

Consultation draft

CONTENTS

Banks

- 1 Special resolution regime: additional objectives and condition
- 2 Holding companies: sale and transfer to bridge bank

Investment firms

- 3 Application of Banking Act 2009 to investment firms

Clearing houses

- 4 Special resolution regime for UK clearing houses
- 5 Additional power to direct UK clearing houses

Insolvency etc.

- 6 Insolvency etc

Schedule – Insolvency etc
Part 1 – Recognised investment exchanges
Part 2 – Clearing houses

A
B I L L

TO

Make provision

BE IT 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:—

Banks

1 Special resolution regime: additional objectives and condition

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 3 (interpretation: other expressions), after “this Part—” insert—
 ““client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),”.
- (3) In section 4 (special resolution objectives), after subsection (8) insert—
 “(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.
 (8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets.”
- (4) In section 8(2) (Condition A: private sector purchaser and bridge bank), omit the “or” after paragraph (b) and after paragraph (c) insert “, or
 (d) the protection of any client assets that may be affected.”
- (5) In section 47 (restriction of partial transfers), for subsection (3) substitute—
 “(3) Provision under subsection (2) may, in particular, refer to—
 (a) particular classes of deposit;
 (b) particular classes of client assets.”
- (6) In the Table in section 261 (index of defined terms), after the entry relating to

“central counterparty clearing services”, insert –

“Client assets (Part 1) | 3”.

2 Holding companies: sale and transfer to bridge bank

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), in the entry in the Table relating to sections 82 to 83 for “82 and” substitute “81B to”.
- (3) Before section 82 (but after the preceding cross-heading) insert –

“81B Sale to commercial purchaser and transfer to bridge bank

- (1) The Bank of England may exercise a stabilisation power in respect of a parent undertaking of a bank (“the holding company”) in accordance with section 11(2) or 12(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of the bank.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the holding company is necessary, having regard to the public interest in –
 - (a) the stability of the financial systems of the United Kingdom,
 - (b) the maintenance of public confidence in the stability of the banking systems of the United Kingdom,
 - (c) the protection of depositors, or
 - (d) the protection of any client assets that may be affected.
- (4) Condition 3 (which applies only in a financial assistance case) is that –
 - (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
 - (b) in the Bank’s opinion, exercise of the power in respect of the holding company is an appropriate way to provide that protection.
- (5) Condition 4 is that the holding company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult –
 - (a) the Treasury,
 - (b) the PRA, and
 - (c) the FCA.
- (7) In this section –

“financial assistance case” means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of the bank for the purpose of resolving or

reducing a serious threat to the stability of the financial systems of the United Kingdom, and

“parent undertaking” has the same meaning as in the Companies Act 2006 (see section 1162 and Schedule 7).”

- (4) In section 83 (supplemental), in subsection (1) –
- (a) after paragraph (b) insert –
“(ba) section 15(1),” and
 - (b) omit the “and” following paragraph (c), and after that paragraph insert –
“(ca) section 33, and”.
- (5) After that subsection insert –
- “(1A) Where the Bank of England exercises a stabilisation power in respect of a bank’s holding company in reliance on section 81B –
- (a) section 20(1) applies to (i) directors of the holding company, (ii) directors of the bank, and (iii) directors of a bank in the same group,
 - (b) sections 24(1), 26(3)(a), 26A(1) and (2), 41(1), 42A(1), 47(1), 60(3), 63(1), 66(1), 76(1) and (4), 77(1), 78(1) and (5), 79(1), 79A(1), 80(1) and 81A(1) and (2) apply as if references to a bank were to a holding company,
 - (c) [provision allowing for the transfer of property, rights, liabilities and securities of financial companies that are members of the same group as the holding company,]
 - (d) other provisions of this Act about share transfer instruments and property transfer instruments apply with any necessary modifications,
 - (e) section 214B of the Financial Services and Markets Act 2000 applies (contribution to costs of special resolution regime), and
 - (f) the reference in section 214B(1)(b) to the bank, and later references in the section, are treated as including references to any bank which is also a subsidiary undertaking of the holding company (but not to the holding company itself).”
- (6) In subsection (2), after paragraph (f) insert –
- “(fa) sections 81(1) and (4) and 81A(1) and (2) apply as if references to a bank were references to a holding company,”.
- (7) In subsection (3) after “transfer” (in both places) insert “instrument or”.
- (8) After subsection (4) insert –
- “(4A) The person exercising a stabilisation power in respect of a holding company in reliance on section 81B or 82 must have regard to the need to minimise the effect of the exercise of the power on other companies which are group undertakings of the holding company.
- (4B) [Provision –
- (a) restricting exercise of stabilisation power in reliance on section 81B or 82 to financial elements of groups, and
 - (b) requiring powers to be exercised at lowest possible level of holding company.]”
- (9) In section 83A (modifications for banks not regulated by PRA), after the entry

in the Table relating to section 46 insert –

- | | |
|--------------|---|
| “Section 81B | <ul style="list-style-type: none"> (a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore subsection (6)(b).” |
|--------------|---|

Investment firms

3 Application of Banking Act 2009 to investment firms

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert –

“Section 89A | Investment firms”.

- (3) In section 2 (interpretation: “bank”), at the end insert –
 - “(8) Section 89A applies this Part to investment firms with modifications.”
- (4) In section 75(5) (power to change law: application to other institutions), omit the “or” following paragraph (c) and after that paragraph insert –
 - “(ca) to investment firms,”.
- (5) After section 89 (and in Part 1) insert –

“Investment firms

89A Application to investment firms

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsections (2) and (3).
- (2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c)[, 10] and 14(5).
- (3) In section 8(2)(b) for “the banking systems of the United Kingdom” substitute “those systems”.
- (6) After section 159 insert –

“159A Application to investment firms

This Part applies to investment firms as it applies to banks.”

- (7) After section 258 insert –

“258A “Investment firm”

- (1) In this Act “investment firm” means a UK institution which is an investment firm for the purposes of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

- (2) But “investment firm” does not include an investment firm which is also –
- (a) a bank (within the meaning of Part 1),
 - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
 - (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985).
- (3) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of, any part of the United Kingdom.”
- (8) In the Table in section 261 (index of defined terms), after the entry relating to “inter-bank payment system”, insert –

“Investment firm | 258A”.

- (9) In section 214B(1)(a) of the Financial Services and Markets Act 2000 (contribution to costs of special resolution regime) for “or credit union” substitute “, credit union or investment firm”.

Clearing houses

4 Special resolution regime for UK clearing houses

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), after the entry in the Table relating to section 89A, insert –

“Sections 89B to 89G | UK clearing houses”.

- (3) In section 2 (interpretation: “bank”), after subsection (8) insert –
- “(9) Section 89B applies this Part to UK clearing houses with modifications.”
- (4) After section 39 insert –

“39A Banks which are clearing houses

Sections 89C to 89D (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house.”

- (5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert –
- “(cb) to UK clearing houses, or”.

- (6) After section 89A (and in Part 1) insert –

“UK clearing houses

89B Application to UK clearing houses

- (1) This Part applies to UK clearing houses as it applies to banks, subject to –
- (a) the modifications specified in subsections (2) to (5) and the Table, and
 - (b) any other necessary modifications.
- (2) For section 13 substitute –

“13 Transfer of ownership

- (1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”
- (3) For sections 28 and 29 substitute –

“28 Onward transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which –
- (a) provides for the transfer of –
 - (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
 - (ii) securities which were issued by the UK clearing house after the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is –
- (a) the Bank of England,
 - (b) a nominee of the Treasury, or

- (c) a company wholly owned by the Bank of England or the Treasury.
- (6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

29 Reverse share transfer

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a UK clearing house to a person (“the original transferee”).
- (2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
 - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
 - (b) provides for transfer to the original transferee (where subsection (3) applies);
 - (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).
- (5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
 - (a) the original transferee is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse share transfer instrument is made with the written consent of the original transferee.

- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless –
 - (a) the onward transferee is –
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
 - (7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
 - (8) Before making a reverse share transfer instrument the Bank of England must consult –
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.
 - (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”
- (4) For sections 45 and 46 substitute –

“45 Transfer of ownership: property transfer

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which –
 - (a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to –
 - (a) the Bank of England,
 - (b) a company wholly owned by the Bank of England or the Treasury, or
 - (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.

- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.
- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.

46 Transfer of ownership: reverse property transfer

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
- (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
- (3) A reverse property transfer instrument is a property transfer instrument which—
 - (a) provides for transfer to the transferor under the original instrument;
 - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
- (4) The Bank of England must not make a reverse property transfer instrument unless—
 - (a) the transferee under the original instrument is—
 - (i) the Bank of England,
 - (ii) a company wholly owned by the Bank of England or the Treasury, or
 - (iii) a nominee of the Treasury, or
 - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
- (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
- (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
 - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
 - (b) the FCA.
- (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”

(5) For section 81 substitute –

“81 Transfer of ownership: report

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).
- (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.
- (3) The report must comply with any requirements as to content specified by the Treasury.
- (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	<p>Ignore subsection (2)(b) and (c).</p> <p>In subsection (3)(c), for “to temporary public ownership” substitute “of ownership”.</p> <p>In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “15, 26 and 28 to 31”.</p>
Section 4	<p>Ignore subsection (2)(b) and (c).</p> <p>Ignore subsection (3)(a), (b) and (ba).</p> <p>In subsection (5), for “banking” substitute “financial”.</p> <p>In subsection (6), for “protect depositors” substitute “maintain the continuity of central counterparty clearing services”.</p> <p>Ignore subsections (8A), (8B) and (9).</p>
Section 5	<p>Ignore subsection (1)(b) and (c).</p> <p>In subsection (3) –</p> <ol style="list-style-type: none"> (a) for “Sections 12 and 13 require” substitute “Section 12 requires”, and (b) ignore the words “and temporary public ownership”.
Section 6	<p>In subsection (4) –</p> <ol style="list-style-type: none"> (a) after “Before” insert “issuing or”, and (b) ignore paragraph (d). <p>In subsection (5) after “after” insert “issuing or”.</p>

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 7	<p>In subsection (1), for “PRA” substitute “Bank of England”.</p> <p>In subsection (2), for the words following “satisfy the” substitute “requirements resulting from section 286 of the Financial Services and Markets Act 2000 (requirements for recognition)”.</p> <p>In subsection (3), for “the threshold conditions” substitute “those requirements while maintaining the continuity of the provision of central counterparty clearing services”.</p> <p>In subsection (4), for “PRA” substitute “Bank of England”.</p> <p>Ignore subsection (4A).</p> <p>In subsection (5)–</p> <ul style="list-style-type: none"> (a) for “PRA” substitute “Bank of England”, and (b) ignore paragraph (a) unless the UK clearing house is a PRA-authorized person, in which case for “Bank of England” substitute “PRA”. <p>Ignore subsections (7) and (8).</p>
Section 8	<p>In subsection (1), omit “in accordance with section 11(2) or 12(2)”.</p> <p>In subsection (2)–</p> <ul style="list-style-type: none"> (a) in paragraph (b), for “the banking systems of the United Kingdom” substitute “those systems”, and (b) ignore paragraphs (c) and (d). <p>In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.</p> <p>In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.</p>
Sections [and 10]	9 Ignore sections 9 [and 10].
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 25	Ignore section 25.
Section 26	In subsection (1), for “11(2)” substitute “13(2)”.
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
	In subsection (6), for “11(2)” substitute “13(2)”.
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 31	In subsection (4), for “7, 8 and 51” substitute “7 and 8”.
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 42A	In subsection (5), for “7, 8 and 50” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 43	In subsection (6), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 44	In subsection (5), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
	In subsection (4)(b), for “compensation scheme order” substitute “the order under section 89F”.
Section 55	In subsection (10), for “to which section 62 applies” substitute “under section 89F”.
Section 56	In subsection (6), for “to which section 62 applies” substitute “under section 89F”.
Section 57	In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.
	In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled” substitute “no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part”.
Section 58	In subsection (1), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.
	Ignore subsection (3).
	In subsection (4), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.
	In subsection (5), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.
	Ignore subsections (6) to (8).
Section 59	Ignore section 59.
Section 60	In subsection (3)(c), ignore the references to bank insolvency and bank administration.
	In subsection (4) –
	(a) ignore paragraphs (a) and (b), and
	(b) in paragraph (c), for “a third party compensation order” substitute “an order under section 89F”.

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
	In subsection (5) – (a) ignore paragraph (a), and (b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “an order under section 89F”.
Section 61	In subsection (1) – (a) ignore paragraphs (a) to (c), and (b) treat the subsection as including a reference to orders under section 89F.
	Ignore subsection (2)(b).
Section 62	Ignore section 62.
Section 65	In subsection (1)(a)(ii), for “order” substitute “instrument”.
	In subsection (3) – (a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and (b) ignore paragraph (b).
Section 66	In subsection (1) – (a) in paragraph (a), ignore the reference to section 11(2)(a), (b) in paragraph (d)(i), ignore the words following “England”, and (c) ignore paragraph (d)(ii).
Section 68	In subsection (1)(a), for “order” substitute “instrument”.
Section 69	In subsection (4) – (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and (b) ignore paragraph (b).
Section 70	In subsection (3) – (a) in paragraph (a), ignore the words “in relation to section 63”, and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Sections 81B	<p>In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2)”.</p> <p>In subsections (1) and (2) references to sections of this Act are to be read as references to those sections as they apply to UK clearing houses.</p> <p>In subsection (3) –</p> <ul style="list-style-type: none"> (a) in paragraph (b) for “banking systems” substitute “those systems”, and (b) ignore paragraphs (c) and (d). <p>In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.</p>
Section 82	Ignore section 82.
Section 83	Ignore subsections (1), (1A)(e) and (f) and (2).

89C Clearing house rules

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.
- (2) In particular, an instrument may –
 - (a) modify or amend the rules of a UK clearing house;
 - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect –
 - (a) for a specified period, or
 - (b) until a specified event occurs or does not occur.

89D Clearing house membership

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.
- (2) In particular, an instrument may –
 - (a) make provision modifying the terms on which a person is a member of a UK clearing house;
 - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

89E Recognition of transferor company

- (1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—
 - (a) for a specified period, or
 - (b) until a specified event occurs.
- (2) The provision may have effect—
 - (a) for a period specified in the instrument, or
 - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
 - (a) may be exercised only with the consent of the Treasury, and
 - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

89F Clearing house compensation orders

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
 - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
 - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
 - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
 - (a) is to be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

89G Interpretation: “UK clearing house” &c.

- (1) In this Part “UK clearing house” means a clearing house—
 - (a) which is incorporated in, or formed under the law of any part of, the United Kingdom,
 - (b) which provides central counterparty clearing services, and
 - (c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.
- (2) But “UK clearing house” does not include a clearing house which is also—
 - (a) a bank,
 - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),

- (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
 - (d) an investment firm.
- (3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.
- (4) In this Part –
- “central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and
 - “PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.”
- (7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert –

“89F	Clearing house compensation orders	Draft affirmative resolution”.
------	------------------------------------	--------------------------------

- (8) In the Table in section 261 (index of defined terms) –
- (a) after the entry relating to “bridge bank share transfer instrument” insert –

central counterparty clearing services	89G”,
--	-------
 - (b) after the entry relating to “partial property transfer” insert –

“PRA-authorised person	89G”, and
------------------------	-----------
 - (c) at the end insert –

“UK clearing house	89G”.
--------------------	-------

5 Additional power to direct UK clearing houses

- (1) After section 296 of the Financial Services and Markets Act 2000 insert –

“296A Additional power to direct UK clearing houses

- (1) The Bank of England may direct a UK clearing house to take, or refrain from taking, specified action if the Bank is satisfied that it is desirable to give the direction, having regard to the public interest in –
- (a) protecting and enhancing the stability of the UK financial system,
 - (b) maintaining public confidence in the stability of the UK financial system,

- (c) maintaining the continuity of the central counterparty clearing services provided by the clearing house, and
 - (d) maintaining and enhancing the financial resilience of the clearing house.
- (2) The direction may, in particular –
- (a) specify the time for compliance with the direction,
 - (b) require the rules of the clearing house to be amended, and
 - (c) override such rules (whether generally or in their application to a particular case).
- (3) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (4) The Bank of England may revoke a direction given under this section.
- (5) In this section –
- “central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section),
 - “UK clearing house” means a clearing house –
 - (a) which has its head office or its registered office (or both) in the United Kingdom,
 - (b) which provides central counterparty clearing services, and
 - (c) in relation to which a recognition order is in force.”
- (2) In section 298 of FSMA 2000 (directions and revocation: procedure), in subsections (1), (6) and (7) after “section 296” insert “or 296A”.

Insolvency etc.

6 Insolvency etc

In the Schedule –

- (a) Part 1 makes provision in relation to the insolvency etc of recognised investment exchanges, and
- (b) Part 2 makes provision in relation to the insolvency etc of recognised clearing houses.

SCHEDULE

Section 6

INSOLVENCY ETC

PART 1

RECOGNISED INVESTMENT EXCHANGES

- 1 (1) In Part 24 of the Financial Services and Markets Act 2000 (insolvency), in each of the provisions listed in sub-paragraph (2), after “authorised person” insert “or recognised investment exchange”.
- (2) The provisions are –
 - (a) in section 356 (powers of FCA and PRA to participate in proceedings: company voluntary arrangements), subsections (1) and (2);
 - (b) in section 358 (powers of FCA and PRA to participate in proceedings: trust deeds for creditors in Scotland), subsections (1), (2) and (6);
 - (c) in section 359 (administration order), subsection (1)(a);
 - (d) in section 362 (powers to participate in proceedings: administration orders), subsection (1);
 - (e) in section 363 (powers to participate in proceedings: receivership), subsection (1);
 - (f) in section 365 (powers to participate in proceedings: voluntary winding up), subsection (1)(b);
 - (g) in section 367 (winding-up petitions), subsection (1)(a);
 - (h) in section 371 (power to participate in proceedings: winding up by the court), subsection (1)(a).

PART 2

CLEARING HOUSES

- 2 In section 285A of the Financial Services and Markets Act 2000 (powers exercisable in relation to recognised clearing houses etc), in subsection (3), omit the “and” at the end of paragraph (b) and after that paragraph insert –
 - “(ba) Part 2A makes provision relating to the winding up, administration or insolvency of UK clearing houses; and”.
- 3 (1) Schedule 17A to Financial Services and Markets Act 2000 (further provision in relation to exercise of Part 18 functions by Bank of England) is amended as follows.
 - (2) In Part 2 (application of provisions of Act in relation to Bank of England), after paragraph 23 insert –

“Insolvency

- 23A (1) The following provisions of Part 24 of this Act are to apply in relation to the Bank –

- (a) section 356 (powers to participate in proceedings: company voluntary arrangements);
- (b) section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland);
- (c) section 359 (administration order);
- (d) section 362 (powers to participate in administration proceedings);
- (e) section 362A (consent to appointment of administrator);
- (f) section 363 (powers to participate in proceedings: receivership);
- (g) section 365 (powers to participate in proceedings: voluntary winding-up);
- (h) section 367 (winding-up petitions);
- (i) section 371 (powers to participate in proceedings: winding-up).

- (2) Those provisions are to apply as if any reference to an authorised person or recognised UK investment exchange were a reference to a recognised clearing house.

23B In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services, the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.”

- (3) After that Part insert –

“PART 2A

WINDING UP, ADMINISTRATION OR INSOLVENCY OF UK CLEARING HOUSES

Notice to Bank of England of preliminary steps

- 31A (1) An application for an administration order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
 - (3) A resolution for voluntary winding up of a UK clearing house may not be made unless the conditions below are satisfied.
 - (4) An administrator of a UK clearing house may not be appointed unless the conditions below are satisfied.
 - (5) Condition 1 is that the Bank of England has been notified –
 - (a) by the applicant for an administration order, that the application has been made,
 - (b) by the petitioner for a winding up order, that the petition has been presented,
 - (c) by the UK clearing house, that a resolution for voluntary winding up may be made, or
 - (d) by the person proposing to appoint an administrator, of the proposed appointment.

- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
 - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
 - (b) the Bank of England has informed the person who gave the notice that—
 - (i) it has no objection to the order, resolution or appointment being made, and
 - (ii) it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a UK clearing house’s creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (9) In this section—

“the court” means—

 - (a) in England and Wales, the High Court,
 - (b) in Scotland, the Court of Session, and
 - (c) in Northern Ireland, the High Court;

“UK clearing house” has the same meaning as in section 296A.

Power to give directions to insolvency practitioner

- 31B (1) This paragraph applies where a person has been appointed to act as an insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986 or article 3 of the Insolvency (Northern Ireland) Order 1989) in relation to company which is, or has been, a UK clearing house.
- (2) The Bank of England may give directions to the person if satisfied that it is desirable to give the directions, having regard to the public interest in—
 - (a) protecting and enhancing the stability of the UK financial system,
 - (b) protecting and enhancing public confidence in the stability of the UK financial system, and
 - (c) maintaining the continuity of central counterparty clearing services.
 - (3) Before giving directions the Bank of England must consult—
 - (a) the Treasury,
 - (b) (if the clearing house is a PRA-authorized person) the PRA;
 - (c) the FCA.
 - (4) Directions are enforceable, on an application by the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

- (5) A person is not liable for damages in respect of action or inaction in accordance with directions.
- (6) The immunity does not extend to action or inaction—
 - (a) in bad faith, or
 - (b) in contravention of section 6(1) of the Human Rights Act 1998.
- (7) In this paragraph—
 - “central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and
 - “UK clearing house” has the same meaning as in section 296A.”

