

Dunfermline Building Society Property Transfer Instrument 2009

Made - - - - - *30th March 2009*

Coming into force - - - - - *30th March 2009*

This Instrument is made by the Bank of England in the exercise of the powers conferred by sections 11(2), 12(2), 34, 35, 36, 37, 38, 39, 40 and 84 of the Banking Act.

In accordance with section 7 of that Act (as applied by section 84), the FSA is satisfied that—

Dunfermline is failing, or is likely to fail, to satisfy the threshold conditions (within the meaning of section 41(1) of the Financial Services and Markets Act 2000 (c. 8)); and

having regard to timing and other relevant circumstances it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of Dunfermline that will enable it to satisfy the threshold conditions.

In accordance with section 7(5) of that Act (as applied by section 84), the FSA has consulted the Bank of England and the Treasury.

In accordance with section 8 of that Act (as applied by section 84), the Bank of England is satisfied that it is necessary to make this Instrument having regard to the public interest considerations specified in section 8(2).

In accordance with section 8(3) of that Act (as applied by section 84), the Bank of England has consulted the FSA and the Treasury and has obtained the consent of the Treasury to the use of public funds under section 78(1) of that Act.

In accordance with section 4(2) of that Act the Bank of England has had regard to the special resolution objectives.

In accordance with section 5(4) of that Act, the Bank of England has had regard to the code of practice published by the Treasury under section 5 of that Act.

The Treasury have notified the Bank of England that, for the purposes of making the transfer to be effected by this Instrument possible and in connection with the transfer, the Treasury have agreed to pay to the Nationwide a sum in respect of the liabilities that are to be transferred to it from Dunfermline, by virtue of the transfer effected by paragraph 3 of this Instrument and to be determined in accordance with the Nationwide payment agreement.

Accordingly, the Bank of England makes the following Instrument —

PART 1
GENERAL

Citation and commencement

1.—(1) This Instrument may be cited as the Dunfermline Building Society Property Transfer Instrument 2009.

(2) This Instrument comes into force at the transfer time.

Interpretation: general

2. In this Instrument:

“acquired mortgage loan” means a mortgage loan which Dunfermline has acquired from a third party;

“the Banking Act” means the Banking Act 2009, (c. 1);

“Bridge Bank” means PT Shelfco (Scot) Limited, a company with the registered number 356970 incorporated in Scotland under Scots law whose registered office is at 24 Great King Street, Edinburgh EH 3 6QN;

“Bridge Bank transfer” means the transfer effected by paragraph 12;

“Bridge Bank business” means the property, rights and liabilities transferred by paragraph 12;

“Bridge Bank excluded property, rights and liabilities” has the meaning given in paragraph 14;

“Building Societies Act” means the Building Societies Act 1986 (c. 53);

“commercial loan” means a loan (other than a commercial mortgage loan) made or agreed to be made by or on behalf of Dunfermline to a person other than an eligible claimant or a housing association;

“commercial mortgage loan” means a mortgage loan made or agreed to be made by or on behalf of Dunfermline to a person other than an eligible claimant or a housing association;

“deposit” has the meaning given by article 5 of the Regulated Activities Order (disregarding the exclusions in articles 6 to 9AA of that Order);

“Dunfermline” means Dunfermline Building Society, incorporated under the Building Societies Act with registered number 9B(S);

“Dunfermline Nominees” means Dunfermline BS Nominees Limited (company number SC113202);

“eligible claimant” has the meaning given by rule 4.2.1 of the Compensation Sourcebook made by the FSA under the Financial Services and Markets Act 2000 (c. 8);

“excluded property, rights and liabilities” has the meaning given in paragraph 3(3);

“the FSA” means the Financial Services Authority;

“FRNs” means the £250,000,000 Floating Rate Notes issued by Dunfermline due 30th March 2009;

“housing association” means a society, body of trustees, or company, which is established for the purpose of, or amongst whose objects or powers are included those of providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of housing accommodation, and which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or

dividend exceeding such rate as may be described by the Treasury, whether with or without differentiation as between share and loan capital and including a registered social landlord under the Housing (Scotland) Act 2001;

“housing association deposit” means any deposit made by a housing association with Dunfermline;

“housing association loan” means any loan or mortgage loan made by Dunfermline to a housing association;

“membership rights” means constitutional and ownership rights and obligations, and include —

- (a) voting rights;
- (b) the right to participate in the distribution of any surplus assets;
- (c) rights to requisition meetings;
- (d) rights in relation to the appointment of directors;
- (e) the right to receive information;
- (f) rights and obligations arising from a charitable assignment declaration of Nationwide; and
- (g) all other rights of a similar nature;

“mortgage loan” means a loan which is fully or substantially secured on heritable, leasehold or other real property;

“Nationwide” means Nationwide Building Society, incorporated under the Building Societies Act with registered number 355B;

“Nationwide business” means the property, rights and liabilities transferred by paragraph 3;

“Nationwide payment agreement” means the agreement entered into between the Treasury and the Nationwide relating to the payment to be made to Nationwide by the Treasury in connection with the transfer (as mentioned in the ninth recital to this instrument);

“Nationwide transfer” means the transfer effected by paragraph 3;

“Partial Property Transfers Order” means The Banking Act 2009 (Restrictions of Partial Property Transfers) Order 2009;

“pension scheme” means the Dunfermline Building Society 1974 Pension and Life Assurance Scheme established by deeds dated 19th and 21st November 1960 and currently governed by a deed of amendment attaching rules, which is effective on and from 6 April 2006;

“Regulated Activities Order” means The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended);

“relevant loan account” means an account opened by the Nationwide in respect of any loan fully secured on land which was outstanding to Dunfermline and was transferred to the Nationwide upon the transfer;

“relevant undertaking” means Dunfermline or any of its subsidiary undertakings within the meaning of section 1159 of the Companies Act 2006;

“security rights” means any standard security, mortgages, charges, pledges, liens or other security rights or interests granted in order to secure an obligation and any reference to property, rights and liabilities in this Instrument shall be considered to include a reference to security rights;

“share” (other than in sub-paragraph 3(3)(f)); “shareholding member” and references to the value of shares are to be construed in accordance with section 119 of the Building Societies Act;

“share account” means any share account with Dunfermline;

“tax” means all taxes, whether of the United Kingdom or otherwise, including those taxes listed in section 74(2) of the Banking Act and value added tax; and

“the transfer time” is 8 a.m. on 30th March 2009 (and is used in the Instrument to denote the time that the Nationwide transfer and the Bridge Bank transfer take place in pursuance of paragraphs 3 and 12 respectively from which other things take effect).

PART 2

THE NATIONWIDE TRANSFER

Nationwide Transfer

3.—(1) By virtue of this Instrument, all property, rights and liabilities (including the Dunfermline brand name and all property, rights and liabilities that fall within any of the descriptions specified in section 35(1) of the Banking Act) of Dunfermline are transferred to the Nationwide other than excluded property, rights and liabilities.

(2) The transfer takes place at the transfer time.

(3) “excluded property, rights and liabilities” means —

- (a) the Bridge Bank business;
- (b) all medium term notes and residential mortgage-backed securities held by Dunfermline as treasury assets;
- (c) all property, rights and liabilities in respect of the £50,000,000 6 per cent. Subordinated Notes due 2015 issued by Dunfermline;
- (d) all property, rights and liabilities in respect of acquired mortgage loans and all other property, rights and liabilities which relate solely to the acquired mortgage loans or which relate to the acquired mortgage loans to a greater extent than to the other property, rights and liabilities of Dunfermline;
- (e) all property, rights and liabilities in respect of commercial loans or commercial mortgage loans and all other property, rights and liabilities which relate solely to the commercial loans and commercial mortgage loans or which relate to the commercial loans and commercial mortgage loans to a greater extent than to the other property, rights and liabilities of Dunfermline;
- (f) the shares held by Dunfermline in Dunfermline Solutions Limited (company number SC113203), Dunfermline Commercial Finance Limited (company number SC113201) and Dunfermline Development Services Limited (company number SC113429) and any rights (including membership rights) and liabilities of Dunfermline in respect of Funds Transfer Sharing Limited (company number 01850222);
- (g) the rights and liabilities of Dunfermline in respect of shares held by shareholding members, other than the aggregate liabilities that Dunfermline would have owed to shareholding members if shareholding members had given notice of withdrawal effective immediately before the transfer time;
- (h) any liability specified in sub-paragraph 7(8);
- (i) any liability in respect of (i) any award of damages or any fine imposed on or against Dunfermline by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the transfer time and (ii) any legal or other costs incurred by Dunfermline in connection with the defence of the proceedings or investigations that gave rise to that liability except that this sub-paragraph 3(3)(i) does not apply to the extent that it would be incompatible with the

Transfer of Undertakings (Protection of Employment) Regulations 2006 or article 4 of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009;

- (j) all rights and liabilities in respect of tax;
- (k) any property, rights and liabilities the transfer of which would constitute a contravention of articles 3 to 7 of the Partial Property Transfers Order; and
- (l) all rights, obligations and liabilities under or in respect of the pension scheme and any other occupational pension schemes operated by any relevant undertaking except that this sub-paragraph 3(3)(l) does not apply to the extent that it would be incompatible with the Transfer of Undertakings (Protection of Employment) Regulations 2006 or section 257 or 258 of the Pensions Act 2004 or article 4 of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009.

(4) For the purposes of, in connection with, and in consequence of the transfer of shares of Dunfermline Nominees by this paragraph, Nationwide is entitled as from the transfer time to all the rights, benefits and privileges of a member of Dunfermline Nominees.

Shares of shareholding members: further provision

4.—(1) The following provision is made in respect of the shares held by the shareholding members of Dunfermline.

(2) At the transfer time all shares held by shareholding members of Dunfermline are cancelled.

(3) The liabilities transferred to Nationwide by paragraph 3 are, subject to sub-paragraph (5), on the same terms that existed between the shareholding member and Dunfermline before the transfer.

(4) The rights of shareholding members in relation to the liabilities transferred by paragraph 3 are, subject to sub-paragraph (5), on the same terms that existed between the shareholding member and Dunfermline before the transfer.

(5) The membership rights of each shareholding member in relation to the liabilities transferred by paragraph 5 are the same as the membership rights of existing shareholding members of the Transferee.

Non-application of sections 93 to 102D of the Building Societies Act

5. This Instrument is to have effect without causing sections 93 to 102D (mergers and transfers) of the Building Societies Act to apply.

Termination rights

6.—(1) Section 38(6) of the Banking Act (which makes provision in respect of “default event provisions”) is applied by this Instrument.

(2) But section 38(6) does not apply to the extent that it would be incompatible with —

- (a) Directive 1998/26/EC (on settlement finality in payment and securities settlement systems), Directive 2002/47/EC (on financial collateral arrangements) or any other enforceable European Community right; or
- (b) article 9 of the Partial Property Transfers Order.

Continuity

7.—(1) As from the transfer time, the Nationwide is to be treated for all purposes necessary to give effect to the Nationwide transfer as the same person as Dunfermline except in relation

to the excluded property, rights and liabilities or relevant loan accounts referred to in sub-paragraph (6).

(2) Agreements or other things done by or in relation to Dunfermline are, if they relate to the Nationwide business (including the shareholding accounts held by the shareholding members of Dunfermline) immediately prior to the transfer time, to be treated as made or done by or in relation to the Nationwide.

(3) Without limiting sub-paragraph (2) —

(a) any payment received after the transfer time by or in relation to Dunfermline that relates to any account held by or with Dunfermline immediately before the transfer time other than an account that relates to any excluded property, rights and liabilities is to be treated as received by or in relation to the Nationwide;

(b) any payment made or other things done by or in relation to Dunfermline that relate to the FRNs is to be treated as made or done by or in relation to the Nationwide.

(4) Subject to sub-paragraph 3(3)(i), anything (including legal proceedings) —

(a) that relates to some or all of the Nationwide business or to the share accounts held by the shareholding members of Dunfermline immediately prior to the transfer time; and

(b) which is in the process of being done by or in relation to Dunfermline immediately before the transfer time,

shall be continued by or in relation to the Nationwide on the same terms and subject to the same discretions.

(5) Subject to sub-paragraph (6), a reference (express or implied) in a relevant instrument or document relating to Dunfermline is to have effect as if it were a reference to the Nationwide if the reference is in connection with rights and obligations that relate to the Nationwide business and nothing in this sub-paragraph (5) shall preclude the application of, in particular, sub-paragraph 17(5).

(6) Sub-paragraph (5) does not have effect so far as it would modify the basis for calculation of any standard variable rates of interest in respect of any relevant loan account.

(7) A relevant instrument or document is one which relates to some or all of the Nationwide business.

(8) Where any breach of contract or breach of duty in connection with some or all of the Nationwide business occurs before the transfer time, any liability of Dunfermline in connection with that breach (whenever that liability may arise) remains that of Dunfermline.

(9) Sub-paragraph (8) does not apply to the extent that it would be incompatible with the Transfer of Undertakings (Protection of Employment) Regulations 2006 or article 4 of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009.

(10) Dunfermline and the Nationwide may by agreement modify paragraphs 6 or 7 to the extent permitted by section 36(7) of the Banking Act.

Provision of assistance

8. Dunfermline must provide Nationwide with such information and assistance as is reasonably requested by Nationwide in writing —

(i) in relation to the transferred business or to the operation of the transferred business; and

(ii) for any other purpose relating to, in connection with or in consequence of this Instrument.

PART 3
MISCELLANEOUS

Pensions

9.Nothing in this Instrument will operate to transfer any rights, obligations or liabilities under or in respect of the pension scheme or any other occupational pension scheme operated by a relevant undertaking to the Nationwide or the Bridge Bank. Nationwide shall have no liability in relation to any early retirement benefits to which any employee may become entitled following the transfer as a consequence of any rights or entitlements to such benefits under the pension scheme, any other occupational pension scheme operated by a relevant undertaking or any contract of employment with a relevant undertaking in relation to service prior to the Nationwide transfer.

10.Paragraph 9 does not apply to the extent that it would be incompatible with the Transfer of Undertakings (Protection of Employees) Regulations 2006, sections 257 or 258 of the Pensions Act 2004 or article 4 of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009.

Liabilities of Dunfermline arising in connection with the Nationwide transfer

11.—(1) Sub-paragraph (2) applies where the Treasury pays to the Nationwide all or any part of the sum payable under the Nationwide payment agreement.

(2) For the purposes of, in connection with, and in consequence of the transfer of liabilities under paragraph 3, Dunfermline assumes the following liabilities to the Treasury (subject to the limitation of sub-paragraph (7)).

(3) The first liability is a liability in an amount equal to the aggregate liabilities transferred under paragraph 3 that Dunfermline would have owed to any person in respect of—

- (a) a deposit (other than a deposit which comprises a liability specified in sub-paragraph (4)), and
- (b) any other unsecured and unsubordinated liability (other than a liability specified in sub-paragraph (4)),

if those liabilities of Dunfermline had not been transferred by paragraph 3.

(4) The second liability is a liability in an amount equal to the aggregate liabilities that Dunfermline would have owed to shareholding members if—

- (a) shareholding members had given notice of withdrawal effective immediately before the transfer time, and
- (b) the liabilities of Dunfermline in respect of their share accounts had not been transferred by paragraph 3.

(5) Dunfermline is to calculate the first and second liabilities as follows—

- (a) Dunfermline must, immediately after the transfer time, estimate the amount of the first and second liabilities, and
- (b) Dunfermline may revise its estimate from time to time, and must do so on the written request of the Treasury.

(6) Dunfermline must notify the Treasury and the Nationwide of estimates and revisions.

(7) Where the aggregate of the first and second liabilities would exceed the relevant amount, any claim made in respect of the first and second liabilities shall be limited to their respective proportions of the relevant amount.

(8) The relevant amount is the amount ultimately to be paid by the Treasury to the Nationwide in accordance with the Nationwide payment agreement.

(9) Sub-paragraph (10) applies where a building society special administration order has been made in respect of Dunfermline (under section 144 of the Banking Act as applied by section 90C of the Building Societies Act).

(10) References in sub-paragraphs (5) and (6) to Dunfermline are to the special administrator.

(11) For the purposes of calculating the amount specified in sub-paragraph (3)(b) and the proportions referred to in sub-paragraph (7), the amount of any contingent liability is to be disregarded.

PART 4

BRIDGE BANK TRANSFER

Bridge Bank Transfer

12. By virtue of this Instrument, the property, rights and liabilities of Dunfermline specified in paragraphs 15 and 16 below (including relevant property, rights and liabilities that fall within any of the descriptions specified in section 35(1) of the Banking Act) are transferred to the Bridge Bank other than the Bridge Bank excluded property, rights and liabilities.

13. The Bridge Bank transfer takes place at the transfer time.

14. “the Bridge Bank excluded property, rights and liabilities” means —

(1) any liability specified in sub-paragraph 17(7);

(2) any liability in respect of (i) any award of damages or any fine imposed on or against Dunfermline by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the transfer time and (ii) any legal or other costs incurred by Dunfermline in connection with the defence of the proceedings or investigations that gave rise to that liability except that this sub-paragraph (2) does not apply to the extent that it would be incompatible with the Transfer of Undertakings (Protection of Employment) Regulations 2006;

(3) all rights and liabilities in respect of tax; and

(4) any property, rights and liabilities the transfer of which would constitute a contravention of paragraphs 3 to 7 of the Partial Property Transfers Order.

Housing Association Loans and Deposits

15. All property, rights and liabilities in respect of the housing association loans together with the housing association deposits held by a housing association which has a housing association loan.

16. All property, rights and liabilities in respect of any customer databases owned by Dunfermline relating exclusively to the property, rights and liabilities referred to in paragraph 15.

Bridge Bank Continuity

17.—(1) As from the transfer time, Bridge Bank is to be treated for all purposes necessary to give effect to the transfer as the same person as Dunfermline except in relation to the Bridge Bank excluded property, rights and liabilities.

(2) Agreements or other things done by or in relation to Dunfermline are, if they relate to the Bridge Bank business immediately prior to the transfer time, to be treated as made or done by or in relation to Bridge Bank.

(3) Without limiting sub-paragraph (2) any payment received after the transfer time by or in relation to Dunfermline that relates to any account held by or with Dunfermline in relation to the Bridge Bank business immediately before the transfer time other than an account that relates to any Bridge Bank excluded property, rights and liabilities is to be treated as received by or in relation to Bridge Bank;

(4) Subject to sub-paragraph 14(2), anything (including legal proceedings) —

- (a) that relates to some or all of the Bridge Bank business immediately prior to the transfer time; and
- (b) which is in the process of being done by or in relation to Dunfermline immediately before the transfer time,

shall be continued by or in relation to Bridge Bank on the same terms and subject to the same discretions.

(5) A reference (express or implied) in a relevant instrument or document relating to Dunfermline is to have effect as if it were a reference to the Bridge Bank if the reference is in connection with rights and obligations that relate to the Bridge Bank business and nothing in this sub-paragraph (5) shall preclude the application of, in particular, sub-paragraph 7(5).

(6) A relevant instrument or document is one which relates to some or all of the Bridge Bank business.

(7) Where any breach of contract or breach of duty in connection with some or all of the Bridge Bank business occurs before the transfer time, any liability of Dunfermline in connection with that breach (whenever that liability may arise) remains that of Dunfermline.

(8) Sub-paragraph (7) does not apply to the extent that it would be incompatible with the Transfer of Undertakings (Protection of Employment) Regulations 2006 or article 4 of the Amendments to Law (Resolution of Dunfermline Building Society) Order 2009.

(9) Dunfermline and Bridge Bank may by agreement modify any provision of this Instrument to the extent permitted by section 36(7) of the Banking Act.