EXPLANATORY MEMORANDUM TO

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

2009 No. **

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").[1] 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. Should the Order be approved by Parliament, the Treasury intend to exercise their powers under section 55 (independent valuer: supplemental) and section 56 (independent valuer: money) to make an order (subject to the negative procedure) making 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. A draft order is attached to this memorandum, setting out the provision the Treasury proposes to make in the event the Order is approved by Parliament.

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

[1] The Transfer Instrument is available at: http://www.bankofengland.co.uk/financialstability/role/risk_reduction/srr/resolutions/DunfermlineCombinedTransferInstrument.pdf

shares of the bridge bank, are to be paid. Part 3 of Schedule 1 makes 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, a draft order is attached to this memorandum, setting out the provisions the Treasury proposes to make in the event the Order is approved by Parliament. Part 4 of the draft order makes provision for the reconsideration by the independent valuer of his or her determinations and for references to the Financial Services and Markets Tribunal.[2]

2.9 Article 11 of the Order provides that the independent valuer appointed in accordance with the Order must undertake the function specified in resolution 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.

[2] 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 werbsite 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, in the event the Order is approved by Parliament, 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 is to be held until a longer term solution has been 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

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 and by telephone 0207 270 6434 or in writing at HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

Draft only, to assist in consideration of the Dunfermline Building Society Compensation Scheme, Resolution Fund, and Third Party Compensation Order 2009 (S.I. 2009/***).

STATUTORY INSTRUMENTS

2009 No. ***

BANKS AND BANKING

The Dunfermline Building Society Independent Valuer Order 2009

Made - - - -	**** 2009*
Laid before Parliament	**** 2009*
Coming into force - -	**** 2009*

The Treasury make this Order in exercise of the powers conferred by sections 55 and 56 and 259 of the Banking Act 2009([3]).

PART 1

General

Citation and commencement

1. This Order may be cited as the Dunfermline Building Society Independent Valuer Order 2009 and shall come into force on ***.

Interpretation

2. In this Order—

"Appointment Panel" has the meaning given in article 5(1)(b) of the Dunfermline Compensation Order;

"assessment notice" means a notice issued by the independent valuer under paragraph 4 or 10 of Schedule 2 to the Dunfermline Compensation Order;

"the Dunfermline Compensation Order" means the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009;

"independent valuer" has the meaning given in article 2 of the Dunfermline Compensation Order;

"the Tribunal" means the Financial Services and Markets Tribunal established under Part 15 of the Financial Services and Markets Act 2000 ([4]) ("FSMA 2000").

([3]) 2009 c.1.
([4]) 2000 c.8.

PART 2

Remuneration

Remuneration of the independent valuer

3.—(1) The Treasury must pay such remuneration and allowances as they may determine to the independent valuer.

(2) The Treasury must appoint a person to monitor the operation of the arrangements for the remuneration and allowances of the independent valuer.

Remuneration of the Appointment Panel and the monitor

4. The Treasury may make provision for—

(a) the Appointment Panel; and

(b) the monitor appointed in accordance with article 3(2),

to be paid such remuneration and allowances as the Treasury may determine.

PART 3

Staff, records and accounts

Staff

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

(2) The independent valuer must determine the remuneration, allowances and other conditions of service of any staff appointed under this paragraph.

(3) The independent 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 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 paragraphs (2) or (3) shall require the approval of the Treasury.

Records and accounts

6.—(1) The independent valuer must maintain reasonable arrangements for—

(a) recording decisions made in exercise of his or her functions; and

(b) the safe-keeping of those records.

(2) The independent valuer must—

(a) keep proper accounts and proper records in relation to the accounts, and

(b) prepare in respect of each financial year a statement of accounts to be provided to the monitor.

PART 4

Procedure and information

Interpretation

7. In this Part—

"court" means the High Court or, in Scotland, the Court of Session;

"specified information" means any information obtained by the independent valuer for the purposes of conducting the functions referred to in article 4 of the Dunfermline Compensation Order.

Procedure

8.—(1) The independent valuer may make such rules as to the procedure to be applied in conducting the independent valuer's functions under article 4 of the Dunfermline Compensation Order (including the procedure for the reconsideration of any decision relating to the assessment of compensation) as the independent valuer considers appropriate.

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

Application to the court for information

9.—(1) The court may, on an application by the independent valuer, make an order requiring a person to provide information that is reasonably required by the independent valuer for the purposes of conducting the functions referred to in article 4 of the Dunfermline Compensation Order.

(2) A person required to provide information pursuant to an order under sub-paragraph (1) shall not be required to provide information—

(a) in respect of which a claim to legal professional privilege (or in Scotland, to confidentiality of communications) could be maintained in legal proceedings,

(b) if such provision by the person holding it would be prohibited by or under any enactment, or

(c) if it is held by a government department and provision of such information would be contrary to the public interest.

(3) In relation to information recorded otherwise than in legible form, the power to require it to be provided includes power to require it to be provided in a form from which it can be readily produced in visible and legible form.

Confidence

10. A person who provides information to the independent valuer for the purposes of conducting the functions referred to in article 4 of the Dunfermline Compensation Order is not, by reason only of the provision of such information, liable in any proceedings relating to a breach of confidence.

Disclosure

11.—(1) Specified information shall not be disclosed by the independent valuer (or any person to whom the independent valuer has disclosed such information in accordance with article 8(2)) without the consent of the person from whom the independent valuer obtained the specified information and, if different, the person to whom it relates.

(2) The prohibition in paragraph (1) of the disclosure of specified information is subject to the following exceptions—

(a) The independent valuer may, for the purposes of conducting the functions referred to in article 4 of the Dunfermline Compensation Order, disclose specified information to any staff appointed by the independent valuer or to any person providing advice or assistance to the independent valuer.

(b) The independent valuer may disclose specified information if and to the extent that the independent valuer considers it necessary to do so for the purposes of conducting the functions referred to in article 4 of the Dunfermline Compensation Order.

(3) The independent valuer must, before disclosing any specified information in accordance with paragraph (3), have regard to the need to exclude from disclosure (so far as practicable)—

(a) commercial information the disclosure of which might significantly harm the legitimate business interests of the person to whom it relates,

(b) information relating to the private affairs of an individual, the disclosure of which might significantly harm the individual's interests, or

(c) any information the disclosure of which would be contrary to the public interest.

(4) The independent valuer may disclose specified information in accordance with this paragraph subject to such conditions as the independent valuer thinks appropriate.

PART 4

Reconsideration by the independent valuer and references to the Tribunal

12.—(1) If—

(a) the Treasury, or

(b) any person who is affected by the determination of the amount of any compensation payable in accordance with Schedule 2 to the Dunfermline Compensation Order,

are dissatisfied with an assessment notice issued by the independent valuer in accordance with paragraphs 4 or 10 of Schedule 2 to the Dunfermline Compensation Order, the Treasury or any such person may require the independent valuer to reconsider his or her determination.

(2) Where the independent valuer is required to reconsider his or her determination in accordance with paragraph (1) he or she must issue a revised assessment notice.

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

(a) the date on which the notice is issued;

(b) either—

(i) notification that the independent valuer has upheld the determination specified in the assessment notice; or

(ii) notification that the independent valuer has varied the determination specified in the assessment notice;

(c) the amount of any compensation determined by the independent valuer as being payable; and

(d) the reasons for the independent valuer's decision.

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

Right to refer to the Tribunal

13. If —

(a) the Treasury, or

(b) any person who is affected by the determination set out in a revised assessment notice of the amount of compensation payable,

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

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([5]); and

(b) the Financial Services and Markets Tribunal Rules 2001([6]);

shall apply in respect of any reference made under article 13, 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 where it occurs substitute "the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009".

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 independent valuer under article 13(2) of the Dunfermline Building Society Independent Valuer Order 2009";

(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 independent valuer for reconsideration in accordance with such directions (if any) as they consider appropriate.";

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

18. Ignore 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) ignore the definitions "the Authority", "Authority notice", "further material", "protected item", "reply" and "statement of case";

([5]) 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.

([6]) S.I. 2001/2476.

(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—

""respondent" means the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009";

"revised assessment notice" means the revised assessment notice issued by the respondent under article 132(2) of the Dunfermline Building Society Independent Valuer Order 2009,".

22. In rule 4(6) (reference notice) ignore ", 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) ignore paragraphs (3) and (4).

24. Ignore rules 6 (applicant's reply), 7 (secondary disclosure by the Authority), 8 (exceptions to disclosure), 11 (filing 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) ignore 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 article 13 of the Dunfermline Building Society Independent Valuer Order 2009 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) ignore "when taking the referred action".

[Name]
[Name]

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking Act 2009 (c. 1) ("the Act").

This Order makes provision in relation to the independent valuer appointed in accordance with article 5(2) of the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009([7]) ("the Dunfermline Compensation Order").

The Dunfermline Compensation Order requires the independent valuer to assess the compensation, if any, payable to third parties affected by the application of section 38(6) of the

([7]) S.I. 2009/***.

Act (by virtue of paragraph 6 of the Dunfermline Building Society Property Transfer Instrument([8])), and to pre-transfer creditors of Dunfermline Building Society([9]). The Dunfermline Compensation Order also requires the independent valuer to make assessments in relation to the Dunfermline Resolution Fund (established in accordance with the provisions of that Order) and the Financial Services Compensation Scheme.

This Order makes various provisions in connection with the independent valuer.

Articles 3 and 4 make provision for the remuneration of, and payment of allowances to, the panel appointed in accordance with article 5(1)(b) of the Dunfermline Compensation Order ("the Appointment Panel"), the independent valuer, and the person appointed in accordance with article 3(2) of this Order to monitor the operation of the arrangements for the remuneration and payment of allowances to the independent valuer.

Article 5 makes provision for the independent valuer to appoint staff and the arrangements for the remuneration of, and payment of allowances to the staff.

Article 6 makes provision for the independent valuer's records and accounts.

Article 7 makes provision for the interpretation of words used in Part 4 of this Order (procedure and information).

Article 8 provides that the independent valuer shall make such rules as to the procedure of the independent valuer as he or she considers appropriate.

Article 9 provides that the independent valuer may apply to the court to require a person to supply information relevant to the independent valuer's functions.

Article 10 provides that a person who supplies information to an independent valuer is not, by reasons only of the provision of information to the independent valuer, liable in any proceedings relating to breach of conduct.

Article 11 makes provision for the disclosure of information by the independent valuer.

Article 12 provides that a person affected by the determination of the independent valuer set out in an assessment notice issued under paragraph 4 or 10 of Schedule 2 to the Dunfermline Compensation Order may require the independent valuer to reconsider his or her determination and produce a revised assessment notice.

Article 13 provides that a person affected by the determination of the independent valuer set out in the revised assessment notice may make a reference to the Financial Services and Markets Tribunal ("the Tribunal") for the notice to be reviewed.

Paragraphs 14 to 27 provide that the provisions of Part 9 of, and Schedule 13 to, the Financial Services and Markets Act 2000([10]) and of the Financial Services and Markets Tribunal Rules 2001 (S.I. 2001/2476) shall apply to a reference to the Tribunal, subject to the modifications set out in those paragraphs.

([8]) The Transfer Instrument was made by the Bank of England in exercise of the powers conferred on it by sections 11(2)(b) and 12(2) of the Act. The Transfer Instrument is available on the Bank of England's website: www.bankofengland.co.uk.

([9]) "Pre-transfer creditor" is defined in section 60(3)(b) of the Act.

([10]) 2000 c.8.