



House of Commons

NOTICES OF AMENDMENTS

given on

Tuesday 2 July 2013

CONSIDERATION OF BILL

FINANCIAL SERVICES (BANKING REFORM) BILL

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.’.

Mr Chancellor of the Exchequer

1

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

Mr Chancellor of the Exchequer

2

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

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

Mr Chancellor of the Exchequer

3

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

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Mr Chancellor of the Exchequer

4

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).’.

Mr Chancellor of the Exchequer

5

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.’.

Mr Chancellor of the Exchequer

6

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

‘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—

Financial Services (Banking Reform) Bill, *continued*

- (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),
 - (c) in relation to any member of the ring-fenced body’s group which is an authorised person but not a PRA-authorized 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-authorized 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-authorized 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 —

Financial Services (Banking Reform) Bill, *continued*

- (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.
- (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.

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- (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.
- (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—

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- (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.

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).

Financial Services (Banking Reform) Bill, *continued*

- (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.
- (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”)

Financial Services (Banking Reform) Bill, *continued*

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.

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—

Financial Services (Banking Reform) Bill, *continued*

- (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.
- (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.’

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—

- ‘() 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),”.

Financial Services (Banking Reform) Bill, *continued*

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.”’

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”.”

- 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,”.

Financial Services (Banking Reform) Bill, *continued*

- 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.”.

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

Financial Services (Banking Reform) Bill, *continued*

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).”.

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.”.
-