ELIZABETH II

1970 CHAPTER xxxiv

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to the Bank of Scotland. [23rd July 1970]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament: 1936 c. 52.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Confirmation of Order in schedule.

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed.

Short title.

2. This Act may be cited as the Bank of Scotland Order Confirmation Act 1970.

SCHEDULE

BANK OF SCOTLAND

Provisional Order to provide for the transfer to the Governor and Company of the Bank of Scotland of the business and undertaking of The British Linen Bank and for other purposes.

Whereas by an Act of the Parliament of Scotland passed in the fifth year of the reign of His Majesty King William the Third dated the seventeenth day of July one thousand six hundred and ninety-five intituled "Act for Erecting a Publick Bank" the Governor and Company of the Bank of Scotland (hereinafter called "the Company") was incorporated "for the carrying on and managing of a publick bank":

And whereas powers of increasing its capital stock were conferred on the Company and further provisions for the management and administration of its affairs were made by the following Acts of Parliament (that is to say): 14 George III chapter 32, 24 George III session 2 chapter viii, 32 George III chapter 25, 34 George III chapter 19, 44 George III chapter xxiii, the Bank of Scotland Act 1873, the Bank of Scotland Act 1920 and the Bank of Scotland Order Confirmation Act 1954; and the business and affairs of the Company are regulated managed administered and carried on under and by virtue of the Acts hereinbefore mentioned (all of which Acts are hereinafter called "the Bank of Scotland Acts 1695 to 1954"):

1873 c. xcix.
1920 c. xxxi.
1954 c. lvi.

And whereas The British Linen Bank (hereinafter called "the Bank") whose head office is in Edinburgh was originally formed by a Charter of Incorporation in the year one thousand seven hundred and forty-six under the name of "The British Linen Company" such name being changed in the year one thousand nine hundred and six to "The British Linen Bank" and carries on an extensive banking business:

And whereas the issued capital of the Bank comprises £2,000,000 stock all of which is beneficially owned by the Company:

And whereas the Bank has, inter alia, three wholly owned subsidiary companies which act as nominees (hereinafter called "the nominee companies"):

And whereas for the better conduct of the business of the Company and the Bank it is expedient to provide for the fusion of their undertakings by the transfer to the Company of the undertaking of the Bank and by the transfer to certain wholly owned subsidiary companies of the Company of the undertakings of the nominee companies as provided respectively in this Order, and that the other provisions relative thereto should be enacted:

And whereas it is expedient that the aforesaid transfers should be effected economically and without interference with the conduct of business:

And whereas it is expedient that the provisions of the Bankers' Books Evidence Act 1879 shall apply to the books of the Company and the Bank as provided in this Order: 1879 c. 11.

And whereas it is expedient that the further provisions contained in this Order should be enacted:

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

Now therefore in pursuance of the powers contained in the last-mentioned Act the Secretary of State orders as follows:—

Short and collective titles.

1. This Order may be cited as the Bank of Scotland Order 1970 and this Order and the Bank of Scotland Acts 1695 to 1954 may be cited together as the Bank of Scotland Acts 1695 to 1970.

Commencement of Order.

2. This Order shall commence and have effect as on and from such day as the Court of Directors of the Company may by resolution appoint (which date is hereinafter in this Order referred to as " the appointed day "):

Provided that such day shall not be earlier than thirty days after the publication of the passing of such resolution in the Edinburgh Gazette and the London Gazette.

Interpretation.

3.—(1) In this Order, unless the subject or context otherwise requires—

" customer " includes any person having a banking account or other dealing, transaction or arrangement in the course of business with the Bank;

" enactment " means an enactment in this Order, in the Act confirming this Order or in any general or local Act or in any order, rule or regulation made under any Act;

" security " includes all personal bonds, bills, notes, assignations of contract and retention moneys, assignations of policies of assurance, assignations of trust interests and reversions or any other rights or interests, undertakings, mandates, guarantees, impledgments, and all bonds and dispositions in security, bonds of cash credit and dispositions in security, bonds of cash credit and assignations in security, ex facie absolute dispositions and assignations, mortgages, equitable mortgages, charges, debentures, fixed securities, floating charges and any other deeds or instruments of any kind whatsoever made in favour of the Bank and constituting a right in security in favour of the Bank;

" the Bank " means The British Linen Bank;

" the Company " means the Governor and Company of the Bank of Scotland.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended or amended by or by virtue of any subsequent enactment including any enactment in this Order or in the Act confirming this Order.

Transfer of undertaking of Bank to the Company.

4.—(1) On the appointed day by virtue of this Order and without further act or deed there shall be transferred to and vested in the Company the undertaking, business and property of the Bank excluding a sum of five thousand pounds but otherwise including all lands, buildings, property, investments and assets, heritable and movable, real and personal, and all other rights whether statutory or otherwise of whatever nature and wherever situated belonging to or vested in the Bank whether beneficially or in any fiduciary capacity immediately before the appointed day subject to all charges, obligations or liabilities affecting the same.

(2) To enable the Company to complete a title if thought fit to any property transferred to and vested in it by virtue of this Order by notice of title or otherwise this Order shall be deemed to be, and may be used as, a general disposition, conveyance or assignation as the case may be of such property in favour of the Company.

Transfer of liabilities.

5. On the appointed day by virtue of this Order and without further act or deed all debts, claims, engagements, liabilities and obligations whether statutory or otherwise, actual or contingent, present or future of the Bank shall be transferred to the Company.

Application of enactments, documents, etc.

6.—(1) Subject to the provisions of this Order, where—

(*a*) any enactment other than an enactment in this Order or in the Act confirming this Order;

(*b*) any document whensoever made or executed; or

(*c*) any resolution by a company or by directors of a company;

contains any reference express or implied to the Bank such reference shall on and after the appointed day and except where the context otherwise requires, be read and construed and have effect as a reference to the Company.

(2) Without prejudice to the generality of the immediately preceding subsection where by any order of the Court or by any trust deed, settlement, covenant or agreement or by any trust disposition and settlement, will, codicil or other testamentary writing whether made or executed before, on or after the appointed day the Bank was or is (whether alone or with any other person), appointed or confirmed trustee, executor, guardian, custodian or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement, trust disposition and settlement, will, codicil or other testamentary writing shall not fail by reason of anything in this Order but shall on and from the appointed day be read and construed and have effect as if for any reference therein to the Bank there was substituted a reference to the Company.

(3) Subsection (1) of this section shall not apply to the charter, warrants of charter and supplementary charters of the Bank.

Contracts to be binding on or enforceable by the Company.

7.—(1) All agreements, awards, contracts, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed

to the Bank whether alone or with any other person and whether as principal or as agent and which are in force on the appointed day shall on and from that day be as binding and of as full force and effect in every respect against or in favour of the Company and may be enforced as fully and effectually as if instead of the Bank the Company had been a party thereto, bound thereby or entitled to the benefit thereof.

(2) In relation to every contract of employment to which subsection (1) of this section applies, the provisions of the said subsection shall operate to substitute the Company for the Bank as the employer thereunder on the appointed day but not to constitute a termination of such contract for the purposes of the Redundancy Payments Act 1965. 1965 c. 62.

Miscellaneous provisions as to business.

8. Without prejudice to the generality of the foregoing provisions of this Order, the following provisions shall have effect with relation to the business of the Bank:—

(*a*) any account between the Bank and a customer at any office or branch of the Bank shall be transferred to the Company on the appointed day and shall become on and from that day an account between the Company and such customer with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the Bank and the customer had continued and such account shall be deemed for all purposes to be a single continuing account and so that any instruction, order, direction, mandate, power of attorney or authority given by such customer in relation to such account and subsisting at or given after the appointed day shall, unless and until revoked or cancelled, apply and have effect in relation to such account after its transfer to the Company as aforesaid;

(*b*) any security in favour of or held by the Bank or an agent for or nominee of the Bank as security for the payment or discharge of debts, obligations or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the Company on the appointed day and shall be held by and be available to the Company as security for the payment or discharge of such debts, obligations and liabilities to the Company and where the security extends to future advances to or obligations or liabilities of such person, the said security shall as from that day be held by and be available to the Company as security for future advances to the said person by, and future debts, obligations or liabilities of the said person to, the Company and shall have effect in favour of the Company as fully in all respects as if it had originally been granted in favour of the Company;

(*c*) the Company shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Order and the moneys

or obligations thereby secured in accordance with those provisions, be entitled to the same rights and priorities and subject to the same obligations and incidents as the Bank would have been entitled and subject to if the same had continued to be held by the Bank;

(*d*) the custody of any document, goods or other property held by the Bank or an agent for or nominee of the Bank as custodian for any person shall be transferred or deemed to be transferred to the Company on the appointed day and the rights and obligations of the Bank relating to such document, goods or property shall be transferred on that day to the Company.

Actions not to abate.

9. If on the appointed day any claim (including any contingent claim) action arbitration or proceeding or any cause of action arbitration or proceeding is pending or existing against or in favour of the Bank the same shall not abate or be discontinued or in anywise prejudicially affected by reason of the provisions of this Order but the same may only be continued, prosecuted and enforced by or against or in favour of the Company as and when it might have been continued, prosecuted and enforced by or against or in favour of the Bank if the Act confirming this Order had not been passed.

Pension schemes.

10.—(1) Without prejudice to the provisions of subsection (1) of section 6 of this Order the trust deeds and rules constituting or relating to The British Linen Bank Staff Pension Fund and The British Linen Bank's Officers' Widows' Fund shall unless the context otherwise requires on and from the appointed day be construed and have effect as if for any reference therein to the Bank there were substituted a reference to the Company.

(2) No officer, clerk or servant of the Bank who, by virtue of this Order, becomes an officer, clerk or servant of the Company shall be entitled as of right to participate in Bank of Scotland Staff Pension Fund, Bank of Scotland Widows Fund or The Officers' Superannuation and Provident Fund of the Union Bank of Scotland Limited.

(3) (*a*) In this subsection—

" existing pension scheme " means each of the following:—

Bank of Scotland Staff Pension Fund;

Bank of Scotland Widows Fund;

The Officers' Superannuation and Provident Fund of the Union Bank of Scotland Limited;

The British Linen Bank Staff Pension Fund;

The British Linen Bank's Officers' Widows' Fund;

" authorised scheme " means any pension scheme or any provident fund established by the Company or any existing pension scheme.

(*b*) An existing pension scheme may as from the appointed day be amalgamated either wholly or in part with any authorised scheme or

partly with one authorised scheme and partly with another such scheme in such manner and upon such terms as may be approved by the trustees of the schemes involved in the amalgamation by—

(i) the admission to participation in an authorised scheme of members or pensioners of or other persons to or in respect of whom benefits or allowances are on the appointed day payable from the existing pension scheme;

(ii) the transfer to the trustees of such authorised scheme of such part or parts of the assets of the existing pension scheme as are certified by a practising actuary to be appropriate; and

(iii) the assumption by the authorised scheme of liability for the benefits and allowances payable or prospectively payable out of the funds of the existing pension scheme in respect of which members, pensioners and other persons are admitted to participate in the authorised scheme or for substituted benefits and allowances certified by a practising actuary to be equivalent in value to those payable or prospectively payable as aforesaid.

(*c*) The trustees of an existing pension scheme may make such arrangements, execute such deeds and documents and do all such things as may be requisite or desirable for the purpose of giving effect to any such amalgamation as aforesaid.

(*d*) For the purpose of any provision contained in any deed or instrument affecting an existing pension scheme which has the effect of prohibiting or invalidating amendments of such deed or instrument which would vary or conflict with the main objects or purposes of the scheme, any such admission, transfer of assets or assumption of liability as is referred to in sub-paragraphs (i), (ii) or (iii) of paragraph (*b*) of this subsection, whether effected in pursuance of the powers conferred by this section or otherwise, shall be deemed to be one of the main objects or purposes of such existing pension scheme.

(*e*) A consent given on behalf of a pupil or minor by his parent or guardian to any amendment of any deed or instrument affecting an existing pension scheme shall be deemed to be an effective consent by that pupil or minor.

Documents to remain evidence.

11.—(1) All books, documents and other records which if the undertaking of the Bank had not been transferred to the Company by virtue of this Order would have been evidence in respect of any matter for or against the Bank shall be admissible in evidence in respect of the same or the like matter for or against the Company.

(2) In this section "documents" has the same meaning as in section 17 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968. 1968 c. 70.

Application of section 4 of Bank Notes (Scotland) Act 1845. 1845 c. 38.

12. For the purposes of section 4 of the Bank Notes (Scotland) Act 1845 this Order shall be deemed to be a written contract or agreement uniting the Bank with the Company.

Application of Bankers' Books Evidence Act 1879 to books of Company and Bank and entries therein.
1879 c. 11.

13.—(1) The provisions of the Bankers' Books Evidence Act 1879 shall apply with respect to the books of the Company and of the Bank transferred to the Company by virtue of this Order.

(2) For the purposes of section 4 of the said Act of 1879, books so transferred to the Company shall be deemed to have been the ordinary books of the Company at the time of the making of any entry therein which purports to have been made before the appointed day, and any such entry shall be deemed to have been made in the usual and ordinary course of business.

(3) For the purposes of this section "books" include ledgers, day books, cash books, account books and all other books and records used in the ordinary business of the Company and the Bank.

Revaluation of capital stock of Bank.

14. The capital stock of the Bank issued before the appointed day is on and from that day hereby reduced in value so that the total amount thereof shall be five thousand pounds.

Nominee companies.

15.—(1) On the appointed day by virtue of this Order and without further act or deed there shall be transferred to and vested in a company which appears in the second column of the Schedule to this Order (in this section called a "transferee company") the undertaking, business and property of the company which appears against that transferee company in the first column of the said schedule (in this and the next following section called "a transferor company").

(2) The transfers effected by the immediately preceding subsection shall exclude any document required to be kept by a transferor company pursuant to the provisions of the Companies Acts 1948 to 1967 but otherwise shall include all lands, buildings, property, investments and assets, heritable and movable, real and personal, and all other rights whether statutory or otherwise of whatever nature and wherever situated belonging to or vested in a transferor company whether beneficially or in any fiduciary capacity immediately before the appointed day subject to all charges, obligations or liabilities affecting the same.

(3) Sections 5, 6, 7, 8, 9 and 11 of this Order shall apply in relation to each transferee company and each transferor company but with the substitution of references to the transferor company concerned for references to "the Bank" and to the appropriate transferee company for references to "the Company".

Dissolution of nominee companies.
1948 c. 38.

16.—(1) A transferor company shall by virtue of this Order be dissolved on the day (being a day after the appointed day) on which at the request of the Company the Registrar or other officer performing under the Companies Act 1948 the duty of registration of companies in Scotland strikes that transferor company off the register.

(2) Notwithstanding the provisions of section 354 of the Companies Act 1948 (which relates to the property of a dissolved company) on the day referred to in the immediately preceding subsection all documents required to be kept by the transferor company concerned pursuant to the provisions of the Companies Acts 1948 to 1967 shall by virtue of this Order be transferred to and vest in the Company.

Evidence of transfer.

17. The production of a Queen's Printer's or Royal Assent copy of the Act confirming this Order shall be conclusive evidence in all courts and proceedings of the transfer and vesting in accordance with this Order of any undertaking, business, property, right, debt, claim, engagement, liability or obligation of the Bank and without prejudice to the generality of the foregoing, any such copy shall, in relation to any registered securities within the meaning of the Stock Transfer Act 1963 which are transferred and vested by virtue of this Order operate for all the purposes of the said Act of 1963 as a duly executed and stamped stock transfer in respect of the transfer and vesting of such securities.

1963 c. 18.

Transfers of interests in land.

18. The transfer of an interest in land by virtue of this Order shall not—

(*a*) constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 (which restricts a landlord's right to oppose an application for a new tenancy of business premises in certain cases); or

1954 c. 56.

(*b*) constitute an assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest; or

(*c*) invalidate or discharge any contract or security; or

(*d*) operate so as to merge any leasehold interest in the reversion which is expectant thereon.

Costs of Order.

19. The costs, charges and expenses preliminary to and of and incidental to the preparing for, obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Company.

SCHEDULE

Transferor Company	Transferee Company
The British Linen Bank Edinburgh Nominees Limited	Bank of Scotland Edinburgh Nominees Limited
The British Linen Bank West George Street Glasgow Nominees Limited	Glasgow Bank of Scotland Nominees Limited
The British Linen Bank Dundee Nominees Limited	Bank of Scotland Dundee Nominees Limited

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Bank of Scotland Order Confirmation Act 1970

CHAPTER xxxiv

ARRANGEMENT OF SECTIONS

Section

1. Confirmation of Order in schedule.
2. Short title.

SCHEDULE

BANK OF SCOTLAND

1. Short and collective titles.
2. Commencement of Order.
3. Interpretation.
4. Transfer of undertaking of Bank to the Company.
5. Transfer of liabilities.
6. Application of enactments, documents, etc.
7. Contracts to be binding on or enforceable by the Company.
8. Miscellaneous provisions as to business.
9. Actions not to abate.
10. Pension schemes.
11. Documents to remain evidence.
12. Application of section 4 of Bank Notes (Scotland) Act 1845.
13. Application of Bankers' Books Evidence Act 1879 to books of Company and Bank and entries therein.
14. Revaluation of capital stock of Bank.
15. Nominee companies.
16. Dissolution of nominee companies.
17. Evidence of transfer.
18. Transfers of interests in land.
19. Costs of Order.

SCHEDULE.