



# House of Commons

## NOTICES OF AMENDMENTS

given up to and including  
**Wednesday 3 July 2013**

### CONSIDERATION OF BILL

#### FINANCIAL SERVICES (BANKING REFORM) BILL

##### *NEW CLAUSES*

##### *Minor amendments*

Mr Chancellor of the Exchequer

**NC1**

To move the following Clause:—

‘Schedule [*Minor amendments*] (which contains amendments of, or connected with, the Financial Services Act 2012 and amendments of provisions amended by that Act) has effect.’.

##### *Burden of proof: persons performing significant influence functions*

Stephen Barclay

**NC2**

To move the following Clause:—

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 66 (disciplinary powers), at end insert—
  - “(10) In determining whether a person performing a significant influence function is guilty of misconduct under this section, where some evidence of misconduct exists, it shall be for him to prove his standard of behaviour was reasonable in all the circumstances.”.

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**Financial Services (Banking Reform) Bill, *continued****Professional standards*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC3

To move the following Clause:—

‘After section 65 of FSMA 2000 insert—

**“65A Professional Standards**

- (1) The regulator will raise standards of professionalism in financial services by mandating a licensing regime based on training and competence. This must—
  - (a) apply to all approved persons exercising controlled functions, regardless of financial sector;
  - (b) specify minimum thresholds of competence including integrity, professional qualifications, continuous professional development and adherence to a recognised code of conduct and revised Banking Standards Rules;
  - (c) make provisions in connection with—
    - (i) the granting of a licence;
    - (ii) the refusal of a licence;
    - (iii) the withdrawal of a licence; and
    - (iv) the revalidation of a licensed person of a prescribed description whenever the appropriate regulator sees fit, either as a condition of the person continuing to hold a licence or of the person’s licence being restored;
  - (d) be evidenced by individuals holding an annual validation of competence;
  - (e) include specific provision for a Senior Persons Regime in relation to activities involving the exercise of a significant influence over a controlled function under section 59 of the Act.
- (2) In section 59, remove “authorised” and insert “licensed” throughout the section.”’.

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*Duty of Care*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC4

To move the following Clause:—

‘At all times when carrying out core activities a ring-fenced body shall—

- (a) be subject to a fiduciary duty towards its customers in the operation of core services; and

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**Financial Services (Banking Reform) Bill, *continued***

- (b) be subject to a duty of care towards its customers across the financial services sector.’

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*Remuneration reform*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

**NC5**

To move the following Clause:—

‘Within six months of Royal Assent of this Act the Chancellor of the Exchequer shall, in consultation with the appropriate regulation, lay before Parliament proposals on reform of remuneration at UK financial institutions which shall include incentives to take account of the performance and stability of a UK financial institution over a five- to 10-year period.’

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*Financial Crime Unit*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

**NC6**

To move the following Clause:—

- ‘(1) The Secretary of State shall by order create a new Financial Crime Unit as part of the Serious Fraud Office for the purpose of tackling financial crime.
  - (2) The Treasury shall conduct a review into the creation of the Financial Crime Unit and consult on its proposals for the Financial Crime Unit’s powers and responsibilities.
  - (3) The Treasury shall lay its proposals before both Houses of Parliament no later than six months after this Act comes into force.
  - (4) The orders under subsection (1) may make such amendments to legislation as appear to the Treasury to be necessary or expedient for the purpose of creating the Financial Crime Unit.
  - (5) The orders under subsection (1) may only be made if they have been laid before and approved by a resolution of each House of Parliament.’
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**Financial Services (Banking Reform) Bill, *continued****Protection for whistleblowers*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC7

To move the following Clause:—

- ‘(1) After section 43B(f) of the Employment Rights Act 1996 there is inserted—
- “(g) that a breach of regulated activities under FSMA 2000 or the Financial Services Act 2012 has been committed, is being committed, or is likely to be committed.”.
- (2) After section 43B(5) of the Employment Rights Act 1996 there is inserted—
- “The chairman of the board of directors of any relevant UK financial institution will be informed of any protected disclosure made by a worker which qualifies under the terms of Part IVA of this Act.”.’.
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*Competition and Markets Authority review into competitiveness*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC8

To move the following Clause:—

- ‘(1) The Chancellor of the Exchequer shall instruct the Competition and Markets Authority to begin a full market study, according to its powers under the Enterprise Act 2002, into UK financial services institutions involved in the provision of core services.
- (2) The full market study will consider:
- (a) the level of competition among UK institutions involved in the provision of core services.
- (b) the obstacles to increasing competition for UK institutions involved in the provision of core services.
- (c) possible actions that could be taken to facilitate new UK institutions being competitive in the provision of core services.
- (3) The full market study will be published within a year of Royal Assent of this Act.
- (4) The review must result in a report to the Treasury.
- (5) The Treasury shall lay a copy of the report before both Houses of Parliament.’.
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Financial Services (Banking Reform) Bill, *continued*

*Leverage ratio*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC9

To move the following Clause:—

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In Part 1A section 9D(1), for “may”, substitute “shall”.
- (3) In Part 1A after section 9D(1) insert—
  - “(1A) The notice in subsection (1) shall include a target for the overall leverage of the UK’s financial system, to encompass also the activities of foreign financial institutions and non-bank originators of credit.”
- (4) After section 9D(3) insert—
  - “(4) After each three month period, the Financial Policy Committee must respond to the notice of the economic policy of Her Majesty’s Government in subsection (1) by notifying the Treasury of—
    - (a) any action that the Committee has taken to regulate leverage in the financial system to the identified target in a manner consistent with maintaining adequate credit availability and growth in the economy, or
    - (b) the Committee’s reasons for not intending to act to regulate leverage in the financial system to the identified target.
- (5) Notification under subsection (4) must be given in writing.
- (6) The Treasury shall—
  - (a) publish in such a manner as they think fit any notification received under subsection (4), and
  - (b) lay a copy of such a notification before Parliament.”.

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*Sale of state-owned banking assets*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC10

To move the following Clause:—

- (1) Before the sale of banking assets in the ownership of HM Treasury, the Treasury shall lay before Parliament a report setting out—
  - (a) the manner in which the best interests of the taxpayer are to be protected in connection with such sale,
  - (b) the expected impact that any sale might have on competition for the provision of core services, customer choice and the rate of economic growth,

**Financial Services (Banking Reform) Bill, *continued***

- (c) an appraisal of the options for potential structural changes in the bank concerned including—
- (i) the separation of the provision of core services from the provision of investment activities,
  - (ii) the retention of a class of assets in the ownership of HM Treasury,
  - (iii) the impact of any sale on the creation of a regional banking network.
- (2) A copy of the report in subsection (1) shall be laid before Parliament and sufficient time shall be given for the appropriate committees of both Houses of Parliament to consider its findings before any sale decision.’

*Reckless misconduct in the management of a bank*

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

NC11

To move the following Clause:—

- ‘(1) Within the three months of Royal Assent of this Act the Government shall publish proposals for the creation of a new criminal offence of reckless misconduct in the management of a bank.
- (2) The new offence in subsection (2) should cover those approved persons who are licensed under a Senior Persons Regime.
- (3) The Government shall bring forward further proposals within three months of Royal Assent of this Act for the civil recovery of monies obtained by individuals who have been found guilty of reckless misconduct in the management of a bank.’

Mr Chancellor of the Exchequer

Clause 1, page 1, line 20, after ‘body’ insert ‘or of a member of a ring-fenced body’s group’.

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Mr Chancellor of the Exchequer

Clause 1, page 2, line 10, at end insert—

- ‘(5) In section 2J of FSMA 2000 (interpretation of Chapter 2 of Part 1)—
  - (a) in subsection (3) for “a PRA-authorized” substitute “an authorised”,
  - (b) after that subsection insert—
    - “(3A) For the purposes of this Chapter, the cases in which a person (“P”) other than an authorised person is to be regarded as failing include any case where P enters insolvency.”, and

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**Financial Services (Banking Reform) Bill, *continued***

- (c) in subsection (4), for “subsection (3)(a)” substitute “subsections (3)(a) and (3A)”.

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Mr Chancellor of the Exchequer

Clause 2, page 3, line 8, after ‘body’ insert ‘or of a member of a ring-fenced body’s group’.

Mr Chancellor of the Exchequer

Clause 2, page 3, line 9, at end insert—  
 ‘(4) In subsection (3)(c), “failure” is to be read in accordance with section 2J(3) to (4).’.

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Mr Chancellor of the Exchequer

Clause 4, page 3, line 35, at end insert—  
 (3A) Subject to that, in deciding whether and, if so, how to exercise their powers under subsection (2)(b), the Treasury must have regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be expected to have on competition in the market for services provided in the course of carrying on core activities, including any adverse effect on the ease with which new entrants can enter the market.  
 (3B) In subsection (3A) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.’.

Ed Balls  
 Chris Leslie  
 Cathy Jamieson  
 Catherine McKinnell

Clause 4, page 9, leave out lines 8 to 21 and insert—

*Reviews*

**142J Reviews of ring-fencing**

- (1) The Treasury must make arrangements for the carrying out of reviews of the effects of the operation of the provision made by or under this Part in relation to ring-fenced bodies, including ring-fencing rules made by the PRA and the FCA. Such arrangements shall be set out in a statutory instrument subject to approval by resolution of both Houses of Parliament.
- (2) The first review must be completed before the end of the period of two years beginning with the date on which section 4 of the Financial Services (Banking Reform) Act 2013, so far as it inserts this section, comes into force.
- (3) Subsequent reviews must be completed before the end of the period of two years beginning with the date on which the previous review was completed.

**Financial Services (Banking Reform) Bill, *continued***

- (4) Not less than nine months, nor more than 12 months, before the date on which a review is due to be completed, the PRA and the FCA must publish a joint assessment of the impact of the operation of their ring-fence rules.
- (5) For the purposes of this section a review is completed when the report of it is published.

**142JA Persons by whom reviews are to be conducted**

- (1) The Treasury shall appoint not fewer than five persons to conduct a review of whom one is to chair it.
- (2) A person may not be appointed to chair a review unless the chairman of the Treasury Committee of the House of Commons has notified the Treasury that, in the chairman's opinion, the person is likely to act independently of the Treasury, the PRA and the FCA in carrying out the review.
- (3) The persons appointed to conduct a review must include at least one person with substantial experience in central banking or financial regulation at a senior level.
- (4) The reference in subsection (2) to the Treasury Committee of the House of Commons—
  - (a) if the name of that Committee is changed, is to be treated as a reference to that Committee by its new name, and
  - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable;
 and any question arising under paragraph (a) or (b) is to be determined by the Speaker of the House of Commons.

**142JB Reports of review**

- (1) The persons appointed to conduct a review must give the Treasury a report of the review.
- (2) The report must include an assessment of the extent to which the provision made by or under this Part in relation to ring-fenced bodies, including ring-fencing rules made by the PRA and by the FCA, are facilitating the advancement by the PRA of the objective in section 2B(3)(c) and by the FCA of the continuity objective.
- (3) If the report is made before section 4 of the Financial Services (Banking Reform) Act 2013, so far as it inserts section 142JD, has come into force it must also include a recommendation as to whether or not section 4 of that Act should be brought into force to that extent.
- (4) The report must include—
  - (a) recommendations to the Treasury as to the provision that should be included in orders and regulations under this Part, and
  - (b) recommendations to the PRA and the FCA about the provision that should be included in ring-fencing rules.
- (5) The Treasury must lay a copy of the report before Parliament and publish it in such manner as it thinks fit.<sup>7</sup>



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**Financial Services (Banking Reform) Bill, *continued****‘Group restructuring powers***142JA Cases in which group restructuring powers become exercisable**

- (1) The appropriate regulator may exercise the group restructuring powers only if it is satisfied that one or more of Conditions A to D is met in relation to a ring-fenced body that is a member of a group.
- (2) Condition A is that the carrying on of core activities by the ring-fenced body is being adversely affected by the acts or omissions of other members of its group.
- (3) Condition B is that in carrying on its business the ring-fenced body—
  - (a) is unable to take decisions independently of other members of its group, or
  - (b) depends on resources which are provided by a member of its group and which would cease to be available in the event of the insolvency of the other member.
- (4) Condition C is that in the event of the insolvency of one or more other members of its group the ring-fenced body would be unable to continue to carry on the core activities carried on by it.
- (5) Condition D is that the ring-fenced body or another member of its group has engaged, or is engaged, in conduct which is having, or would apart from this section be likely to have, an adverse effect on the advancement by the appropriate regulator—
  - (a) in the case of the PRA, of the objective in section 2B(3)(c), or
  - (b) in the case of the FCA, of the continuity objective.
- (6) The appropriate regulator may not exercise the group restructuring powers in relation to any person if—
  - (a) either regulator has previously exercised the group restructuring powers in relation to that person, and
  - (b) the decision notice in relation to the current exercise is given before the second anniversary of the day on which the decision notice in relation to the previous exercise was given.
- (7) In this section and sections 142JB to 142JG “the appropriate regulator” means—
  - (a) where the ring-fenced body is a PRA-authorized person, the PRA;
  - (b) where it is not, the FCA.

**142JB Group restructuring powers**

- (1) In this Part “the group restructuring powers” means one or more of the powers conferred by this section.
- (2) Where the appropriate regulator is the PRA, the powers conferred by this section are as follows—
  - (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
  - (b) in relation to any member of the ring-fenced body’s group which is a PRA-authorized person, power to impose a requirement on the PRA-authorized person requiring it to take any of the steps mentioned in subsection (6),

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**Financial Services (Banking Reform) Bill, *continued***

- (c) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to direct the FCA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
  - (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).
- (3) Where the appropriate regulator is the FCA, the powers conferred by this section are as follows—
  - (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
  - (b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6),
  - (c) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
  - (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).
- (4) A parent undertaking of a ring-fenced body by reference to which the group restructuring powers are exercisable is for the purposes of this Part a "qualifying parent undertaking" if —
  - (a) it is a body corporate which is incorporated in the United Kingdom and has a place of business in the United Kingdom, and
  - (b) it is not itself an authorised person.
- (5) The steps that the ring-fenced body may be required to take are—
  - (a) to dispose of specified property or rights to an outside person;
  - (b) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the ring-fenced body to an outside person;
  - (c) otherwise to make arrangements discharging the ring-fenced body from specified liabilities.
- (6) The steps that another authorised person or a qualifying parent undertaking may be required to take are—
  - (a) to dispose of any shares in, or securities of, the ring-fenced body to an outside person;
  - (b) to dispose of any interest in any other body corporate that is a member of the ring-fenced body's group to an outside person;
  - (c) to dispose of other specified property or rights to an outside person;
  - (d) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the authorised person or qualifying parent undertaking to an outside person.

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**Financial Services (Banking Reform) Bill, *continued***

- (7) In subsections (5) and (6) “outside person” means a person who, after the implementation of the disposal or scheme in question, will not be a member of the group of the ring-fenced body by reference to which the powers are exercised (whether or not that body is to remain a ring-fenced body after the implementation of the disposal or scheme in question).
- (8) It is immaterial whether a requirement to be imposed on an authorised person by the appropriate regulator, or by the other regulator at the direction of the appropriate regulator, is one that the regulator imposing it could impose under section 55L or 55M.

**142JC Procedure: preliminary notices**

- (1) If the appropriate regulator proposes to exercise the group restructuring powers in relation to any authorised person or qualifying parent undertaking (“the person concerned”), the regulator must give each of the relevant persons a first preliminary notice stating—
  - (a) that the regulator is of the opinion that the group ring-fencing powers have become exercisable in relation to the person concerned, and
  - (b) its reasons for being satisfied as to the matters mentioned in section 142JA(1).
- (2) Before giving a first preliminary notice, the regulator must—
  - (a) give the Treasury a draft of the notice,
  - (b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and
  - (c) obtain the consent of the Treasury.
- (3) The first preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator.
- (4) The relevant persons are—
  - (a) the person concerned,
  - (b) the ring-fenced body, if not the person concerned, and
  - (c) any other authorised person who will, in the opinion of the appropriate regulator, be significantly affected by the exercise of the group restructuring powers.
- (5) After considering any representations made by any of the relevant persons, the regulator must either—
  - (a) with the consent of the Treasury, give each of the persons a second preliminary notice, or
  - (b) give each of them a notice stating that it has decided not to exercise its group restructuring powers.
- (6) A second preliminary notice is a notice stating—
  - (a) that the regulator proposes to exercise the group restructuring powers, and
  - (b) the manner in which it proposes to do so.
- (7) The second preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator about the proposals.

**Financial Services (Banking Reform) Bill, *continued***

- (8) The regulator must after considering any representations made in response to the second preliminary notice give each of the relevant persons a third preliminary notice stating—
  - (a) whether it has made any revisions to the proposals, and
  - (b) if so, what the revisions are.

**142JD Procedure: warning notice and decision notice**

- (1) If the appropriate regulator has given a third preliminary notice, it must either—
  - (a) if it still proposes to exercise the group restructuring powers, give each of the relevant persons a warning notice during the warning notice period, or
  - (b) before the end of the warning notice period, give each of them a notice stating that it has decided not to exercise the powers.
- (2) The “warning notice period” is the period of 6 months beginning with the first anniversary of the day on which the third preliminary notice was given.
- (3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must —
  - (a) give the Treasury a draft of the notice,
  - (b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and
  - (c) obtain the consent of the Treasury.
- (4) The action specified in the warning notice may be different from that specified in the third preliminary notice if—
  - (a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the third preliminary notice was given, or
  - (b) the person concerned consents to the change.
- (5) The regulator must, in particular, have regard to anything that—
  - (a) has been done by the person concerned since the giving of the third preliminary notice, and
  - (b) represents action that would have been required in pursuance of the proposals in that notice.
- (6) If the regulator decides to exercise the group restructuring powers it must give each of the relevant persons a decision notice.
- (7) The decision notice must allow at least 5 years from the date of the decision notice for the completion of—
  - (a) any disposal of shares, securities or other property that is required by the notice, or
  - (b) any transfer of liabilities for which the notice requires arrangements to be made.
- (8) The giving of consent for the purpose of subsection (4)(b) does not affect any right to refer to the Tribunal the matter to which any decision notice resulting from the warning notice relates.
- (9) “The relevant persons” has the same meaning as in section 142JC.

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**Financial Services (Banking Reform) Bill, *continued*****142JE References to Tribunal**

- (1) A notified person who is aggrieved by—
  - (a) the imposition by either regulator of a requirement as a result of section 142JB(2)(a) or (b) or (3)(a) or (b),
  - (b) a requirement to be imposed as a result of the giving by one regulator to the other of a direction under section 142JB(2)(c) or (3)(c), or
  - (c) the giving by either regulator of a direction under section 142JB(2)(d) or (3)(d),may refer the matter to the Tribunal.
- (2) “Notified person” means a person to whom a decision notice under section 142JD(6) was given or ought to have been given.

**142JF Subsequent variation of requirement or direction**

- (1) A regulator may at any time with the consent of the person concerned vary—
  - (a) a requirement imposed by it as a result of section 142JB(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142JB(2)(c) or (d) or (3)(c) or (d).
- (2) The person concerned may at any time apply to the appropriate regulator for the variation of—
  - (a) a requirement imposed by it as a result of section 142JB(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142JB(2)(c) or (d) or (3)(c) or (d).
- (3) Sections 55U, 55V, 55X and 55Z3 apply to an application under subsection (2) as they apply to an application for the variation of a requirement imposed by the appropriate regulator under section 55L or 55M.

**142JG Consultation etc. between regulators**

- (1) Where a notice under section 142JC or a warning notice or decision notice under section 142JD relates to a requirement to be imposed in pursuance of a direction to be given as a result of section 142JB(2)(c) or (3)(c), the appropriate regulator must—
  - (a) consult the other regulator before giving the notice, and
  - (b) give a copy of the notice to the other regulator.
- (2) The appropriate regulator must consult the other regulator before varying under section 142JF a direction given as a result of section 142JB(2)(c) or (3)(c).
- (3) Directions given by the FCA as a result of section 142JB(3)(c) are subject to any directions given to the FCA under section 3I.

**142JH Relationship with regulators’ powers under Parts 4A and 12A**

- (1) Subsection (2) applies in relation to—
  - (a) a ring-fenced body which is a member of a mixed group, and
  - (b) a parent undertaking of such a ring-fenced body.

**Financial Services (Banking Reform) Bill, *continued***

- (2) A regulator may not exercise its general powers in relation to the ring-fenced body or parent undertaking so as to achieve either of the results in subsection (3).
- (3) Those results are—
  - (a) that no existing group member is a parent undertaking of the ring-fenced body;
  - (b) that the ring-fenced body is not a member of a mixed group.
- (4) In subsection (3)(a) “existing group member” means a person who is a member of the ring-fenced body’s group at the time when the requirement is imposed or the direction given.
- (5) Except as provided by subsections (1) to (4), the provisions of sections 142JA to 142JG do not limit the general powers of either regulator.
- (6) For the purposes of this section, a regulator’s “general powers” are its powers under the following provisions—
  - (a) section 55L or 55M (imposition of requirements in connection with Part 4A permission);
  - (b) section 192C (power to direct qualifying parent undertaking).
- (7) For the purposes of this section, a ring-fenced body is a member of a mixed group if a member of the ring-fenced body’s group carries on an excluded activity.

*Failure of parent undertaking to comply with direction***142JI Power to impose penalty or issue censure**

- (1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking as defined in section 142JB(4) (“P”) has contravened a requirement of a direction given to P by that regulator as a result of section 142JB(2)(d) or (3)(d).
- (2) The regulator may impose a penalty of such amount as it considers appropriate on—
  - (a) P, or
  - (b) any person who was knowingly concerned in the contravention.
- (3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 142JJ.
- (5) “The limitation period” means the period of 3 years beginning with the first day on which the regulator knew of the contravention.
- (6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.
- (7) The requirements that a regulator may be required to impose as a result of a direction under section 142JB(2)(c) or (3)(c) include requirements that the regulator would not but for the direction have power to impose.

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**Financial Services (Banking Reform) Bill, *continued*****142JJ Procedure and right to refer to Tribunal**

- (1) If a regulator proposes to take action against a person under section 142JI, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the regulator decides to take action against a person under section 142JI, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the regulator decides to take action against a person under section 142JI, the person may refer the matter to the Tribunal.

**142JK Duty on publication of statement**

After a statement under section 142JI(3) is published, the regulator must send a copy of the statement to—

- (a) the person in respect of whom it is made, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

**142JL Imposition of penalties under section 142JI: statement of policy**

- (1) Each regulator must prepare and issue a statement of policy with respect to—
  - (a) the imposition of penalties under section 142JI, and
  - (b) the amount of penalties under that section.
- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention,
  - (b) the extent to which the contravention was deliberate or reckless, and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A regulator may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, a power under section 142JI(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
- (6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

**Financial Services (Banking Reform) Bill, *continued***

- (7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.
- (8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.’

Ed Balls  
Chris Leslie  
Cathy Jamieson  
Catherine McKinnell

18

Clause 4, page 9, line 21, at end insert—

*‘Full separation***142JD General requirement of separation**

- (1) Where the members of any group include one or more ring-fenced bodies and one or more other bodies, the members of the group must, before the end of the period of five years beginning with the relevant commencement date, take steps to secure that there are no members of the group that are ring-fenced bodies.
- (2) If in the case of any group steps to secure that there are no members of the group that are ring-fenced bodies are not taken within the period specified in subsection (1)—
  - (a) at the end of that period the Part 4A permission of each member of the group that is a ring-fenced body shall be treated as having been cancelled to the extent that it relates to a core activity, and
  - (b) after the end of that period the appropriate regulator must refuse to give any member of the group a Part 4A permission to carry on a core activity.
- (3) At the end of the period specified in subsection (1)—
  - (a) section 142H(1)(b) and (4) to (7), and
  - (b) section 142JC,
 cease to have effect.
- (4) In subsection (1) “the relevant commencement date” means the day appointed for the coming into force of section 4 of the Financial Services (Banking Reform) Act 2013 so far as it inserts this section.’

Mr Chancellor of the Exchequer

7

Clause 4, page 13, line 10, leave out from beginning to ‘any’ and insert—

- ‘(1) This section has effect for the interpretation of this Part.’

Mr Chancellor of the Exchequer

8

Clause 4, page 13, line 14, at end insert—

- ‘(3) Any reference to the group restructuring powers is to be read in accordance with section 142JB(1).’

Mr Chancellor of the Exchequer

9

Clause 4, page 13, line 14, at end insert—



**Financial Services (Banking Reform) Bill, *continued***

- ‘( ) In section 133 of FSMA 2000 (proceedings before Tribunal), in subsection (7A) after paragraph (i) insert—
  - “(ia) a decision to take action under section 142JI;”.
- ( ) In section 392 of FSMA 2000 (application of sections 393 and 394)—
  - (a) in paragraph (a), after “131H(1),” insert “142JJ(1),” and
  - (b) in paragraph (b), after “131H(4),” insert “142JJ(4),”.

Mr Chancellor of the Exchequer

10

Clause 4, page 13, line 26, at end insert—

- ‘( ) In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), in paragraph 8(3)(c)(i), after “138N,” insert “142JL,”.
- ( ) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), in paragraph 16(3)(c)(i), after “69,” insert “142JL,”.

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*NEW SCHEDULE*

Mr Chancellor of the Exchequer

NS1

To move the following Schedule:—

‘MINOR AMENDMENTS

*Companies Act 1985 (c. 6)*

- 1 In Schedule 15D to the Companies Act 1985 (disclosures), omit paragraph 29.

*Financial Services and Markets Act 2000 (c. 8)*

- 2 In section 376 of FSMA 2000 (continuation of contracts of long-term insurance where insurer in liquidation), in subsection (11B), for “PRA-  
authorised” substitute “PRA-regulated”.
- 3 In Schedule 17A to FSMA 2000 (further provision in relation to exercise of  
Part 18 functions by Bank of England), in paragraph 10(1)(j), for “subsections  
(1) and (3)” substitute “subsection (1)”.

*Income Tax Act 2007 (c. 3)*

- 4 In section 991 of the Income Tax Act 2007 (meaning of “bank”), in subsections  
(2)(b) and (3), for “Part 4” substitute “Part 4A”.

*Banking Act 2009 (c. 1)*

- 5 In section 89B of the Banking Act 2009 (application to recognised central  
counterparties), in the Table in subsection (6), in the entry relating to section  
81B, in the second column, after the modification of subsection (1) of that  
section insert—

“In subsection (2), for “PRA” substitute “Bank of England”.”
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**Financial Services (Banking Reform) Bill, *continued***

- 6 In section 191 of the Banking Act 2009 (directions), in subsection (1), after “inter-bank” insert “payment”.

*Financial Services Act 2012 (c. 21)*

- 7 In section 73 of the Financial Services Act 2012 (duty of FCA to investigate and report on possible regulatory failure), in subsection (1)(b)(i)—
- (a) for “their activities,” substitute “of the carrying on of regulated activities,” and
  - (b) for “or for the regulation of collective investment schemes” substitute “, for the regulation of collective investment schemes or for the regulation of recognised investment exchanges,”.
- 8 (1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) The relevant functions of the FCA or the PRA are—
- (a) its functions conferred by or under FSMA 2000, other than its legislative functions, and
  - (b) such other functions as the Treasury may by order provide.”
- (3) For subsection (3) substitute—
- “(3) The relevant functions of the Bank of England are—
- (a) its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions, and
  - (b) such other functions as the Treasury may by order provide.”
- (4) In subsections (4) and (5), for “subsection (2)” substitute “subsection (2)(a)”.
- (5) In subsections (6) and (7), for “subsection (3)” substitute “subsection (3)(a)”.
- (6) After subsection (7) insert—
- “(8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply.”.

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Mr Chancellor of the Exchequer	<b>11</b>
Schedule, page 22, line 22, leave out ‘subsidiary’ and insert ‘body’.	
Mr Chancellor of the Exchequer	<b>12</b>
Schedule, page 22, line 28, leave out ‘subsidiary’ and insert ‘body’.	
Mr Chancellor of the Exchequer	<b>13</b>
Schedule, page 22, line 30, leave out ‘subsidiary undertaking’ and insert ‘member of the group’.	

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Financial Services (Banking Reform) Bill, *continued*

Mr Chancellor of the Exchequer

14

Schedule, page 23, line 3, at end insert—

- ‘(d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee’s group are not ring-fenced bodies.’.

Mr Chancellor of the Exchequer

15

Schedule, page 23, line 24, at end insert—

- ‘(2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.’.

Mr Chancellor of the Exchequer

16

Schedule, page 23, line 24, at end insert—

‘6A For the heading to section 109 substitute “Scheme reports: insurance business transfer schemes”.

6B After section 109 insert—

**“109A Scheme reports: ring-fencing transfer schemes**

- (1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a “scheme report”).
- (2) A scheme report may be made only by a person—
  - (a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
  - (b) nominated or approved for the purpose by the PRA.
- (3) A scheme report must be made in a form approved by the PRA.
- (4) A scheme report must state—
  - (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
  - (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.
- (5) The PRA must consult the FCA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).”.

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ORDER OF THE HOUSE [11 MARCH 2013]

That the following provisions shall apply to the Financial Services (Banking Reform) Bill:

*Committal*

1. The Bill shall be committed to a Public Bill Committee.

**Financial Services (Banking Reform) Bill, *continued****Proceedings in Public Bill Committee*

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 18 April 2013.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

*Consideration and Third Reading*

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

*Other proceedings*

7. Any other proceedings on the Bill (including any proceedings on consideration of Lords Amendments or on any further messages from the Lords) may be programmed.
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