

EXPLANATORY MEMORANDUM TO
THE SCOTTISH AND NORTHERN IRELAND BANKNOTE REGULATIONS 2009
2009 No. 3056

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision about the treatment, holding and issuing of banknotes by those banks which are entitled by virtue of section 213 of the Banking Act 2009 (c. 1) to issue banknotes in Scotland or Northern Ireland (other than the Bank of England).

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

3.1 None

4. Legislative Context

4.1 This instrument is the first set of regulations made for the purposes of Part 6 of the Banking Act 2009. The Regulations require note issuing banks to hold backing assets and make provision for a note exchange programme in the event of the insolvency of a note issuing bank. They enable the Bank of England to make banknote rules about the treatment, holding and issuing of banknotes by the note issuing banks.

4.2 The following undertakings were given by Ministers in Parliament:

(a) that the regulations will not permit the banknote rules to do everything that the regulations may do; the banknote rules will focus on the operational aspects of the new framework rather than the underlying principles of banknote issuance (HL Deb 26 Jan 2009 Col 55-6);

(b) that the regulations will set out a formula for calculating the maximum penalty to be imposed for holding insufficient backing assets and will make provision in relation to a statement of policy on penalties to which the Bank of England must have regard when determining the level of penalty to be imposed (HL Deb 3 Feb 2009 Col 590-1, HC Deb 10 Feb 2009 Col 1332-3).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary has made the following statement regarding Human Rights:

In my view the provisions of the Scottish and Northern Ireland Banknote Regulations 2009 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The issuance of national banknotes is usually a monopoly of the central bank, which in the United Kingdom is the Bank of England. The United Kingdom is unusual in permitting a limited number of commercial banks to issue their own banknotes.
- 7.2 A total of 7 banks are currently authorised to issue banknotes in Scotland and Northern Ireland. The 3 banks authorised to issue banknotes in Scotland currently have approximately £3.2 billion notes in circulation, while the 4 banks authorised to issue banknotes in Northern Ireland currently have approximately £1.7 billion notes in circulation.
- 7.3 The Banking Act 2009 introduced a framework to provide enhanced protection for holders of Scottish and Northern Ireland banknotes, and to update, modernise and strengthen the regime for commercial note issue, which dates back over 160 years.
- 7.4 The aim is to ensure that holders of Scottish and Northern Ireland banknotes have a level of protection similar to that of holders of Bank of England notes, and, in the event of an authorised bank failing, can expect to obtain full face value for their notes.
- 7.5 The framework governing the issue of Scottish and Northern Ireland banknotes is set out in primary legislation, while the detail is to be set out in this instrument and the banknote rules. This structure provides the necessary flexibility in order to make detailed provision as appropriate.
- 7.6 The Government consulted on these proposals in 2005, 2008 and 2009. Earlier consultations were concerned with the overall proposals, and the 2009 consultation was concerned with this instrument. Beyond the authorised banks themselves, few other parties have expressed an interest in these proposals, and the issue has received hardly any media attention.
- 7.7 This is an important change in order to ensure noteholders are adequately protected, in the event that an authorised bank enters insolvency.

Consolidation

- 7.8 Consolidation does not arise in relation to these Regulations.

8. Consultation outcome

- 8.1 HM Treasury launched a consultation on the Regulations on 17th June 2009, which closed on 9th September 2009. A total of 8 responses were received.
- 8.2 Respondents broadly agreed with the proposals set out in the consultation draft of the regulations.
- 8.3 All respondents requested that an arbitration or appeal process be included. An appeal process will be included in the Bank of England's published penalty policy.
- 8.4 A summary of responses has been published on HM Treasury's website.

9. Guidance

- 9.1 No guidance on this instrument will be issued by the Treasury. However, the Bank of England will publish guidance when it makes the banknotes rules.

10. Impact

- 10.1 An Impact Assessment is attached to this memorandum.

11. Regulating small business

- 11.1 The legislation does not regulate small businesses.

12. Monitoring & review

- 12.1 The changes set out in this instrument aim to ensure that holders of Scottish and Northern Ireland banknotes have a level of protection similar to that of holders of Bank of England notes, and, in the event of an authorised bank failing, can expect to obtain full face value for their notes.
- 12.2 The Bank of England must report on the discharge of its functions under these Regulations at least once a year. This report will be published, initially in Spring 2010 and thereafter on an annual basis.

13. Contact

Sarah Gannaway at HM Treasury (tel: 020 7270 6273 or email: sarah.gannaway@hm-treasury.gov.uk) can answer any queries regarding the instrument.