

BANK OF ENGLAND AND FINANCIAL SERVICES BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Bank of England and Financial Services Bill [HL] as brought from the House of Lords on 19 January 2016 (Bill 120).

- These Explanatory Notes have been prepared by the Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Bill

- 1 The Bank of England and Financial Services Bill is intended to amend governance and accountability arrangements at the Bank of England (“the Bank”), make provision in relation to the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”), expand the scope of and make changes to the Senior Managers and Certification Regime, make provision for the enforceability of credit agreements, give the Treasury power to make regulations in relation to transformer vehicles, permit the extension of the Government’s Pension Wise service, make provision about the Bank sharing information with the Treasury about resolution planning, and allow for some flexibility to change which legal entities are authorised to issue commercial banknotes in Scotland and Northern Ireland.
- 2 Part 1 of the Bill makes provision in relation to the governance of the Bank. It makes the Deputy Governor for markets and banking a member of the court of directors, the Monetary Policy Committee (“MPC”), the Financial Policy Committee (“FPC”), and the new Prudential Regulation Committee (“PRC”), and gives the Government power to make further changes to the membership of the court of directors by secondary legislation. It gives the Bank’s oversight functions to the court of directors and makes the FPC a committee of the Bank, rather than a sub-committee of the court. It reduces the required number of annual MPC meetings and provides for faster publication of minutes relating to those meetings.
- 3 Part 1 also gives the Comptroller and Auditor General power to carry out examinations of the economy, efficiency and effectiveness with which the Bank uses its resources (“value for money” examinations) and gives the Treasury power to carry out value for money reviews of the prudential regulation functions of the Bank.
- 4 Part 1 ends the status of the PRA as a subsidiary of the Bank, instead providing that the PRA is the Bank of England and creating a new Bank committee to be known as the Prudential Regulation Committee, with responsibility for the Bank’s functions as the PRA.
- 5 Part 2 gives the Treasury power to make recommendations to the FCA, and amends the regulatory principles which apply to the FCA and the PRA. It also extends the Senior Managers and Certification Regime to all firms which are authorised to provide financial services under the Financial Services and Markets Act 2000 (“FSMA”), and amends the definition of “misconduct” applicable to senior managers so that, where there has been a regulatory contravention in an area for which they are responsible, senior managers no longer have to prove that they have taken reasonable steps to prevent that contravention to avoid being found guilty of misconduct. It will be necessary for the regulators to prove that a senior manager has not taken such steps before they can bring disciplinary proceedings against a senior manager on this ground.
- 6 Part 2 also clarifies the circumstances in which agreements relating to credit are enforceable and amends the circumstances in which credit agreements made through unauthorised persons are unenforceable, and gives the Treasury power to make regulations relating to transformer vehicles, which are used in transactions related to insurance linked securities.
- 7 Part 2 also extends the remit of the Government’s Pension Wise service to holders of annuities specified by the Treasury so that it can deliver guidance to pensioners who will be eligible to sell their annuity income stream in 2017, and requires the FCA to make rules ensuring that those wishing to transfer a right to payments under an annuity have received appropriate advice before doing so where the annuity in question falls within a class specified in regulations made by the Treasury. In addition, the Bill ensures that appointed representatives of authorised persons may give advice satisfying the requirements of the Pension Schemes Act 2015 as to the advice which people must have received before they can convert and transfer

safeguarded benefits. Currently only firms which are authorised persons under FSMA in their own right may give such advice.

- 8 Part 2 imposes a duty on the Bank to provide information to the Treasury when firms' resolution strategies are developed or updated. It also gives the Treasury a power to request specified information supporting the Bank's assessment of public funds risks associated with the failure of a firm.
- 9 Part 3 gives the Treasury power to make regulations (with the consent of the Bank) which authorise a bank in the same group as an existing issuer to issue commercial banknotes in Scotland or Northern Ireland instead of the existing issuer.

Policy background

- 10 The Financial Services Act 2012 ("the 2012 Act") replaced the 'tripartite' system of financial regulation with a new system that put the Bank at the centre of the system, giving it a number of new responsibilities and powers. The 2012 Act gave the Bank responsibility for macro-prudential regulation through the establishment of the FPC. It also gave the FPC a key role in safeguarding the UK's financial stability by identifying, monitoring, and taking action to address systemic risks to the UK financial system. The 2012 Act also established the PRA as a subsidiary of the Bank. The PRA has specific responsibility for ensuring effective micro-prudential regulation of all deposit takers, insurers, and large investment firms.
- 11 The Bill seeks to simplify further and strengthen the governance of the Bank and the PRA, and to increase the transparency and accountability of the Bank.
- 12 The Bank's governance model is determined by statute. The governing body, the court of directors ("the court"), is responsible for managing the affairs of the Bank, other than the formulation of monetary policy, and is accountable for the Bank's performance in relation to its objectives. The Government and the Bank have made continuous improvements to the court's structures and processes since 2012, most recently requiring minutes of its meetings to be published. A review commissioned by the Governor of the Bank into the Bank's practices on transparency, particularly in relation to the work of the MPC, was carried out by Kevin Warsh. The report of that review, "Transparency and the Bank of England's Monetary Policy Committee" ("the Warsh Review") was published on 11 December 2014. At the same time the Bank announced a number of other measures it wished to take to improve its transparency and accountability. This Bill amends the Bank of England Act 1998 to enable the Bank to implement these measures, building on action the Bank has already taken.
- 13 The Bill changes the membership of the court, adding an additional deputy governor, and assigns the oversight functions to the full court to enable the court to operate more like a unitary board. The 2012 Act established the FPC as a sub-committee of the court responsible for identifying, monitoring and taking action to address emerging risks and vulnerabilities across the UK financial system as a whole. By making the FPC a committee of the Bank, the Bill simplifies the governance structure within the Bank, with all the policy committees established as committees of the Bank. The Bill makes changes to the operation of the MPC, to implement the recommendations made by the Warsh Review.
- 14 The Bill aims to strengthen the Bank's accountability to the public and to Parliament, by giving the Comptroller and Auditor General the power to initiate value for money studies in relation to the whole of the Bank, following consultation with the court.
- 15 The Bill is also intended to clarify the responsibilities of the Bank for prudential regulation by transferring the PRA's functions to the Bank. The PRA's brand and objectives will remain

unchanged and the Bill contains safeguards to ensure that the Bank's functions as PRA must be operated independently from the Bank's resolution functions, to comply with EU legislation and the Basel Core Principles on Supervision.

- 16 The Bank has primary operational responsibility for resolving banks and other financial institutions when they fail. However, the Chancellor and the Treasury have responsibility for any decision involving public funds. The Bill seeks to enhance the powers of the Treasury to ensure that public funds are applied appropriately in a financial crisis by imposing new obligations on the Bank to provide the Treasury with information on proposed resolution options being considered by the Bank, and by enhancing the Treasury's powers to obtain additional information from the Bank in relation to the implications for public funds of the failure of a bank or other financial institution.
- 17 At present, the Approved Persons Regime ("APR") in Part 5 of FSMA is the main way in which individuals in the financial services industry are regulated. In its final report, *Changing Banking for Good*[1], the Parliamentary Commission on Banking Standards ("PCBS") raised concerns about the existing APR and made a number of recommendations for change including the introduction of a new regime for regulating senior persons in the banking industry, new arrangements for ensuring that more junior staff are fit and proper, and provisions enabling the regulators to make rules of conduct applying to staff other than approved persons. The Government broadly accepted these recommendations[2] and used the Financial Services (Banking Reform) Act 2013 ("the 2013 Act") to put in place the Senior Managers and Certification Regime ("SM&CR").
- 18 The PCBS considered that the deficiencies they had identified in the APR would not be confined to banking. However, they were concerned that attempting to change the APR for the whole financial services industry would risk delaying the introduction of reforms. The Government shared those concerns and limited the substantive reforms in the 2013 Act to banks, other deposit takers and those investment firms that are regulated by the PRA. The SM&CR will come into operation for those financial services firms on 7 March 2016. Following consultation, and subject to Parliamentary approval[3], the SM&CR will also apply to UK branches of corresponding foreign institutions.
- 19 The experience and feedback gained from developing the detailed measures needed for implementation of the SM&CR, mainly rules made by the regulators, indicates that the SM&CR should deliver the improvements in conduct and performance of key bank staff that the PCBS and the Government were seeking. The Government therefore considers that it is appropriate to legislate to extend the SM&CR to all types of financial services firms. The Government will also take this opportunity to make amendments to the SM&CR. The regulators will remain responsible for developing the detailed measures in their rules.
- 20 On 1 April 2014, the Government reformed consumer credit regulation, transferring responsibility from the Office of Fair Trading to the FCA and bringing the regulation of consumer credit activities into the framework established by FSMA. The intention was to create a more robust regulatory regime which strikes the right balance between protecting consumers and ensuring regulatory burdens placed on firms are proportionate.

1 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/>

2 See the Government's response to the Commission on Banking Standards, https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/211047/gov_response_to_the_parliamentary_commission_on_banking_standards.pdf.

3 The necessary secondary legislation – the draft Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 was laid before Parliament on 20 July 2015.

- 21 The Bill also gives the Treasury power to make regulations providing for transformer vehicles, which are companies and other undertakings used, particularly by insurers and reinsurers, to mitigate risk by assuming risk from another undertaking and funding the vehicle's exposure to that risk by issuing investments. In the March 2015 Budget, the Chancellor committed to implementing a new and competitive framework for Insurance Linked Securities ("ILS") business. This provision is part of the Treasury's project to fulfil that commitment.
- 22 In April 2015, the Government introduced greater flexibility for pensions products, removing tax penalties which applied to the use of pension funds other than for the purchase of an annuity. A new service, Pension Wise, was introduced with the aim of providing guidance to people approaching retirement and helping them understand the options available for using their pension funds. As part of the pension flexibilities, the Government provided for an 'advice safeguard' which provides that trustees and managers must ensure that members of pensions schemes have received appropriate independent advice before they transfer or convert safeguarded benefits - which are certain valuable categories of pension benefit such as defined benefit pensions, and pensions with Guaranteed Annuity Rates - into flexible benefits.
- 23 From 2017, the options available for the use of pension funds will be extended further by allowing people who have already bought an annuity to sell their annuity income to a third party. Since the current remit of Pension Wise is tightly defined, primary legislation is required to allow Pension Wise to deliver guidance for the secondary annuity market. This Bill intends to enable the Government to extend the Pension Wise service to cover holders of annuities specified by the Treasury. The Bill also imposes a requirement on the FCA to make rules requiring specified authorised persons to check that individuals with annuities of a certain type or value have received appropriate financial advice before selling their annuity income on the secondary market.
- 24 The Bill intends to provide the flexibility to change which legal entities are authorised to issue commercial banknotes in Scotland or Northern Ireland. The Banking Act 2009 restricts the permission for banks to issue banknotes only to those banks who had that permission immediately before that Act came into force. Part 6 of that Act was intended to deliver the Government policy of supporting the continuation of the long-standing tradition of certain Scottish and Northern Ireland banks being able to issue their own banknotes, whilst not allowing for new issuers to emerge. However, the Government believes that inflexibility in the current legislation can cause problems when a bank wants to restructure its operations. In these circumstances, the permission to issue banknotes cannot be moved to a different legal entity, except by legislation, even if they are within the same group structure. The Bill provides a power for the Treasury to make regulations authorising a bank in the same group as an existing issuer to issue banknotes instead of that issuer.

Legal background

- 25 The existing governance arrangements for the Bank of England are primarily set out in the Bank of England Act 1998 ("the 1998 Act"). Part 1 of that Act makes provision about the constitution, regulation and financial arrangements for the Bank, with Schedule 1 to the 1998 Act making additional provision in relation to the court of directors. Part 1A of and Schedule 2A to the 1998 Act make provision for the Financial Policy Committee, as a sub-committee of the court with responsibility for the Bank's financial stability objective, and set out the FPC's powers. Part 2 of and Schedule 3 to the 1998 Act make provision in relation to the Monetary Policy Committee.
- 26 The legislative framework for financial regulation is set out in FSMA. Part 1A of that Act establishes the FCA and the PRA (which is the financial regulator responsible for prudential

regulation), and sets out their functions and objectives. Section 3B sets out the regulatory principles which must be applied by both regulators. Schedule 1ZB to FSMA provides for the constitution of the PRA. Part 2 of FSMA sets out the general prohibition on carrying on a regulated activity in the UK without being an authorised person or an exempt person, and makes provision (in sections 26 to 30 of FSMA) on the enforceability of agreements made in breach of the prohibition, or otherwise in breach of requirements under FSMA. Section 39 of FSMA provides for an exemption for "appointed representatives": a class of persons who are not directly regulated by the FCA or PRA as they act on behalf of a "principal" who is responsible for their conduct and is itself regulated for the activities the appointed representative carries on. The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) prescribes the types of business that an appointed representative can carry on and provides for conditions that must be present in the contract between the principal and its appointed representative.

- 27 Part 5 of FSMA makes provision for regulation of the conduct of people working in the financial services industry. It was amended by the 2013 Act, which introduced a special regime for people working in banks, building societies, credit unions and PRA-regulated investment firms. Part 9A of FSMA sets out the rule-making powers of the FCA and the PRA. Part 20A of FSMA makes provision for the giving of pensions guidance.
- 28 Chapter 2 of Part 4 of the Pension Schemes Act 2015 imposes a requirement on the trustees or managers of a pension scheme to ensure members of the scheme have taken appropriate independent advice before converting or transferring safeguarded benefits to flexible benefits.
- 29 Parts 1 to 3 of the Banking Act 2009 ("the 2009 Act") give the Bank various powers to take action when a bank or another financial institution is failing to "resolve" that institution by, for example, transferring the business or part of the business of the institution to another entity. The consent of the Treasury is required by section 78 of the 2009 Act in relation to the exercise of any power in Part 1 of the Act which has implications for public funds. The Bank is required by the Bank Recovery and Resolution (No 2) Order 2014 to prepare resolution plans setting out what action the Bank will take to resolve a bank or other financial institution if that institution fails. Part 4 of the 2012 Act imposes a duty on the Bank to notify the Treasury whenever it considers that there is a material risk that public funds might be required in connection with the exercise by the Bank of its powers under Parts 1 to 3 of the 2009 Act.
- 30 Part 6 of the 2009 Act authorises commercial banks to continue to issue Scottish or Northern Ireland banknotes if they had permission to do so before Part 6 came into force, but prohibits all other banks (apart from the Bank) from issuing banknotes, provides for the circumstances in which a bank's permission to issue these banknotes will terminate, and gives the Treasury power to make regulations about the issue of banknotes. If a bank ceases to issue banknotes its permission to do so will terminate, and Part 6 of the 2009 Act makes no provision for the permission to be transferred to another entity.

Territorial extent and application

- 31 The Bill's provisions extend to the whole of the United Kingdom, with the exception of clause 31(2), which extends to England and Wales and Scotland, and clause 31(3), which extends to Northern Ireland. In the Government's view, the matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; accordingly no legislative consent motions are necessary.
- 32 There is a convention that Westminster will not normally legislate with regard to matters that

are within the legislative competence of any of these legislatures without the consent of the legislature concerned. If there are amendments relating to such matters that fall within the convention, the consent of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly (as appropriate) will be sought for them.

Commentary on provisions of Bill

Part 1: The Bank of England

Clause 1: Membership of court of directors

- 33 This clause makes the person in the position of Deputy Governor for markets and banking a member of the court of directors of the Bank.
- 34 It gives the Treasury power by order to alter the title of a Deputy Governor or to add or remove a Deputy Governor from the membership of the court. If a Deputy Governor has been made a member of the court, that Deputy Governor may also be made a member of the FPC, MPC or PRC. Similarly, if a Deputy Governor has been removed from membership of the court, that Deputy Governor may also be removed from membership of the FPC, the MPC or the PRC. If it is necessary to accommodate the addition or removal of a Deputy Governor, the order may also change the number of members who may be appointed to the relevant committee by the Chancellor (in the case of the FPC or PRC) or the Governor (in the case of the MPC). These changes affect the position of the specified Deputy Governor – and not the person holding that position at the time the change is made. No change may be made to the title of a Deputy Governor so as to affect the current holder of that post. Equally, the removal of a Deputy Governor from the list of Deputy Governors who are members of the court will not affect the person in that post at the time.
- 35 The clause also provides (in *new section 1A(7)* to be inserted into the 1998 Act) that an order changing the membership of the court of directors or the title of one of the Deputy Governors of the court may make any consequential amendments required to the 1998 Act or other Acts of Parliament or statutory instruments.

Clause 2: Term of office of non-executive directors

- 36 This clause enables the term of office of a non-executive director of the court to be extended once for up to 6 months. If re-appointed, the individual's subsequent term of office is reduced by the length of the extension (but may itself be extended by up to six months).

Clause 3: Abolition of Oversight Committee

- 37 This clause gives the oversight functions previously delegated to the Oversight Committee (a sub-committee of the court) to the court itself. The oversight functions are listed in section 3A of the 1998 Act, which the Bill amends. The clause also removes the requirement for there to be an Oversight Committee. However, the non-executive directors retain the right to arrange for reviews (including performance reviews) if they consider that this would assist the court in the exercise of its oversight functions. Where necessary, the non-executive directors can act by majority to arrange such a review.

Clause 4: Functions of non-executive directors

- 38 This clause requires the remuneration of the Governor and Deputy Governors to be determined by a sub-committee of the court consisting of 3 or more non-executive directors.

Clause 5: Financial stability strategy

- 39 This clause amends paragraph 11 of Schedule 1 to the 1998 Act to give the court of directors power to delegate the powers and duties conferred on it in relation to the financial stability strategy of the Bank (provided for in section 9A of the 1998 Act). It also clarifies that the court remains responsible for any power and duty delegated under paragraph 11.

Clause 6: Financial Policy Committee: status and membership

- 40 This clause makes the FPC a committee of the Bank instead of a sub-committee of the court, makes clear which Deputy Governors are members of the FPC and increases the number of members of the Committee appointed by the Chancellor of the Exchequer from four to five in order to maintain the balance between external members of the FPC and officers of the Bank following the addition of the Deputy Governor for markets and banking as a member of the FPC.

Clause 7: Monetary Policy Committee: membership

- 41 This clause makes the Deputy Governor for markets and banking an ex officio member of the MPC. Previously the only ex officio members of the committee were the Governor, the Deputy Governor for monetary policy and the Deputy Governor for financial stability. The Deputy Governor for markets and banking was previously one of the two MPC members appointed by the Governor of the Bank of England after consultation with the Chancellor of the Exchequer.
- 42 The clause also reduces the number of members of the Committee who may be appointed by the Governor of the Bank of England from two to one; provides that the person appointed as a member of the Committee by the Governor must carry out monetary policy analysis within the Bank, rather than have executive responsibility for such analysis (the previous requirement under the 1998 Act), and gives that member the title "Chief Economist of the Bank". In addition, it clarifies the requirements for members of the MPC appointed by the Chancellor of the Exchequer.

Clause 8: Monetary Policy Committee: procedure

- 43 This clause amends the requirement on the timing of publication of minutes of MPC meetings so that they must be published "as soon as reasonably practicable" following the meeting, or, where the proceedings in the meeting related to a decision to intervene in the financial markets, after publication of that decision. This contrasts with the current requirement, which is for publication within six weeks after the meeting or publication of a decision to intervene.
- 44 *Subsection (4)* reduces the number of times the MPC has to meet each year, changing the requirement to meet "at least once a month" to a requirement to meet at least eight times a year, and at least once in any 10 week period.
- 45 *Subsection (5)* changes the rules on the quorum for the Monetary Policy Committee. A meeting will not be quorate unless either the Governor of the Bank, or the Deputy Governor for monetary policy are present. In addition, unless both the Governor and the Deputy Governor for monetary policy are at the meeting, the meeting will not be quorate unless either the Deputy Governor for financial stability or the Deputy Governor for markets and banking is present.
- 46 *Subsection (6)* sets out the procedure to be followed where a member of the Committee has an interest in anything being considered by the Committee, and requires the Bank to have a code of practice on the way in which the Committee and its members are to deal with conflicts of interest.

Clause 9: Audit

- 47 This clause inserts new *section 7ZA* into the 1998 Act. This describes the extent to which the Comptroller and Auditor General is to be involved with the audit of the Bank. The Comptroller and Auditor General will be consulted by the Bank about the appointment of the Bank's external auditors. The auditor or auditors appointed by the Bank will then consult the Comptroller and Auditor General on the way in which the audit is planned. If an audit plan is

produced, the Comptroller and Auditor General must be consulted not only on the audit plan itself, but also on any material revision of the plan.

- 48 The Comptroller and Auditor General will have the right to see information reasonably required relating to the audit of the Bank's accounts which is held by the Bank, and to attend any meetings of the Audit and Risk Committee of the Bank which deal with any aspect of the audit of the Bank's accounts.

Clause 10: Activities indemnified by Treasury

- 49 This clause inserts new *sections 7B* and *7C* into the 1998 Act.
- 50 *Section 7B* gives the Treasury power to require the Bank to prepare a financial report for any activity of the Bank which has been the subject of an indemnity or guarantee given by the Treasury, and which therefore represents a risk to public funds. This report may be sent to the Comptroller and Auditor General for review. The clause also gives the Comptroller and Auditor General the power to obtain access to any document which the Bank or its auditors hold if the document is reasonably required for the purposes of this review.
- 51 *Section 7C* applies when the Treasury has given an indemnity or guarantee to a company which is a subsidiary of the Bank, or in which the Bank has a minority interest. The Treasury may direct the company to send its own accounts to the Comptroller and Auditor General to be audited. The Comptroller and Auditor General must report on any accounts sent for examination, and both the accounts and the report will be sent to the Treasury and laid before Parliament.

Clause 11: Examinations and reviews

- 52 This clause inserts new *sections 7D, 7E, 7F, 7G* and *7H* into the 1998 Act. These give the Comptroller and Auditor General and the Treasury power to initiate value for money studies of the Bank (the Comptroller and Auditor General of the whole Bank, and the Treasury of the Bank's PRA functions). Under new *section 7D* the Comptroller and Auditor General has power to carry out value for money studies of any functions of the Bank (after consulting the court of directors of the Bank) and report to Parliament on the results. This does not give the Comptroller and Auditor General power to question the Bank's policy objectives or to consider the merits of policy decisions taken by the Financial Policy Committee, the Monetary Policy Committee or the Prudential Regulation Committee. In addition, the Comptroller and Auditor General may not examine the merits of policy decisions on the supervision of financial market infrastructure (such as payment or settlement systems or clearing houses) taken by the body within the Bank responsible for the Bank's supervision of financial market infrastructure. Nor may the Comptroller and Auditor General consider the merits of policy decisions relating to resolution taken by the body responsible for the exercise of the Bank's resolution functions. However, where the Bank has used its powers under the 2009 Act, or Part 6 of the 2013 Act (which provides for special administration for infrastructure companies) to resolve a bank or other financial institution the Comptroller and Auditor General may consider any policy decision on resolution which is relevant to the resolution of that institution. New *section 7E* makes provision for a Memorandum of Understanding between the Bank and the Comptroller and Auditor General, to set out the procedure for resolving disputes between them, and to identify functions which the Comptroller and Auditor General would not usually wish to examine.
- 53 Under new *section 7F* the Treasury is given power to commission an independent value for money study of the way in which the Bank carries out its functions as PRA. This provision replaces section 20 of FSMA (which contained a similar provision for the Treasury to commission reviews of the PRA when it was a subsidiary of the Bank) which is being repealed

by the Bill.

- 54 New *section 7G* ensures that the Comptroller and Auditor General, and any person asked by the Treasury to carry out a value for money study, has access to the documents and information they reasonably need to see to enable them to do the study.
- 55 New *section 7H* ensures that any information which the Comptroller and Auditor General or the National Audit Office receives from the Bank during the course of such an examination (or otherwise) which relates to monetary policy, the Bank's financial support operations or the provision of private banking services, must be treated as specially protected information and may not be disclosed.

Clause 12: Bank to act as Prudential Regulation Authority

- 56 This clause ends the subsidiary status of the PRA by making the Bank the PRA. The Bank must exercise its functions as PRA (which are identified in new section 2AB of FSMA) through the new Prudential Regulation Committee, and it is prohibited from exercising them in any other way.

Clause 13: Prudential Regulation Committee

- 57 This clause inserts new *sections 30A, 30B and 30C* into the 1998 Act.
- 58 New *section 30A* creates the Prudential Regulation Committee ("PRC"), sets out its membership and makes it responsible for the Bank's prudential regulation functions: that is, the Bank's functions as PRA, and the functions conferred on the PRC by the 1998 Act.
- 59 New *section 30B* requires the Treasury to make recommendations to the PRC (at least once every Parliament) about the matters of Government economic policy which it wants the PRC to take into account. These recommendations will not relate to individual firms or cases, and any recommendation made will be published, and laid before Parliament.
- 60 New *section 30C* requires the Bank to make arrangements to comply with provisions in the specified European Union directives, which require that where a single institution is responsible both for supervising financial institutions and for resolving financial institutions when they fail, the supervision functions of the institution are operationally independent from its resolution functions. If it appears to the Treasury that any action the Bank proposes to take would be incompatible with the UK's obligations under those directives, the Treasury may direct the Bank not to take that action, or to take any action that is needed to ensure compliance with those obligations.
- 61 *Subsection (3)* of this clause inserts a new *Schedule 6A* (found in Schedule 1 to the Bill) into the Bank of England Act 1998. The Schedule makes provision about the PRC.
- 62 *Paragraphs 2 to 9* of Schedule 6A set out the rules to be followed by the Chancellor in appointing any member of the PRC (including terms of office, factors intended to ensure their independence and provisions on disqualification), and the terms on which they may be removed.
- 63 *Paragraphs 10 to 16* set out what procedure must be followed by the Committee in meetings, how the Committee is to deal with potential conflicts of interest and the procedure for taking decisions in writing. Subject to these provisions, the Committee may determine its own procedure.
- 64 *Paragraph 17* allows the Committee to delegate some of its functions and states to whom they may be delegated. It requires certain functions to be delegated to the chief executive for prudential regulation (while making it clear that the chief executive is not prevented from delegating those functions to another person), and sets out which of the Committee's

functions may not be delegated to anyone else.

65 *Paragraph 18* requires a budget for the Bank's PRA functions to be adopted by the PRC.

66 *Paragraph 19* requires the PRC to make an annual report to the Chancellor on the resources the Bank is giving to its functions as PRA and whether those functions are being carried out within the Bank independently of its other functions.

Clause 14: Accounts relating to Bank's functions as Prudential Regulation Authority

67 This clause amends section 7 of the 1998 Act to require the Bank to prepare a statement of accounts on its income and expenditure (and related assets and liabilities) as PRA. This will include details of the levy determined by the PRC and imposed on financial institutions to meet the Bank's costs as PRA. The Treasury is given power to issue directions on the information in the statement of accounts and the methods and principles that must be used in its preparation. The Bank's external auditor is required to report on whether the Bank has properly complied with the requirements applying to its power, in its capacity as the PRA, to impose penalties and raise the levy from industry.

Clause 15: Transfer of property etc to Bank

68 This clause transfers the property, rights and liabilities of the company currently known as the Prudential Regulation Authority to the Bank.

Clause 16: Amendments relating to Part 1

69 This clause introduces Schedule 2.

70 Schedule 2 makes consequential amendments to the Bank of England Act 1998 ("the 1998 Act"), the Financial Services and Markets Act 2000, the Banking Act 2009 and other legislation arising as a result of the amendments to the governance framework of the Bank made by Part 1 of this Bill.

71 *Paragraphs 1 to 22* amend the 1998 Act.

72 *Paragraph 2* excludes determining the objectives and strategy of the PRA from the functions which the court is responsible for managing under section 2.

73 *Paragraph 3* removes the requirement for the Bank to work with the PRA in pursuing its Financial Stability Objective. It is no longer necessary to make express provision for this, as the Bank exercises the functions of the PRA itself.

74 *Paragraph 4* changes the description of the Bank's objectives and strategy for the purposes of the courts' oversight functions to include the PRA's objectives and strategy, so that the court is required to review the Bank's performance in relation to them. It also removes some items from the list of oversight functions, as a consequence of the transfer of the oversight functions from the Oversight Committee to the court (for example, because the items relate to matters which are determined by the court in any event, such as the terms and conditions of certain members of the Bank's statutory committees), or because it would not be appropriate for the court to have oversight of them (for example the remuneration of the Governor and Deputy Governors).

75 *Paragraphs 5 to 8, 11, 16, 20, and 21* replace references in the 1998 Act to the Oversight Committee with references to the court of directors. *Paragraph 5* also removes the requirement for the Governor to consent to the appointment of a Bank officer or employee to conduct a performance review. *Paragraph 8* also ensures that those carrying out the court's oversight functions will have access to meetings of the PRC and documents considered by the PRC as well as to the meetings and documents of the other committees of the Bank. However, no

member of the court who has an interest in a matter to be considered by the PRC will have access to information or meetings relating to that matter.

- 76 *Paragraph 9* requires the court to report on the performance of their oversight functions as part of the annual report of the Bank made under section 4.
- 77 *Paragraphs 10, 13, 14, and 22* remove some references to the PRA from the 1998 Act.
- 78 *Paragraph 12* amends section 9O to ensure that recommendations by the FPC to the Bank in its capacity as PRA continue to be made under section 9Q (which provides for recommendations by the FPC to the PRA and the FCA) and not under section 9O.
- 79 *Paragraph 15* amends the requirement in section 14 for the Bank to publish statements about its decisions whether to take action to meet its monetary policy objectives, and what action the Bank has decided to take, as soon as practicable after the meeting (or, if the MPC decided that the Bank should intervene in the financial markets, after the MPC has decided that the Bank's intervention would not be adversely affected by publication of the decision) so that they need only be published as soon as reasonably practicable. *Paragraph 17* makes an equivalent amendment to section 18, so that the Bank needs only publish its quarterly inflation report as soon as reasonably practicable after the period to which it relates.
- 80 *Paragraph 18* amends section 40 to provide for the parliamentary procedure applicable to orders made under section 1A(1).
- 81 *Paragraph 19* ensures that the court may delegate its functions to any committee of the Bank (including the statutory committees, but not only to those committees). It also amends the title of the chief executive of the PRA to reflect his new title.
- 82 *Paragraph 20* amends Schedule 2A to the 1998 Act, which deals with the FPC. Apart from changing references in that Schedule to the oversight committee to references to the court of directors, it also ensures that members of the PRC may not be appointed as members of the FPC as well, requires the Bank to have, and to publish, a code of practice on the way in which conflicts of interest are dealt with by the FPC and gives the Committee power to take decisions outside a meeting by writing.
- 83 *Paragraph 21* amends Schedule 3 to the 1998 Act, which deals with the MPC. In addition to changing references in that Schedule to the oversight committee to references to the court of directors, it provides that members of the PRC may not also be appointed as members of the MPC, and amends the ground on which the member of the MPC appointed by the Governor may be removed to reflect the revised qualification for that member (set out in *clause 7(3)* of the Bill).
- 84 *Paragraph 22* ensures that the Bank is able to disclose information to discharge its functions as PRA.
- 85 *Paragraph 23* amends the Bank of England Act 1946 to ensure that the Treasury's power to direct the Bank does not apply when the Bank is acting in its capacity as PRA.
- 86 *Paragraphs 24 and 25* amend the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 so that members of the PRC are not qualified for election either to the House of Commons or to the Northern Ireland Assembly. This disqualification takes the place of the previous disqualification which applied to members of the PRA Board.
- 87 *Paragraphs 26 to 51* make consequential amendments to FSMA. In particular provisions requiring the PRA to consult or to co-operate with the Bank are removed. Once the Bank itself is responsible for exercising the functions of the PRA, the way in which the sections of the

- Bank which are responsible for its different functions interact with each other will be determined internally by the Bank.
- 88 *Paragraphs 27 and 28* remove sections 2O and 2P (these provisions are now made in sections 7F and 7G of the 1998 Act, inserted by clause 11 of the Bill).
- 89 *Paragraph 29* ensures that the duty to follow principles of good corporate governance only applies in relation to the FCA.
- 90 *Paragraph 30* amends requirements in section 3Q for the regulators (the PRA and the FCA) to co-operate with the Bank in relation to its financial stability objective and duties in relation to public funds, so that they only apply to the FCA.
- 91 *Paragraph 31* amends section 3R so that the permission for either regulator to enter into arrangements with the Bank for service provision only applies to the FCA.
- 92 *Paragraph 32* inserts section 3T into FSMA, defining what is meant by enactment.
- 93 *Paragraphs 33 and 34* amend requirements for the regulators to consult with the Bank in relation to rules regarding recovery plans and resolution plans so that the requirements only fall on the FCA.
- 94 *Paragraph 35* amends the requirement for the regulators to give the Bank notice when they make, alter or revoke any rule so that it only applies to the FCA.
- 95 *Paragraphs 36 and 37* extend the PRA's power to obtain information under section 165 and 165A of FSMA so that the Bank, acting in its capacity as PRA, is also able to obtain information which the Bank requires for the purposes of its financial stability objective.
- 96 *Paragraphs 38, 39 and 40* amend provisions in FSMA dealing with the regulators' consideration of applications for approval of a change of control over a bank, investment firm or banking group company. *Paragraph 38* amends section 187A so that the requirement for the FCA to act as soon as reasonably practicable if it wishes to make representations about, object to or seek more information in relation to such an application, is triggered by notification from the PRA that it is itself required to act in a timely manner. *Paragraph 39* inserts subsection (1ZB) into section 189, imposing this requirement to act in a timely manner on the PRA where the Bank is exercising resolution powers in relation to the bank, investment firm or banking group company concerned. *Paragraph 40* makes a consequential amendment.
- 97 *Paragraphs 41 and 42* amend requirements for both regulators to consult the Bank on the directions they propose (or have decided) to give to qualifying parent undertakings, and in relation to their proposed statement of policy in relation to such directions, so that they only apply to the FCA.
- 98 *Paragraph 43* amends the description of the memorandum of understanding (MOU) required by Part 1 of Schedule 17A to FSMA, to reflect that the MOU between the Bank, the PRA and the FCA on their functions in relation to recognised investment exchange and clearing houses will become an MOU between the PRA and the FCA. There will therefore be two MOUs - one between the Bank and the FCA, and one between the FCA and the Bank in its capacity as PRA.
- 99 *Paragraph 44* removes the obligation on the PRA to notify the Bank that it has disqualified a person from acting as auditor of a PRA-authorized person.
- 100 *Paragraph 45* amends section 348 (restrictions on disclosure of confidential information by FCA, PRA etc.) so that it applies to the Bank, both in its capacity as PRA and otherwise.
- 101 *Paragraph 46* amends section 353A (restrictions on disclosing information received from the

Bank (including in its capacity as PRA) so that it only applies to information received from the Bank by the FCA.

- 102 *Paragraph 47* amends section 354B (PRA's duty to co-operate with others) to remove a reference to the Bank.
- 103 *Paragraph 48* repeals section 354C (PRA's duty to provide information to Bank of England), which places an obligation on the PRA to provide information relating to the Bank's financial stability objective to the Bank.
- 104 *Paragraph 49* inserts a definition of the Bank into section 417.
- 105 *Paragraph 50* amends Schedule 1ZB to FSMA (the Prudential Regulation Authority). Paragraphs 2 to 16, 18, and 22 to 26 of that Schedule are removed. Paragraph 19, which requires the PRA to make an annual report to the Treasury, is amended to require the report to be made to the Chancellor of the Exchequer instead. Consequential amendments are made to paragraphs 1 and 31.
- 106 *Paragraph 51* amends Schedule 17A (provision in relation to the exercise of Part 18 functions by the Bank). The requirement for an MOU between the FCA, the Bank and the PRA on the exercise of their respective functions in relation to PRA-authorized persons who are also recognised bodies becomes a requirement for an MOU between the FCA and the PRA. A requirement for consultation between the Bank and the PRA and FCA in relation to statements of policy on directions to qualifying parent undertakings is limited to consultation between the Bank and the FCA, and requirements on the Bank to consult the PRA in relation to notices of such directions, and on proposed directions to insolvency practitioners, are removed.
- 107 *Paragraphs 52 to 63* amend the Banking Act 2009.
- 108 *Paragraph 53* removes a requirement for the Bank to co-operate with the PRA in imposing regulatory sanctions in relation to the Bank's resolution powers.
- 109 *Paragraph 54* removes the PRA from the list of persons to whom the Bank may delegate its enforcement functions.
- 110 *Paragraph 55* removes a modification of section 348 (restrictions on disclosure of confidential information) which made the Bank a primary recipient under that section. This modification is no longer necessary because of the amendment to section 348 made by paragraph 45.
- 111 *Paragraph 56* amends section 96 (grounds for applying) so that the requirements for an application by the Bank for a bank insolvency order are satisfied as soon as the PRA is satisfied of the relevant condition, without the need for formal notification from the PRA to the Bank. Similarly, the requirements for such an application by the PRA are satisfied once the Bank is satisfied of the relevant condition without such notification.
- 112 *Paragraph 57* removes the requirements for the Bank and the PRA to consult each other before making an application for the removal of a bank liquidator.
- 113 *Paragraph 58* removes the requirement for the consent of the Bank to an application by the PRA for a bank insolvency order.
- 114 *Paragraph 59* amends the modifications made by section 129A to sections 96 (grounds for applying for a bank insolvency order), 108 (removal by court) and 117 (bank insolvency as alternate order) in relation to FCA regulated banks. The amendments to the modifications to section 96 ensure that the Bank is not required to consult the PRA where there is a PRA-authorized person in the bank's immediate group, but that the Bank and the FCA must have

informed each other that the conditions for an application for a bank insolvency order for which they are responsible are satisfied before either may make such an order. The amendments to the modifications made to sections 108 and 117 ensure that the FCA is required to consult the Bank before making an application to remove a bank liquidator (section 108), and to obtain the consent of the Bank before applying for a bank insolvency order (section 117).

115 *Paragraphs 60 and 61* remove provisions permitting the Bank to disclose to the PRA information it has either obtained from a third party under section 204 or that it thinks relevant to financial stability under section 246.

116 *Paragraph 62* inserts definitions of the PRA and the Bank into the Banking Act 2009, to distinguish between the two different capacities in which the Bank may act, and *paragraph 63* adds these terms to the index of defined provisions in section 261 of that Act.

117 *Paragraphs 64 to 66* amend the Financial Services Act 2012, making a consequential amendment to section 85(8) to refer to the section where the definition of the functions of the PRA is now found (*paragraph 65*), to amend the definition of the PRA and to add a definition of the Bank (*paragraph 66*) to distinguish between the two different capacities in which the Bank may act.

118 *Paragraphs 67 to 68* amend the Financial Services (Banking Reform) Act 2013, amending the definition of "relevant functions" in relation to the PRA in section 98 of that Act to refer to the section of FSMA where those functions are now defined.

119 *Paragraph 69* makes some consequential repeals.

Clause 17: Saving and transitional provision relating to Part 1

120 This clause introduces Schedule 3.

121 Schedule 3 makes saving and transitional provision relating to Part 1 of this Bill.

122 *Paragraphs 2 to 12* make provision in relation to prudential regulation. *Paragraph 2* preserves the effect of orders made under section 2A(6)(d) specifying certain EU provisions as conferring functions on the PRA.

123 *Paragraph 3* provides for the prudential regulation strategy last determined by the PRA under section 2E of FSMA to continue to have effect.

124 *Paragraph 4* provides for the prudential regulation budget last adopted by the PRA under paragraph 18 of Schedule 1ZB to FSMA to continue to have effect.

125 *Paragraph 5* makes provision for the time when the Bank, acting in its capacity as the PRA, has to make its first annual report under paragraph 19 of Schedule 1ZB to FSMA.

126 *Paragraph 6* allows the subsidiary company originally incorporated as Prudential Regulation Authority Ltd ("PRA Ltd") to disclose confidential information to the Bank in order to prepare for the transfer of its functions to the Bank.

127 *Paragraph 7* ensures that the company known as the Prudential Regulation Authority will not incur liabilities to corporation tax because of the transfer of its intangible assets to the Bank.

128 *Paragraph 8* limits the application of the new definition of the PRA so that it does not apply to any enactment to the extent that the enactment only applies to a time before the new definition came into force.

129 *Paragraph 9* ensures that references to the PRA in documents which relate to functions or property of the PRA which are transferred to the Bank will be read as referring to the Bank

acting in its capacity as the PRA after the transfer of the PRA's functions to the Bank takes effect.

130 *Paragraphs 10 to 12* make general provision to ensure that the transfer of functions and the transfer of property, rights and liabilities from the PRA Ltd to the Bank, acting in its capacity as the PRA, does not affect anything the PRA Ltd did, or which was done in relation to it, before the transfers took effect.

Part 2: Financial Services

Clause 18: Financial Conduct Authority

131 *New section 1JA* of FSMA requires the Treasury to make recommendations to the FCA (at least once every Parliament) about the matters of Government economic policy which it wants the FCA to take into account. These recommendations will not relate to individual firms or cases, and any recommendation made will be published, and laid before Parliament.

Clause 19: Diversity

132 This clause amends section 3B of FSMA (regulatory principles to be applied by both regulators) to clarify that the regulators must have regard to the differences between different kinds of business organization adopted by financial services firms (such as mutual societies) in exercising their general functions.

Clause 20: Extension of relevant authorised persons regime to all authorised persons

133 This clause introduces *Schedule 4*, which makes provision to extend the regime which regulates the conduct of people working in banks and certain investment firms (described in FSMA as "relevant authorised persons") to cover those working in any institution which is authorised to carry out regulated activities under FSMA.

134 *Paragraphs 2 and 4 to 20* remove references to "relevant authorised persons" and replace them with references to all authorised persons.

135 *Paragraph 3* inserts the definition of "designated senior management functions" into a new section.

136 *Paragraph 21* makes a consequential amendment to section 429 of FSMA.

137 *Paragraph 22* makes consequential amendments to the Financial Services (Banking Reform) Act 2013.

Clause 21: Rules about controlled functions: power to make transitional provision

138 This clause extends the regulators' existing powers to make transitional provisions in their rules, to deal with changes to the rules on controlled functions. It gives examples of the sort of transitional provisions which can be included. It also gives the Treasury power to make transitional or consequential provisions in relation to rules made by the regulators under section 59, which may, for example, give the regulators an extended power to make rules for the purpose of making transitional arrangements when they are modifying the controlled functions regime.

Clause 22: Administration of senior managers regime

139 This clause makes a number of amendments to the senior managers regime. *Subsection (2)* amends section 62A of FSMA, which places an obligation on an authorised person to inform the FCA or the PRA about any significant change in the responsibilities of an approved person. The effect of the amendment is to require the authorised person to provide that information to both the PRA and the FCA where the application to approve that person was

granted by both those regulators. *Subsection (3)* allows someone who has been granted approval to be a senior manager for a limited period to apply to the regulators for the period to be extended, or for the limitation on their approval to be removed altogether. *Subsection (4)* permits each of the regulators to vary an approval already given to a senior manager, either by varying or removing the limitation on the period for which the approval was given, or by imposing a limited period on an approval which was previously unlimited.

140 *Subsection (5)* amends section 204A to ensure that both the PRA and the FCA are able to bring disciplinary proceedings for failure to comply with the requirement for information to be provided on any change in the responsibilities of senior managers under section 62A of FSMA.

Clause 23: Rules of conduct

141 This clause amends section 64A of FSMA to extend the power of the PRA and the FCA to make rules of conduct, so that they can make rules of conduct in relation to directors of authorised persons, as well as their employees and approved persons. It also amends section 64B to ensure that the duty of the authorised person to ensure that anyone subject to conduct rules is aware of the rules that apply to them also applies in relation to their directors, and, by omitting subsection (5) to remove the statutory duty for firms to report to the regulator when they know or suspect that someone in the firm has failed to comply with conduct rules.

Clause 24: Misconduct

142 This clause amends sections 66A and 66B of FSMA to ensure that the FCA and the PRA respectively are able to bring disciplinary proceedings against directors of authorised persons who have breached rules of conduct applying to them.

143 It also amends the definition of misconduct applying to senior managers, both in relation to action by the PRA and action by the FCA. Under the existing provisions as currently drafted senior managers of a bank or other relevant authorised person would be guilty of misconduct if there had been a breach of any regulatory requirement in an area for which they were responsible unless they could prove that they have taken reasonable steps to avoid the breach happening. This will be amended so that no senior manager will be guilty of misconduct unless the regulators can prove that the senior manager did not take reasonable steps to avoid the breach happening. As amended, this ground of misconduct will also apply to senior managers of all authorised persons, and not just those in banks or other relevant authorised persons.

Clause 25: Decisions causing a financial institution to fail: meaning of insolvency

144 This clause extends the circumstances when a financial institution can be said to be failing for the purpose of the criminal offence created by section 36 of the Financial Services (Banking Reform) Act 2013 (offence relating to a decision causing a financial institution to fail), so that it includes cases where a building society goes into the building society insolvency or administration procedure, or an investment bank is put into one of the insolvency procedures provided for in the Investment Bank Special Administration Regulations 2011.

Clause 26: Enforceability of agreements relating to credit

145 This clause makes amendments to section 26A of FSMA which concerns the enforceability of agreements relating to credit. The amendments make it clear that where a person can lawfully undertake the relevant credit-related regulated activity in relation to the agreement (whether administering the agreement in relation to subsection (4) of section 26A, or taking steps to procure the payment of debts under it in relation to subsection (5) of section 26A) they are also able to enforce the agreement. This applies to those who are appointed representatives who are not authorised persons in their own right, and people who are exempt from the general

prohibition (such as members of a designated professional body).

Clause 27: Enforceability of credit agreements made through unauthorised persons

146 This clause makes amendments to section 27 of FSMA which concerns the enforceability of agreements where they are made through unauthorised persons. The amendments narrow the circumstances in which a credit agreement or consumer hire agreement is unenforceable under this section and ensures that this will only be the case where the provider of credit knows, before the agreement is made, that a third party had some involvement in the making of the agreement or in matters preparatory to it being made.

Clause 28: Transformer Vehicles

147 *Subsections (1) and (2)* of this clause insert a new section 284A into FSMA. The new section is concerned with “transformer vehicles” which are used as a risk mitigation technique by companies and financial institutions, and particularly by insurers and reinsurers. It will enable the Treasury to make regulations facilitating and regulating transformer vehicles, and the activities carried out and the trading of investments issued by transformer vehicles.

148 *Subsections (1) and (2)* of the new section 284A define “transformer vehicle”. *Subsection (1)* provides that a transformer vehicle is an undertaking which is established to carry out the activities mentioned in *subsection (2)* or which carries out those activities. The activities mentioned in *subsection (2)* are assuming risk from another undertaking (“B”) and fully funding the vehicle’s exposure to that risk by issuing investments where the repayments rights of the investors are subordinated to the vehicle’s obligations to B in respect of the risk. *Subsection (10)* defines “investment”, “primary legislation” and “subordinate legislation” for the purposes of section 284A.

149 *Subsection (3)* of new section 284A confers a broad regulation making power on the Treasury, as described above.

150 *Subsections (4) to (6)* set out non-exhaustive lists of the type of matters about which regulations may be made under subsection (3). *Subsection (4)* is mainly concerned with the creation and functioning of corporate bodies. *Subsection (5)* provides that the list in subsection (4) applies equally to the constituent parts of a body as it does to the body as a whole. *Subsection (6)* specifies a range of matters, including the creation of criminal offences, the conferral of functions on the financial regulators and the modification and amendment of primary and secondary legislation which may be dealt with in the regulations. *Subsections (7) to (9) and (11)* make further provision about the regulations which may be made under subsection (3), including a requirement for any regulations which permit the regulators to require the Council of Lloyd's to exercise any functions on their behalf to be made only with the consent of the Council.

151 *Subsection (3)* of this clause amends section 429(2) of FSMA, so that regulations under the new section 284A must be approved by both Houses of Parliament before they are made.

Clause 29: Pensions guidance

152 This clause expands the scope of the Government’s pensions guidance service, “Pension Wise”, so that it can offer guidance to those with a relevant interest in an annuity such as annuity holders considering selling the income from their annuities to a third party on the secondary market. The Secretary of State is given power to specify in secondary legislation what annuities come within the scope of this provision, and what interest a person must have in an annuity to have access to the guidance service.

Clause 30: Advice about transferring or otherwise dealing with annuity payments

153 This clause places a requirement on the FCA to make rules to require certain authorised

persons (to be specified in rules made by the FCA) to check that an individual with an annuity of a specified type or value, who is considering transferring or dealing with the income stream from that annuity on the secondary market, has taken appropriate financial advice. The clause includes powers for the Treasury to make secondary legislation:

- a. exempting some people from the requirement to take advice;
- b. specifying which types of annuities are caught by the advice requirement (by reference to their type, value or otherwise, including by reference to a person's financial circumstances), and
- c. specifying what is meant by appropriate advice.

Clause 31: Independent advice on conversions and transfers of pension benefits: appointed representatives

154 This clause makes a technical amendment to Pension Schemes Act 2015 to allow 'appointed representatives' of authorised financial advisers (a class of persons exempt from direct regulation by the FCA or PRA pursuant to section 39 of FSMA) to advise on the conversion and transfer of safeguarded benefits – features of certain pensions, such as defined benefit pensions, and pensions with Guaranteed Annuity Rates – to flexible benefits for the purposes of the 'advice safeguard' established in sections 48 and 51 of the Pension Schemes Act 2015. The clause also amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 to the same end.

Clause 32: Duty of Bank to provide information to Treasury

155 This clause makes amendments to the Financial Services Act 2012, inserting two new sections: 57A and 57B.

156 New *section 57A* provides the Treasury with a power to require the Bank to provide the Treasury with specific information identified by the Treasury, and held by the Bank - which the Treasury considers material to understanding the implications for public funds as assessed by the Bank of a bank or other financial institution failing.

157 New *section 57B* imposes a duty on the Bank to give the Treasury information about some resolution plans it prepares in relation to certain banks and other financial institutions. The "resolution plan" sets out what action the Bank may take if a particular bank fails, and in particular which of the Bank's powers under Parts 1 to 3 of the Banking Act 2009 it may exercise in relation to that bank. The information the Bank must give the Treasury includes the resolution plan itself; and an assessment of what impact the failure of the relevant bank or institution would have on the financial system, and what costs the Bank's proposals for resolving it would impose on public funds. The Bank must also give the Treasury any analysis the Bank considers to be material to its assessments of the implications for public funds, and provide the Treasury with updated information of any significant changes to the resolution plan or any other information given to the Treasury. *Subsection (5)* gives the Treasury power to direct the Bank not to provide it with information under this provision in relation to any institution or entity specified in the notice. This enables the Treasury to ensure that it does not receive inside information in relation to any financial institution in which the Treasury holds an interest that it wishes to sell.

Clause 33: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001

158 This clause reverses the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 by the National Savings Regulations

2015 with retrospective effect, so that the Order will be treated as never having been revoked.

Part 3: Miscellaneous and General

Clause 34: Banks authorised to issue banknotes in Scotland and Northern Ireland

- 159 This clause introduces a new *section 214A* into the Banking Act 2009 and makes other amendments to that Act.
- 160 *Subsection (1)* of that section gives the Treasury a power to make regulations authorising a bank to issue commercial banknotes in Scotland and Northern Ireland in place of an existing issuer.
- 161 *Subsection (2)* provides that a bank may only be authorised if it is in the same group as a bank which already has the right to issue banknotes. It may also only be authorised to issue banknotes in the same part of the United Kingdom as the existing issuer - and the authorisation of the existing issuer must end on the authorisation of the newly authorised bank to issue banknotes. *Subsection (2)* also gives the Treasury power to say what is to happen to relation to banknotes which are in the possession of the existing issuer or in circulation, when the right to issue notes passes to the newly authorised bank.
- 162 *Subsection (3)* ensures that, in the unlikely event that two banks in the same group are authorised in a short period of time to issue banknotes in place of the original issuer, the regulations authorising the second bank to issue banknotes may also make provision in relation any notes issued by the original issuer.
- 163 *Subsection (4)* allows the Treasury to set the date on which the right to issue banknotes is transferred from one bank to another either in the regulations themselves or by later announcement, published as provided for in the regulations. Where the date is not set in the regulations, it will have to be published in Gazettes (defined in *subsection (5)* as the London Gazette and either the Edinburgh Gazette (if Scottish banknotes are concerned) or the Belfast Gazette (if Northern Irish banknotes are concerned)).
- 164 *Subsection (6)* makes the consent of the Bank necessary before the Treasury is able to make regulations under this power. By *subsection (7)* the Bank is required to publish a statement of the matters it will take into account when deciding whether to give consent.

Clause 35: Consequential provision

- 165 This clause allows the Treasury and the Secretary of State to make consequential provisions by regulations.

Clause 36: Extent

- 166 This clause provides that the Act extends to the whole of the United Kingdom, except for those provisions which are amending or repealing legislation which only applies to part of the United Kingdom.

Clause 37: Commencement

- 167 This clause specifies that clauses 28, 33 and 35 to 38 will come into force on the day the Act receives Royal Assent. All other provisions come into force on such day as the Treasury or (in the case of clause 29) the Secretary of State may appoint by regulations.

Clause 38: Short title

- 168 This clause gives the Act its short title.

Commencement

169 Clauses 28, 33, and 35 to 38 (Transformer vehicles, Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, Consequential provision, Extent, Commencement and Short title) will commence on Royal Assent. All other provisions of the Bill will come into force on the day or days that the Treasury (or, in the case of clause 29, the Secretary of State) may by regulations appoint.

Financial implications of the Bill

170 Clause 6 adds an additional member to the Financial Policy Committee. The annual fee for an FPC member is currently £92,058 and there may be minimal additional costs to the Bank of England in administrative staffing burden. These costs will to some extent be offset by a non-legislative change to the court: the Government has already reduced the number of non-executive directors in the court from 9 to 7^[4], though legislative change was not required to effect this.

171 Clause 11 permits value for money studies of the Bank, which may require additional National Audit Office (“NAO”) resource if the Comptroller and Auditor General decides to proceed with a review. The charge for the NAO’s programme of value for money studies is funded through resources voted to the NAO directly by Parliament.

172 Clause 20 extends the relevant authorised persons regime to all authorised persons. Financial services firms (other than firms to which the regime already applies) are expected to incur costs of setting up and operating systems required to meet their new obligations. Evidence from cost benefit analysis^[5] undertaken by the FCA for its main consultation on proposed SM&CR rules for deposit takers indicates that the costs of the SM&CR can vary significantly depending on the size and complexity of the bank or building society concerned. In general, small institutions incur relatively low costs but the costs increase significantly for large banks and building societies. It is assumed that the costs of this extension will follow a similar pattern.

173 Clause 28 is an enabling power for the Treasury to make regulations which facilitate or regulate the Insurance Linked Securities business. The power provided in the Bill does not itself change the regulatory regime and so there are no financial implications as a direct result of this provision.

174 Clause 29 extends the remit of the Pension Wise service. There will be additional ongoing costs associated with this expansion since it will need to be adapted to ensure that the content and service delivery are appropriate for annuity holders. It is expected that ongoing costs will be passed on to firms through the FCA levy, subject to consultation. In addition, there may be some transitional set-up costs for the expanded service. Set-up costs for Pension Wise have, in the past, been met from public funds. The clause also extends Pension Wise to members of the Pension Protection Fund (PPF). The cost of extending the service to members of the PPF is estimated to be negligible due to the small number of individuals affected. We do not envisage any significant costs to the Pensions Protection Fund as it will only add an extra line in its broader communications to members to sign post Pension Wise. This will not incur additional administrative costs.

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447140/bank_of_england_bill_v3.pdf

5 Under section 138I (FCA) and section 138J (PRA) of FSMA, the regulators are required to publish a cost benefit analysis when consulting on rules that they propose to make.

175 Clause 30 requires the FCA to make rules requiring certain authorised persons to check that individuals with annuities of a specified type or value have taken appropriate advice before transferring or otherwise dealing with their income stream under that annuity. Individuals will be responsible for meeting the costs of the advice they receive. Indicative analysis suggest that this will have a total business cost of considerably less than £1m in the first years of the market.

Parliamentary approval for financial costs or for charges imposed

176 The Bill will require a money resolution to cover expenditure incurred by the Treasury by virtue of the Bill (clause 11, inserted section 7F provides for the costs of Treasury reviews of the Bank to be met from money provided by Parliament) and increased expenditure under other Acts (because of the additional functions conferred on the Comptroller and Auditor General by Part 1, and the expansion of the Pension Wise service by clause 29). A ways and means resolution is needed to cover paragraph 7 of Schedule 3.

Compatibility with the European Convention on Human Rights

177 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Chancellor of the Exchequer and First Secretary of State has made the following statement: "In my view, the provisions of the Bank of England and Financial Services Bill are compatible with the Convention rights".

178 Article 8 may be engaged by clauses 11 and 32. Clause 11 gives the Comptroller power to conduct value for money examinations at the Bank and the Treasury power to appoint an independent reviewer to conduct value for money examinations in relation to the Bank's prudential regulation functions. Both involve the reviewer being given full access to information held at the Bank or by the Bank's auditors for the purpose of the review or examination. The rights of the reviewer are limited (they have no right to seize information), and the reviews are intended to see that the Bank is carrying out its functions (and in particular its public functions) effectively and to increase the Bank's public accountability. Clause 32 requires the Bank to provide the Treasury with information in connection with the Bank's resolution plans, which may in some cases involve the disclosure of confidential information relating to a particular firm. This is provided to enable the Treasury to assess the implications for public funds of the possible failure of a financial institution, and engage in advance planning to limit the damage to the UK financial system, and thus the economy, of such a failure.

179 The access to information given to the Comptroller and an independent reviewer under clause 11, and to the Treasury under clause 32 may be considered to engage Article 8. To the extent that it does so, it is given in each case to achieve a legitimate aim, and is a proportionate means of achieving that aim.

180 Clause 14 imposes an obligation on the Bank to prepare a statement of accounts for income and expenditure relating to its prudential regulation functions, in addition to the Bank's own accounts. This requires the Bank to incur additional expense, and could be said to constrain the way in which it carries out its business. However, in the Government's view, these

requirements are imposed for a legitimate purpose in the general interest, to ensure transparency in the way in which the Bank uses monies received under the levy imposed on financial services firms under FSMA. Given the minimal demands these requirements impose on the Bank's resources, there is a fair balance between the rights of the Bank and the interests of the community.

181 Clauses 20 to 24 extend the Senior Managers and Certification Regime now applying to banks and investment banks to all firms authorised to provide financial services. One consequence is that the regulators will be able to make conduct rules applying to the employees of all firms (rather than only the employees of banks and investment banks). Breach of those rules will render the person responsible liable to disciplinary proceedings brought by the regulators. The sanctions available in those proceedings include unlimited fines, and they would in many cases be considered to involve the determination of a civil right and so subject to Article 6 of the ECHR. However, the safeguards provided for in those proceedings - which include the right to refer any decision of the regulators to take action against them to the Upper Tribunal - meet the requirements of Article 6.

182 In clause 30 the Government is providing, in effect, for a requirement for certain individuals with annuities that are specified by regulations made by the Treasury (by reference to their type, value or otherwise) to take appropriate financial advice before transferring or otherwise dealing with their right to payments under those annuities. It is anticipated that the cost of obtaining such financial advice will be met by the annuity holder. Certain individuals may be excluded from the requirement if they meet certain criteria relating to their financial circumstances, if the Treasury so prescribe. The advice requirement is driven by the objective of ensuring that consumers with certain categories of annuities (expected to be those that of a high value) are appropriately protected and have received full and tailored advice about the financial consequences of "cashing in" their annuity income stream, which may include whether it is appropriate for them and whether they have been offered a fair deal by reference to the market as a whole. Requiring certain categories of persons to pay for financial advice from their own resources before being permitted to engage in the secondary market for annuities may be argued to engage their right under Article 1 Protocol 1 ECHR ("A1 P1") to the peaceful enjoyment of their possessions. The extent to which the advice requirement interferes with A1P1 rights cannot be fully assessed until the Government sets out how the requirement is to be applied by way of secondary legislation. In doing so the Government is required, under section 6 of the Human Rights Act 1998, to act compatibly with the Convention rights. In general terms, it is considered that any interference would be justified in the public interest on consumer protection grounds, and would be proportionate, since it is expected that advice will only be required for those with annuities above a threshold value. The advice requirement would also only be triggered in relation to the new ability, from 2017, to sell one's annuity income on the secondary market (subject to the agreement of the annuity provider), and the decision to access one's retirement income in this way is entirely voluntary.

Related documents

183 The following documents are relevant to the Bill and can be read at the stated locations:

- Bank of England Bill - Consultation.
<https://www.gov.uk/government/consultations/bank-of-england-bill-technical-consultation>
- Transparency and the Bank of England's Monetary Policy Committee - Review by Kevin Warsh.

<http://www.bankofengland.co.uk/publications/Documents/news/2014/warsh.pdf>

- Creating a secondary annuity market - Consultation
<https://www.gov.uk/government/consultations/creating-a-secondary-annuity-market-call-for-evidence>
- Fair and Effective Markets Review
<http://www.bankofengland.co.uk/markets/Pages/fmreview.aspx>

Annex A - Glossary

the 1998 Act	Bank of England Act 1998
the 2009 Act	Banking Act 2009
the 2012 Act	Financial Services Act 2012
the 2013 Act	Financial Services (Banking Reform) Act 2013
the Bank	The Bank of England
Court	The court of directors of the Bank of England
FSMA	Financial Services and Markets Act 2000
FPC	Financial Policy Committee
MPC	Monetary Policy Committee
NAO	National Audit Office
PRA	Prudential Regulation Authority
PRC	Prudential Regulation Committee (proposed by this Bill)
SM&CR	Senior Managers and Certification Regime
Warsh Review	"Transparency and the Bank of England's Monetary Policy Committee" (review by Kevin Warsh published 11 December 2014)

Annex B - Territorial extent and application

The Bill's provisions extend to the whole of the United Kingdom, with the exception of clause 31(2), which extends to England and Wales and Scotland, and clause 31(3) which extends to Northern Ireland. In the Government's view, the matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; accordingly no legislative consent motions are necessary^[6]

Provision	England	Wales		Scotland		Northern Ireland		
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within the competence of the National Assembly for Wales?	Extends to Scotland?	Would corresponding provision be within the competence of the Scottish Parliament?	Extends to Northern Ireland?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	LCM needed?
Part 1 Clauses 1 to 17	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Part 2 Clauses 18 to 30	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 31(1),(4) to (7)	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 31(2)	Yes	Yes	N/A	Yes	N/A	No	N/A	No
Clause 31(3)	No	No	N/A	No	N/A	Yes	N/A	No
Clauses 32 to 33	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Part 3 Clauses 34 to 38	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Schedules 1 to 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No

⁶ References in Annex A to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

BANK OF ENGLAND AND FINANCIAL SERVICES BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Bank of England and Financial Services Bill [HL] as brought from the House of Lords on 19 January 2016 (Bill 120).

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