 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 negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 These Regulations will only apply in circumstances where part of the business of a bank has been transferred to a bridge bank in accordance with section 12 of the Act (bridge bank), or where the Treasury make a share transfer order, in respect of securities issued by a bank (or a bank's holding company), in accordance with section 13(2) of the Act (temporary public ownership), and later make a property transfer order from the bank in temporary public ownership in accordance with section 45(2) (temporary public ownership: property transfer), and the residual bank enters bank administration as set out in Part 3 of the Act.

7.2 In cases where part of the business of a bank has been transferred to a bridge bank in accordance with section 12(2) of the Act, the Regulations provide for relevant information to be shared between the bank administrator, the Bank of England (acting as the resolution authority) and the bridge bank to help ensure that a bridge bank can operate effectively and that a bank administrator has the necessary information to enable him or her to carry out the duties of the office in relation to achieving the objectives of the bank administration.

7.3 In cases where the Treasury make a share transfer order, in respect of securities issued by a bank (or a bank's holding company) in accordance with section 13(2) of the Act and later make a property transfer order from the bank in temporary public ownership under section 45(2), the Regulations are modified in accordance with Regulation 4 and Tables 1 and 2 of the Schedule, which provide for relevant information to be shared between, as appropriate:

- the bank administrator;
- the Treasury (acting as the resolution authority);
- a company wholly owned by the Treasury or a nominee of the Treasury, or a company wholly owned by Bank of England, as appropriate; and
- the Bank of England (if appropriate).

These information sharing provisions help ensure that the transferee company can operate effectively and that a bank administrator has the necessary

information to enable him or her to carry out the duties of the office in relation to achieving the objectives of the bank administration.

7.4 In the early stages of a bank administration, the bank administrator will require information from the resolution authority in relation to those assets and liabilities that have been transferred. This will supplement the information that the directors of the bank are obliged to supply to the bank administrator on the bank's affairs and its financial position. Since the partial transfer will be effected by the resolution authority, the directors may not be in the best position to provide information to the bank administrator about the elements of the bank's business that have been transferred. These Regulations therefore set out the information that the resolution authority should be obliged to provide to the bank administrator. These details will help the bank administrator to fulfil his or her functions under Part 3 of the Act.

7.5 In addition, because the resolution will impact on the outcome of the bank administration and the achievement of the objectives of the bank administrator (see section 137 of the Act), these Regulations set out the type of information that the transferee (that is, the bridge bank, the company wholly owned by the Bank of England, the Treasury or a nominee of the Treasury, as appropriate) should be obliged to provide to the bank administrator. That information will help to ensure that the bank administrator acts appropriately to achieve the objectives of the bank administration.

7.6 These Regulations also provide that a bank administrator must, upon request, supply certain information to the resolution authorities and the transferees. This will help to ensure that the transferees can operate effectively and assist in achieving the best possible resolution. It will also assist in the administration itself, since the two processes are linked by virtue of the parts of the business, assets and liabilities that have been transferred between the two bodies. In the case of the transferees, the information that may be requested is generally that which is relevant to the effective operation of the transferee and any additional details that may be needed for the purposes of an onward sale. The resolution authorities can also request information which is relevant to their functions under Part 3 of the Act and which might impact on the achievement of the objectives of the procedure or resolution.

7.7 To facilitate the exchange of required information, the Regulations also allow the transferees or the resolution authorities to inspect any records held by the bank administrator that are relevant to the information that is requested by them.

## 8. Consultation outcome

8.1 The measures in Part 3 of the Act were subject to a number of consultations and Part 3 of the Act has been developed in consultation with stakeholders, the Bank of England and the Financial Services Authority. Given the need to implement this instrument promptly to coincide with the coming into force of provisions of Parts 1 and 3 of the Act on 21st February, immediately after the

expiry of the powers in sections 3 and 6 of the Banking (Special Provisions) Act 2008, no public consultation was carried out.

## 9. Guidance

9.1 These Regulations will only apply in the limited circumstances of a residual bank entering bank administration following a transfer of a bank's business to a transferee that is wholly owned by the Bank of England, the Treasury or a nominee of the Treasury. The information that may need to be exchanged is likely to vary on a case-by-case basis and so no general guidance is being issued. In practice, given the functions of a bank administrator and the resolution authorities in bank administration proceedings, it is likely the parties will be cooperating in order to achieve Objective 1 of the bank administration (section 138 of the Act) and to ensure that any transferee can operate effectively.

## 10. Impact

10.1 These Regulations only apply to the sharing of information between a bank administrator, the resolution authorities and the transferees where a transfer of a bank's business is effected using the powers in Part 1 of the Act and the residual bank enters the bank administration procedure set out in Part 3 of the Act. The definition of a bank for these purposes is given in section 2 of the Act and the bank administration cannot be used in relation to other businesses, charities or voluntary bodies.

10.2 The resolution authorities will have an important role to play in effecting a partial transfer and in the operation of a transferee. Part 3 of the Act and these Regulations have been developed in consultation with the Bank of England and the Financial Services Authority.

10.3 Separate Regulations will be introduced dealing with safeguards in relation to partial transfers, including compensation arrangements, and an impact assessment is to be drafted for those Regulations. Separate regulations have been made to modify the application of Part 3 of the Act where the Treasury has first placed a bank into temporary public ownership, as noted in paragraph 2.3.

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

## 11. Regulating small business

11.1 These Regulations only apply to the sharing of information between a bank administrator, the resolution authorities, and any transferees where a transfer of a bank's business if effected using the powers in Part 1 of the Act and the residual bank enters the bank administration procedure set out in Part 3 of the Act. For these purposes, bank is defined in section 2 of the Act.

## 12. Monitoring & review

12.1 These Regulations only apply where part of a bank's business is transferred to by way of an exercise of the powers in Part 1 of the Act and the residual bank enters bank administration, and the Banking Liaison Panel created in accordance with section 10 of the Act will monitor the impact of this new regime.

## 13. Contact

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