Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 ISBN 978-0-11-148073-1*

Draft Order laid before Parliament under section 62(2) of the Banking Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. ***

BANKS AND BANKING

The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009

Made - - - -	**** 2009*
Coming into force - -	**** 2009*

The Treasury make this Order in exercise of the powers conferred by sections 49, 50, 52, 54, 57 to 59, 61 and 259 of the Banking Act 2009(**1**) and in accordance with regulation 3 of the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009(**2**).

A draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 62(2) of that Act.

PART 1

General

Citation and commencement

1. This Order may be cited as the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

"Account Holder" has the meaning given in paragraph 1(2) of Schedule 1;

"the Act" means the Banking Act 2009;

(**1**) 2009 c.1.
(**2**) S.I. 2009/319.

"Bridge Bank" means DBS Bridge Bank Limited, a company with the registered number SC356970 whose registered office is Caledonia House, Carnegie Avenue, Dunfermline KY11 8PJ;

"Bridge Bank business" means the property, rights and liabilities transferred from Dunfermline to the Bridge Bank by virtue of paragraph 12 of the Transfer Instrument and any property, rights and liabilities transferred from Dunfermline to the Bridge Bank by virtue of a supplemental property transfer instrument(**3**);

"Dunfermline" means Dunfermline Building Society, a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(**4**) and authorised and regulated by the Financial Services Authority (Reg no: 158765);

"Dunfermline Resolution Account" means the account established in accordance with article 6(1);

"Financial Services Compensation Scheme" means the scheme established under Part 15 of the Financial Services and Markets Act 2000(**5**);

"financial year" means the twelve months ending with 31st March;

"independent valuer" means the person appointed in accordance with article 5(2);

"Nationwide business" means the property, rights and liabilities transferred from Dunfermline to Nationwide Building Society (incorporated under the Building Societies Act 1986 with registered number 355B) by virtue of paragraph 3 of the Transfer Instrument;

"Transfer Instrument" means the Dunfermline Building Society Property Transfer Instrument 2009(**6**);

PART 2

Dunfermline Compensation Scheme

Transfer of the Nationwide business: determination of amount of compensation

3. The amount of compensation payable to Dunfermline in respect of the Nationwide business is determined as nil.

PART 3

Independent valuer

Functions of the independent valuer

4. An independent valuer must be appointed to perform the functions specified in—

(a) article 9 (third party compensation);

(b) article 11 (assessment of recoveries by the Financial Services Compensation Scheme);

(**3**) Where the Bank of England has made a property transfer instrument in accordance with section 11(2) or 12(2) of the Act, the Bank of England may make a supplemental property transfer instrument in exercise of the power conferred by section 42 of the Act.
(**4**) 1986 c.53.
(**5**) 2000 c.8.
(**6**) The Transfer Instrument was made by the Bank of England in exercise of the powers conferred on it by sections 11(2) and 12(2) of the Act (as applied by section 89). The Transfer Instrument is available on the Bank of England's website: www.bankofengland.co.uk.

(c) paragraph 7 of Schedule 1 (certification of costs of the Bank of England or the Treasury to be deducted from the Dunfermline Resolution Account).

Appointment of the independent valuer

5.—(1) The Treasury must—

(a) make arrangements to identify candidates for the office of independent valuer and must publish the details of those arrangements on their website(**7**);

(b) make arrangements for a panel to appoint the independent valuer ("the Appointment Panel").

(2) The Appointment Panel shall have the function of selecting and appointing an independent valuer from a list of the candidates identified by the Treasury in accordance with paragraph (1)(a).

(3) The Treasury must ensure that the Appointment Panel comprises no fewer than four members, of which—

(a) one member is the Chief Executive of the Institute of Chartered Accountants in England and Wales, who must be the chair of the Appointment Panel; and

(b) one member is a representative of the Treasury, who shall be a non-voting member of the Appointment Panel.

(4) The independent valuer is to hold and vacate office in accordance with the terms of his or her appointment.

(5) The independent valuer may be removed from office only—

(a) by the Appointment Panel, excluding the member who is a representative of the Treasury, and

(b) on the grounds of incapacity or serious misconduct.

(6) In the event of the death of the independent valuer, or if the independent valuer is removed from office or resigns, a new independent valuer must be appointed.

(7) In the event that a member of the Appointment Panel is unable to sit on the Appointment Panel to perform the function in paragraph (5), the Treasury must appoint another member to replace that member of the first Appointment Panel.

(8) The provisions of this Order apply to the replacement of the independent valuer as to the first independent valuer appointed.

PART 4

Dunfermline Resolution Fund

Transfer of the Bridge Bank business: resolution fund

6.—(1) The Treasury must establish an account to be known as the Dunfermline Resolution Account.

(2) Part 1 of Schedule 1 makes provision for the arrangements for the Dunfermline Resolution Account.

(**7**) The website is available at the following address: www.hm-treasury.gov.uk.

Payments into the resolution fund

7. Part 2 of Schedule 1 makes provision for the arrangements for paying money into the Dunfermline Resolution Account.

Entitlement to the moneys in the resolution fund and payments out of the resolution fund

8. Part 3 of Schedule 1 makes provision in respect of—

(a) entitlements to the moneys standing to the credit of the Dunfermline Resolution Account; and

(b) the arrangements for making payments from the Dunfermline Resolution Account.

PART 5

Third Party Compensation

Third party compensation

9.—(1) Schedule 2 makes provision for the arrangements to be put in place for the assessment of any compensation payable to persons other than Dunfermline.

(2) The independent valuer must determine, in accordance with Part 2 of Schedule 2, the amount of any compensation payable to any person who was affected by the application of section 38(6) of the Act (termination rights, &c.) (by virtue of paragraph 6 of the Transfer Instrument).

(3) The independent valuer must determine, in accordance with Part 3 of Schedule 2, the amount of any compensation payable to pre-transfer creditors(**8**) of Dunfermline(**9**).

Payment of compensation

10. Any compensation determined by an independent valuer to be payable in accordance with this Order must be paid by the Treasury in accordance with paragraph 13 of Schedule 2.

PART 6

Financial Services Compensation Scheme

Assessment of recoveries

11. The independent valuer must perform the function in regulation 8(1) of the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009(**10**) in order to assess the amount that would have been likely to be recovered by the Financial Services Compensation Scheme from Dunfermline.

(**8**) "Pre-transfer creditor" is defined in section 60(3)(b) of the Act.

(**9**) Part 3 of Schedule 2 makes provision in accordance and in connection with the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009. Those Regulations specify the provisions which must or may be included in a third party compensation order made in accordance with section 59 of the Act in cases where those regulations apply.

(**10**) S.I. 2009/807.

[Name]
[Name]
Two of the Lords Commissioners of Her
Majesty's Treasury

Date