

# **Financial Services (Banking Reform) Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by HM Treasury, are published separately as HL Bill 38-EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Deighton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Financial Services (Banking Reform) Bill are compatible with the Convention rights.



# Financial Services (Banking Reform) Bill

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**B I L L**

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Make further provision about banking and other financial services, including provision about the Financial Services Compensation Scheme; to make provision for the amounts owed in respect of certain deposits to be treated as a preferential debt on insolvency; to make provision about the accounts of the Bank of England and its wholly owned subsidiaries; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Ring-fencing***1 Objectives of Prudential Regulation Authority**

(1) Section 2B of FSMA 2000 (the PRA’s general objective) is amended as follows.

(2) In subsection (3)—

(a) at the end of paragraph (a), omit “and”, and 5

(b) after paragraph (b) insert “, and

(c) discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to—

(i) ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services, 10

(ii) ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and 15

(iii) minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body’s group could affect the continuity of the 20

provision in the United Kingdom of core services.”

- (3) In subsection (4) for “subsection (3)” substitute “subsection (3)(a) and (b)”.
- (4) After subsection (4) insert –
- “(4A) The matters referred to in subsection (3)(c) are – 5
- (a) Part 9B (ring-fencing);
- (b) ring-fenced bodies (see section 142A);
- (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
- (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.” 10
- (5) In section 2J of FSMA 2000 (interpretation of Chapter 2 of Part 1) –
- (a) in subsection (3) for “a PRA-authorised” substitute “an authorised”,
- (b) after that subsection insert – 15
- “(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)”. 20

## 2 Modification of objectives of Financial Conduct Authority

After section 1I of FSMA 2000 insert –

*“Modifications applying if core activity not regulated by PRA*

### 1IA Modifications applying if core activity not regulated by PRA

- (1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications. 25
- (2) Section 1B is to have effect as if –
- (a) in subsection (3) after paragraph (c) there were inserted – 30
- “(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).”, and
- (b) in subsection (4), for “or the integrity objective,” there were substituted “, the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective,”. 35
- (3) After section 1E there is to be taken to be inserted –

#### “1EA Continuity objective

- (1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C). 40
- (2) Those matters are –

- (a) Part 9B (ring-fencing);
  - (b) ring-fenced bodies (see section 142A);
  - (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
  - (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body. 5
- (3) The FCA’s continuity objective is to be advanced primarily by –
- (a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services, 10
  - (b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and 15
  - (c) seeking to minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body’s group could adversely affect the continuity of the provision in the United Kingdom of core services. 20
- (4) In subsection (3)(c), “failure” is to be read in accordance with section 2J(3) to (4).”.

### 3 Amendment of PRA power of direction

- In section 3I of FSMA 2000 (power of PRA to require FCA to refrain from specified action), in subsection (4) – 25
- (a) at the end of paragraph (a), omit “or”, and
  - (b) at the end of paragraph (b) insert “, or
  - (c) threaten the continuity of core services provided in the United Kingdom.”

### 4 Ring-fencing of certain activities 30

- (1) After Part 9A of FSMA 2000 insert –

“PART 9B

RING-FENCING

*Introductory*

#### 142A “Ring-fenced body” 35

- (1) In this Act “ring-fenced body” means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.
- (2) But “ring-fenced body” does not include –
  - (a) a building society within the meaning of the Building Societies Act 1986, or 40

- (b) a UK institution of a class exempted by order made by the Treasury.
- (3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services. 5
- (4) 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. 10
- (5) In subsection (4) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G. 15
- (6) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.
- (7) In this section “UK institution” means a body corporate incorporated in the United Kingdom. 20

#### **142B Core activities**

- (1) References in this Act to a “core activity” are to be read in accordance with this section.
- (2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order. 25
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances. 30
- (4) Those purposes are –
- (a) to secure an appropriate degree of protection for the depositors concerned, or
  - (b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits. 35
- (5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.
- (6) An order under subsection (5) may be made only if the Treasury are of the opinion – 40
- (a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and 45

- (b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.

#### 142C Core services

- (1) References in this Act to “core services” are to be read in accordance with this section. 5
- (2) The following are core services –
- (a) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;
- (b) facilities for withdrawing money or making payments from such an account; 10
- (c) overdraft facilities in connection with such an account.
- (3) The Treasury may by order provide that any other specified services provided in the course of carrying on the core activity of accepting deposits are also core services. 15
- (4) If an order under section 142B(5) provides for an activity other than that of accepting deposits to be a core activity, the Treasury must by order provide that specified services provided in the course of carrying on that activity are core services.
- (5) The services specified by order under subsection (4) must be services in relation to which the Treasury are of the opinion mentioned in section 142B(6)(a). 20

#### 142D Excluded activities

- (1) References in this Act to an “excluded activity” are to be read in accordance with this section. 25
- (2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services. 30
- (4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order. 35
- (5) An activity to which an order under subsection (4) relates –
- (a) need not be a regulated activity, and
- (b) may be an activity carried on in the United Kingdom or elsewhere. 40
- (6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must –

- (a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and
- (b) consider whether the carrying on of that activity by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services. 5
- (7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services. 10
- 142E Power of Treasury to impose prohibitions**
- (1) The Treasury may by order prohibit ring-fenced bodies from—
- (a) entering into transactions of a specified kind or with persons falling within a specified class;
- (b) establishing or maintaining a branch in a specified country or territory; 15
- (c) holding in specified circumstances shares or voting power in companies of a specified description.
- (2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must— 20
- (a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and
- (b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services. 25
- (3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services. 30
- (4) An order under this section may in particular—
- (a) provide for any prohibition to be subject to exemptions specified in the order;
- (b) provide for any exemption to be subject to conditions specified in the order. 35
- 142F Orders under sections 142A, 142B, 142D or 142E**
- (1) An order made under section 142A, 142B, 142D or 142E may—
- (a) authorise or require the making of rules by a regulator for the purposes of, or connected with, any provision of the order;
- (b) authorise the making of other instruments by a regulator for the purposes of, or connected with, any provision of the order; 40
- (c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.
- (2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also— 45

- (a) impose conditions on the exercise of any power conferred on the regulator;
- (b) impose consultation requirements on the regulator;
- (c) make the exercise of a power by the regulator subject to the consent of the Treasury.

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*Ring-fenced bodies not to carry on excluded activities or contravene prohibitions*

**142G Ring-fenced bodies not to carry on excluded activities or contravene prohibitions**

- (1) A ring-fenced body which –
  - (a) carries on an excluded activity or purports to do so, or
  - (b) contravenes any provision of an order under section 142E,
 is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act. 10
- (2) The contravention does not –
  - (a) make a person guilty of an offence;
  - (b) make a transaction void or unenforceable;
  - (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.15
- (3) In such cases as the Treasury may specify by order, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty. 20
- (4) In this section “the appropriate regulator” means –
  - (a) in relation to a ring-fenced body which is a PRA-authorised person, the PRA;
  - (b) in relation to any other ring-fenced body, the FCA.25

*Ring-fencing rules*

**142H Ring-fencing rules**

- (1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules –
  - (a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and
  - (b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body’s group.30
- (2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c). 35

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- (3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as “ring-fencing rules”.
- (4) The “group ring-fencing purposes” are –
- (a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group; 5
  - (b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body –
    - (i) is able to take decisions independently of other members of its group, and 10
    - (ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;
  - (c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group. 15
- (5) Ring-fencing rules made for the group ring-fencing purposes must include – 20
- (a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm’s length terms;
  - (b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group; 25
  - (c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;
  - (d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent – 30
    - (i) members who are treated by the rules as being independent of other members of the ring-fenced body’s group, 35
    - (ii) members who are treated by the rules as being independent of the ring-fenced body itself, and
    - (iii) non-executive members;
  - (e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements; 40
  - (f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;
  - (g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements; 45
  - (h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).
- (6) The reference in subsection (5)(e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description. 50

- (7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.
- (8) In this section – 5  
     “the appropriate regulator” means –  
         (a) in relation to a ring-fenced body which is a PRA-  
             authorised person, the PRA;  
         (b) in relation to any other ring-fenced body, the FCA;  
     “shares” has the meaning given in section 422; 10  
     “specified” means specified in the rules;  
     “voting power” has the meaning given in section 422.

#### **142I Powers of Treasury in relation to ring-fencing rules**

- (1) The Treasury may by order require the appropriate regulator, as defined in section 142H(8), to include (or not to include) in ring-fencing rules specified provision relating to – 15  
     (a) any of the matters mentioned in section 142H(5)(a) to (g), or  
     (b) any other specified matter.
- (2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so – 20  
     (a) for any of the group ring-fencing purposes as defined in section 142H(4), or  
     (b) otherwise for securing the independence of ring-fenced bodies from other members of their groups.
- (3) “Specified” means specified in the order. 25

#### **142J Review of ring-fencing rules**

- (1) The PRA must carry out reviews of its ring-fencing rules.
- (2) The first review must be completed before the end of the period of 5 years beginning with the day on which the first ring-fencing rules come into force. 30
- (3) Subsequent reviews must be completed before the end of the period of 5 years beginning with the day on which the previous review was completed.
- (4) The PRA must give the Treasury a report of each review.
- (5) The Treasury must lay a copy of the report before Parliament. 35
- (6) The PRA must publish the report in such manner as it thinks fit.
- (7) If (because any ring-fenced body is not a PRA-authorised person) section 142H has the effect of requiring the FCA to make ring-fencing rules, subsections (1) to (6) apply to the FCA as they apply to the PRA.

*Group restructuring powers***142K 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. 5
- (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 – 10
- (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. 15
- (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 – 20
- (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 – 25
- (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. 30
- (7) In this section and sections 142L to 142Q “the appropriate regulator” means – 35
- (a) where the ring-fenced body is a PRA-authorized person, the PRA;
  - (b) where it is not, the FCA.

**142L 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 – 40
- (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 45

- requirement on the PRA-*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 an authorised person but not a PRA-*authorised* person, power to direct the FCA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and 5
- (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). 10
- (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), 15
- (b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-*authorised* person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), 20
- (c) in relation to any member of the ring-fenced body's group which is a PRA-*authorised* person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
- (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6). 25
- (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 – 30
- (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 – 35
- (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; 40
- (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; 45
- (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; 50

- (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). 5  
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- (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.

**142M Procedure: preliminary notices** 15

- (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 20
- (b) its reasons for being satisfied as to the matters mentioned in section 142K(1).
- (2) Before giving a first preliminary notice, the regulator must – 25
- (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. 30
- (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 – 35
- (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 – 40
- (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. 45
- (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. 5
- (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 10
  - (b) if so, what the revisions are.

#### **142N 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 15
  - (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. 20
- (3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must –
- (a) give the Treasury a draft of the notice, 25
  - (b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and
  - (c) obtain the consent of the Treasury.
- (4) The action specified in the warning notice may be different from that specified in the third preliminary notice if –
- (a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the third preliminary notice was given, or
  - (b) the person concerned consents to the change. 35
- (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. 40
- (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 45

- (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. 5
- (9) “The relevant persons” has the same meaning as in section 142M.

#### **142O 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 142L(2)(a) or (b) or (3)(a) or (b), 10
  - (b) a requirement to be imposed as a result of the giving by one regulator to the other of a direction under section 142L(2)(c) or (3)(c), or
  - (c) the giving by either regulator of a direction under section 142L(2)(d) or (3)(d), 15
- may refer the matter to the Tribunal.
- (2) “Notified person” means a person to whom a decision notice under section 142N(6) was given or ought to have been given.

#### **142P Subsequent variation of requirement or direction**

- (1) A regulator may at any time with the consent of the person concerned vary – 20
- (a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d). 25
- (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 142L(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d). 30
- (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. 35

#### **142Q Consultation etc. between regulators**

- (1) Where a notice under section 142M or a warning notice or decision notice under section 142N relates to a requirement to be imposed in pursuance of a direction to be given as a result of section 142L(2)(c) or (3)(c), the appropriate regulator must – 40
- (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 142P a direction given as a result of section 142L(2)(c) or (3)(c). 45

- (3) Directions given by the FCA as a result of section 142L(3)(c) are subject to any directions given to the FCA under section 3I.

#### **142R 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 5
  - (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 – 10
- (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. 15
- (5) Except as provided by subsections (1) to (4), the provisions of sections 142K to 142Q 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 – 20
- (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. 25

#### *Failure of parent undertaking to comply with direction*

#### **142S 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 142L(4) (“P”) has contravened a requirement of a direction given to P by that regulator as a result of section 142L(2)(d) or (3)(d). 30
- (2) The regulator may impose a penalty of such amount as it considers appropriate on –
- (a) P, or 35
  - (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 142T. 40

- (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. 5
- (7) The requirements that a regulator may be required to impose as a result of a direction under section 142L(2)(c) or (3)(c) include requirements that the regulator would not but for the direction have power to impose.
- 142T Procedure and right to refer to Tribunal 10**
- (1) If a regulator proposes to take action against a person under section 142S, 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. 15
- (4) If the regulator decides to take action against a person under section 142S, 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. 20
- (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 142S, the person may refer the matter to the Tribunal.
- 142U Duty on publication of statement 25**
- After a statement under section 142S(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). 30
- 142V Imposition of penalties under section 142S: statement of policy**
- (1) Each regulator must prepare and issue a statement of policy with respect to –
- (a) the imposition of penalties under section 142S, and
- (b) the amount of penalties under that section. 35
- (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. 40

- (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 142S(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. 5
- (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. 10
- (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. 15
- (9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.

*Pension liabilities*

**142W Pension liabilities**

- (1) For the purposes of this section an occupational pension scheme is a “relevant pension scheme” if— 20
  - (a) it is a multi-employer scheme, as defined in section 75A(13) of the Pensions Act 1995 or Article 75A(13) of the Pensions (Northern Ireland) Order 1995,
  - (b) it is not a money purchase scheme, 25
  - (c) at least one of the employers in relation to the scheme is a ring-fenced body, and
  - (d) at least one of the employers in relation to the scheme is not a ring-fenced body.
- (2) The Treasury may by regulations— 30
  - (a) require a ring-fenced body which is an employer in relation to a relevant pension scheme to make arrangements for the purpose of—
    - (i) ensuring that the ring-fenced body cannot become liable to meet, or contribute to the meeting of, liabilities in respect of pensions or other benefits payable to or in respect of employment by a person who is not a ring-fenced body, and 35
    - (ii) to the extent that it is not possible to ensure that result, minimising any potential liability falling within subparagraph (i); 40
  - (b) make other provision about the making of arrangements for that purpose by a ring-fenced body which is an employer in relation to a relevant pension scheme.
- (3) The regulations may in particular— 45

- (a) require a ring-fenced body to cease to participate in a relevant pension scheme unless the scheme is divided into two or more sections in relation to which prescribed conditions are met;
  - (b) provide that assets or liabilities of a relevant pension scheme may not be transferred under the arrangements to another occupational pension scheme unless the other scheme meets prescribed conditions; 5
  - (c) require ring-fenced bodies to establish new occupational pension schemes in prescribed circumstances;
  - (d) provide that any provision of a relevant pension scheme that might prevent a ring-fenced body from making the arrangements, other than a provision requiring the consent of the trustees or managers of the scheme, is not to have effect in prescribed circumstances; 10
  - (e) make provision enabling the trustees or managers of a relevant pension scheme, with the consent of the employers in relation to the scheme, to modify the scheme by resolution for the purpose of enabling a ring-fenced body to make the arrangements; 15
  - (f) make provision enabling the court, on an application made in accordance with the regulations by a ring-fenced body, if it appears to the court that the trustees or managers of a relevant pension scheme, or an employer in relation to such a scheme, have unreasonably refused their consent to any step that would enable the ring-fenced body to make the arrangements, to order that the step may be taken without that consent; 20
  - (g) require a ring-fenced body to make an application for clearance in connection with the making of the arrangements; 25
  - (h) confer exemption from any provision of the regulations in prescribed cases; 30
  - (i) confer functions on the PRA;
  - (j) provide that a ring-fenced body which contravenes a prescribed requirement of the regulations is to be taken to have contravened a requirement imposed by the PRA under this Act.
- (4) An “application for clearance” is an application to the Pensions Regulator under any of the following provisions – 35
- (a) section 42 of the Pensions Act 2004 (clearance statements relating to contribution notice under section 38);
  - (b) section 46 of that Act (clearance statements relating to financial support directions); 40
  - (c) Article 38 of the Pensions (Northern Ireland) Order 2005 (clearance statements relating to contribution notices under article 34);
  - (d) Article 42 of that Order (clearance statements relating to financial support directions). 45
- (5) In relation to a ring-fenced body that is not a PRA-authorized person, references in subsection (3) to the PRA are to be read as references to the FCA.
- (6) The regulations may not require ring-fenced bodies to achieve the results mentioned in subsection (2) before 1 January 2026, but this does 50

not prevent the regulations requiring steps to be taken at any time after the regulations come into force.

#### **142X Further interpretative provisions for section 142W**

- |     |  |    |
|-----|--|----|
| (1) | The following provisions have effect for the interpretation of section 142W.   | 5  |
| (2) | “Occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, “employer”, “member” and “trustees or managers” have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995. | 10 |
| (3) | “Money purchase scheme” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.  |    |
| (4) | “The court” means –  | 15 |
|     | (a) in relation to England and Wales or Northern Ireland, the High Court, and  |    |
|     | (b) in relation to Scotland, the Court of Session.   |    |

#### *Loss-absorbency requirements*

#### **142Y Power of Treasury in relation to loss-absorbency requirements** 20

- |     |   |    |
|-----|---|----|
| (1) | The Treasury may by order make provision about the exercise by either regulator of its functions under this Act, so far as they are (apart from the order) capable of being exercised in relation to a relevant body so as to require the relevant body – |    |
|     | (a) to issue any debt instrument, or  | 25 |
|     | (b) to ensure that any part of the relevant body’s debt consists of debt owed by it in respect of debt instruments, or debt instruments of a particular kind.   |    |
| (2) | A “relevant body” is –  |    |
|     | (a) a ring-fenced body,   | 30 |
|     | (b) any other body corporate that has a Part 4A permission relating to the regulated activity of accepting deposits, or   |    |
|     | (c) a body corporate that is a member of the group of a body falling within paragraph (a) or (b).   |    |
| (3) | “Debt instrument” means –   | 35 |
|     | (a) a bond,   |    |
|     | (b) any other instrument creating or acknowledging a debt, or   |    |
|     | (c) an instrument giving rights to acquire a debt instrument.   |    |
| (4) | An order under this section may in particular –   |    |
|     | (a) require the regulator to exercise its functions so as to require relevant bodies to do either or both of the things mentioned in subsection (1);  | 40 |
|     | (b) limit the extent to which the regulator may require a relevant body’s debt to consist of debt owed in respect of debt   |    |

- instruments or of debt instruments of a kind specified in the order;
- (c) require the regulator –
    - (i) to make, or not to make, provision by reference to specified matters, or 5
    - (ii) to have regard, or not to have regard, to specified matters;
  - (d) require the regulator to consult, or obtain the consent of, the Treasury before making rules of a specified description or exercising any other specified function; 10
  - (e) impose on the regulator in connection with the exercise of a specified function procedural requirements which would not otherwise apply to the exercise of the function;
  - (f) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time. 15
- (5) “Specified” means specified in the order.

*General*

**142Z Affirmative procedure in relation to certain orders under Part 9B**

- (1) This section applies to an order containing provision made under any of the following provisions of this Part – 20
  - (a) section 142A(2)(b);
  - (b) section 142B(2) or (5);
  - (c) section 142C;
  - (d) section 142D(2) or (4); 25
  - (e) section 142E;
  - (f) section 142I;
  - (g) section 142Y.
- (2) No order to which this section applies may be made unless –
  - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or 30
  - (b) subsection (4) applies.
- (3) Subsection (4) applies if an order under 142D(4) or 142E contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved. 35
- (4) Where this subsection applies the order –
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order). 40
- (5) The “relevant period” is a period of 28 days beginning with the day on which the order is made. 45

- (6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

### **142Z1 Interpretation of Part 9B**

- (1) This section has effect for the interpretation of this Part. 5
- (2) Any reference to –
- (a) the regulated activity of accepting deposits, or
  - (b) the regulated activity of dealing in investments as principal,
- is to be read in accordance with Schedule 2, taken with any order under section 22. 10
- (3) Any reference to the group restructuring powers is to be read in accordance with section 142L(1)."
- (2) In section 133 of FSMA 2000 (proceedings before Tribunal), in subsection (7A) after paragraph (i) insert –
- “(ia) a decision to take action under section 142S;” 15
- (3) In section 392 of FSMA 2000 (application of sections 393 and 394) –
- (a) in paragraph (a), after “131H(1),” insert “142T(1),” and
  - (b) in paragraph (b), after “131H(4),” insert “142T(4),”.
- (4) In section 417 of FSMA 2000 (definitions), in subsection (1) –
- (a) after the definition of “control of information rules” insert – 20
 

““core activities” has the meaning given in section 142B;  
“core services” has the meaning given in section 142C;”
  - (b) after the definition of “ESMA” insert –
 

““excluded activities” has the meaning given in section 142D;” and 25
  - (c) after the definition of “regulator” insert –
 

““ring-fenced body” has the meaning given in section 142A;  
“ring-fencing rules” has the meaning given in section 142H;” 30
- (5) In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), in paragraph 8(3)(c)(i), after “138N,” insert “142V,”.
- (6) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), in paragraph 16(3)(c)(i), after “69,” insert “142V,”.
- 5 Directors of ring-fenced bodies to be approved persons 35**
- In section 59 of FSMA 2000 (approval for particular arrangements) after subsection (7B) insert –
- “(7C) In relation to a ring-fenced body, the function of acting as a director (or, where the ring-fenced body does not have a board of directors, as a member of its equivalent management body) – 40
- (a) is a significant-influence function, and
  - (b) must be specified as a controlled function by rules made –

- (i) in relation to ring-fenced bodies that are PRA-  
authorised persons, by the PRA, or
- (ii) in relation to other ring-fenced bodies, by the FCA.”

## 6 PRA annual report

- (1) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority),  
paragraph 19 (annual report) is amended as follows. 5
- (2) After sub-paragraph (1) insert –
  - “(1A) In the report the PRA must also report in general terms on –
    - (a) the extent to which, in its opinion, ring-fenced bodies have  
complied with the ring-fencing provisions, 10
    - (b) steps taken by ring-fenced bodies in order to comply with the  
ring-fencing provisions,
    - (c) steps taken by it to enforce the ring-fencing provisions, and
    - (d) the extent to which ring-fenced bodies appear to it to have  
acted in accordance with any guidance which it has given to  
ring-fenced bodies and which relates to the operation of the  
ring-fencing provisions. 15
  - (1B) In sub-paragraph (1A) –
    - (a) references to “ring-fenced bodies” relate only to ring-fenced  
bodies that are PRA-authorised persons, and 20
    - (b) “the ring-fencing provisions” means ring-fencing rules and  
the duty imposed as a result of section 142G.”
- (3) In sub-paragraph (2), for “Sub-paragraph (1) does not” substitute “Sub-  
paragraphs (1) and (1A) do not”.”

## 7 Ring-fencing transfer schemes 25

Schedule 1 (which contains amendments of Part 7 of FSMA 2000 relating to ring-fencing transfer schemes) has effect.

## 8 Building societies: power to make provision about ring-fencing

- (1) The Treasury may by regulations –
  - (a) make provision in relation to building societies for purposes  
corresponding to those of any provision made, in relation to authorised  
persons other than building societies, by or under any provision of Part  
9B of FSMA 2000 (ring-fencing) apart from sections 142W to 142Y, and 30
  - (b) provide for the application of the relevant continuity provision in  
relation to the exercise by the FCA or the PRA of any function conferred  
on it by or under provision made pursuant to paragraph (a). 35
- (2) The regulations may, in particular –
  - (a) amend the Building Societies Act 1986;
  - (b) apply any of the provisions contained in, or made under, Part 9B of  
FSMA 2000, with such modifications as the Treasury consider 40  
appropriate;

- (c) authorise the making of rules or other instruments by the FCA or the PRA for the purposes of, or connected with, any provision made by the regulations;
  - (d) confer functions on the FCA or the PRA;
  - (e) make such consequential provision including amendments of any enactment as the Treasury consider appropriate. 5
- (3) This section does not affect the application of section 142Y of FSMA 2000 (power of Treasury in relation to loss-absorbency requirements) to building societies that are relevant bodies for the purposes of that section.
- (4) In this section – 10
- “building society” has the same meaning as in the Building Societies Act 1986;
  - “the relevant continuity provision” means –
- (a) in the case of functions exercisable by the FCA, the continuity objective set out in section 1EA of FSMA 2000, or 15
  - (b) in the case of functions exercisable by the PRA, section 2B(3)(c) and (4A) of that Act.

*Depositor preference*

**9 Preferential debts: Great Britain**

- (1) In Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) after paragraph 15A insert – 20
- “Category 7: Deposits covered by Financial Services Compensation Scheme*
- 15B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed. 25
- Interpretation for Category 7*
- 15C (1) In paragraph 15B “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme. 30
- (2) For this purpose a “deposit” means rights of the kind described in –
- (a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits), or 35
  - (b) section 1(2)(b) of the Dormant Bank and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund).”
- (2) In section 386 of the Insolvency Act 1986 (categories of preferential debt), in subsection (1), after “production” insert “; deposits covered by Financial Services Compensation Scheme”. 40
- (3) In Part 1 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (list of preferred

debts), after paragraph 6A insert –

*“Deposits covered by Financial Services Compensation Scheme*

6B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.” 5

(4) In Part 2 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (interpretation of Part 1), after paragraph 9 insert –

*“Meaning of eligible deposit* 10

9A (1) In paragraph 6B “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For this purpose a “deposit” means rights of the kind described in paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits).” 15

*Financial Services Compensation Scheme*

## 10 Discharge of functions by the scheme manager

After section 224 of FSMA 2000 insert – 20

### **“224ZA Discharge of functions**

(1) In discharging its functions the scheme manager must have regard to –  
 (a) the need to ensure efficiency and effectiveness in the discharge of those functions, and  
 (b) the need to minimise public expenditure attributable to loans made or other financial assistance given to the scheme manager for the purposes of the scheme. 25

(2) In subsection (1)(b) “financial assistance” includes the giving of guarantees and indemnities and any other kind of financial assistance (actual or contingent).” 30

## 11 Power to require information from scheme manager

After section 218A of FSMA 2000 insert –

### **“218B Treasury’s power to require information from scheme manager**

(1) The Treasury may by notice in writing require the scheme manager to provide specified information or information of a specified description that the Treasury reasonably require in connection with the duties of the Treasury under the Government Resources and Accounts Act 2000. 35

(2) Information required under this section must be provided before the end of such reasonable period as may be specified.

- (3) “Specified” means specified in the notice.”

## 12 Scheme manager: appointment of accounting officer

- (1) Section 212 of FSMA 2000 (the scheme manager of the Financial Services Compensation Scheme) is amended as follows.
- (2) In subsection (3) – 5
- (a) omit the “and” following paragraph (a),
- (b) after that paragraph insert –
- “(aa) a chief executive (who is to be the accounting officer); and”, and
- (c) in paragraph (b), after “chairman” insert “and chief executive”. 10
- (3) In subsection (4) –
- (a) after “chairman”, in the first place, insert “, chief executive”, and
- (b) after “chairman”, in the second place, insert “and the chief executive”.

### *Fees to meet Treasury expenditure*

## 13 Fees to meet Treasury expenditure relating to international organisations 15

After section 410 of FSMA 2000 insert –

### *“Fees to meet Treasury expenses*

#### 410A Fees to meet certain expenses of the Treasury

- (1) The Treasury may by regulations –
- (a) enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a “regulator”) to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury; 20
- (b) make provision about how the regulator to which a direction is given is to comply with the direction; 25
- (c) require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator. 30
- (2) “Relevant expenses” are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation so far as those expenses –
- (a) represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and 35
- (b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.
- (3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator. 40

- (4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations –
- (a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA; 5
  - (b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.
- (5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations. 10
- (6) The regulations may in particular –
- (a) make provision about what is, or is not, to be regarded as an expense;
  - (b) specify requirements that the Treasury must comply with before giving a direction; 15
  - (c) enable a direction to be varied or revoked by a subsequent direction;
  - (d) confer functions on a regulator.
- (7) An amount payable to a regulator as a result of –
- (a) any provision of rules made by the FCA or the PRA as a result of the regulations, or 20
  - (b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank,
- may be recovered as a debt due to the regulator.
- (8) “Relevant persons” means – 25
- (a) in the case of a direction given to the PRA, PRA-*authorised* persons;
  - (b) in the case of a direction given to the FCA, *authorised* persons and recognised investment exchanges who (in either case) are not PRA-*authorised* persons; 30
  - (c) in the case of a direction given to the Bank of England, recognised clearing houses, other than those falling within paragraph (a) or (b).
- (9) This section is subject to section 410B.
- 410B Directions in pursuance of section 410A** 35
- (1) In this section “a fees direction” means a direction given by the Treasury as a result of regulations under section 410A.
- (2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a “regulator”), the Treasury must consult the regulator concerned. 40
- (3) A fees direction must –
- (a) be in writing;
  - (b) except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be 45

- charged by the regulator and explain how that amount is calculated;
- (c) contain such other information as may be prescribed.
- (4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction.”

5

*Parliamentary control of statutory instruments under FSMA 2000*

**14 Amendments of section 429 of FSMA 2000**

- (1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.
- (2) In subsection (1)(a) (orders subject to affirmative procedure), for “144(4), 192(b) or (e), 138K(6)(c)” substitute “138K(6)(c), 144(4), 192(b) or (e)”. 10
- (3) In subsection (2) (regulations subject to affirmative procedure), after “90B,” insert “142W,”.
- (4) After subsection (2) insert –
- “(2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House. 15
- (2B) This subsection applies to regulations which contain provision made under section 410A, other than provision made only by virtue of subsection (2) of that section.” 20
- (5) In subsection (8), for “or 23A” substitute “, 23A or 142Z”.

*Bank of England*

**15 Accounts of Bank of England and its wholly-owned subsidiaries**

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 7 (accounts), in subsection (4), for the words from “appropriate” to the end substitute “necessary to do so having regard to the Financial Stability Objective”. 25
- (3) After section 7 insert –
- “7A Accounts of companies wholly owned by the Bank**
- (1) If the Bank considers it necessary to do so having regard to the Financial Stability Objective, the Bank may by direction to a qualifying company exclude the application to the qualifying company of any of the relevant Companies Act requirements. 30
- (2) The relevant Companies Act requirements are the requirements to which the directors of the qualifying company would otherwise be subject under the Companies Act 2006 (except sections 412 and 413 (directors’ benefits)) in relation to the preparation of accounts under section 394 of that Act. 35

- (3) A direction under subsection (1) may relate to one or more specified accounting periods of the qualifying company, or to a specified accounting period and all subsequent accounting periods of the qualifying company.
- (4) The Bank must consult the Treasury before giving a direction under subsection (1). 5
- (5) The Treasury may by notice in writing to the Bank require it to publish in such manner as it thinks fit such information relating to the accounts of a qualifying company as the Treasury may specify in the notice.
- (6) The information specified in a notice under subsection (5) may include information which as a result of a direction under subsection (1) was excluded from accounts prepared in accordance with the Companies Act 2006. 10
- (7) The Treasury must consult the Bank before giving a notice under subsection (5). 15
- (8) A direction under subsection (1) or a notice under subsection (5) may be revoked by a subsequent direction or notice (as the case may be).
- (9) “Qualifying company” means any company which is wholly owned by the Bank other than—
- (a) the Prudential Regulation Authority, or
  - (b) a company which is a bridge bank for the purposes of section 12(3) of the Banking Act 2009. 20
- (10) For the purposes of subsection (9), a company is wholly owned by the Bank if—
- (a) it is a company of which no person other than the Bank or a nominee of the Bank is a member, or
  - (b) it is a wholly-owned subsidiary of a company within paragraph (a).” 25

*Miscellaneous*

- 16 Minor amendments** 30
- Schedule 2 (which contains amendments of, or connected with, the Financial Services Act 2012 and amendments of provisions amended by that Act) has effect.

*Final provisions*

- 17 Orders and regulations** 35
- (1) Any power of the Treasury to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing regulations under section 8 (building societies: power to make provision about ring-fencing) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40

- (3) A statutory instrument containing an order under section 19 (transitional provisions and savings) is subject to annulment in pursuance of a resolution of either House of Parliament, unless the instrument is required by any enactment to be laid in draft before, and approved by a resolution of, each House. 5

## 18 Interpretation

In this Act –

“enactment” includes –

- (a) an enactment contained in subordinate legislation,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, 10
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation; 15

“the FCA” means the Financial Conduct Authority;

“FSMA 2000” means the Financial Services and Markets Act 2000;

“the PRA” means the Prudential Regulation Authority.

## 19 Transitional provisions and savings

- (1) The Treasury may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the commencement of any provision made by or under this Act. 20
- (2) An order under this section may –
- (a) confer functions on the FCA or the PRA;
  - (b) modify, exclude or apply (with or without modifications) any enactment (including any provision of, or made under, this Act). 25

## 20 Extent

The provisions of this Act extend to England and Wales, Scotland and Northern Ireland, except that the amendments made by section 9 (preferential debts: Great Britain) have the same extent as the enactments amended. 30

## 21 Commencement and short title

- (1) Sections 17 to 20 and this section come into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as the Treasury may by order appoint. 35
- (3) Different days may be appointed for different purposes.
- (4) This Act may be cited as the Financial Services (Banking Reform) Act 2013.

## SCHEDULES

## SCHEDULE 1

Section 7

## RING-FENCING TRANSFER SCHEMES

- 1 Part 7 of FSMA 2000 (control of business transfer schemes) is amended as follows. 5
- 2 For “the authorised person concerned”, wherever occurring in Part 7 (including Schedule 12), substitute “the transferor concerned”.
- 3 (1) Section 103A (meaning of “the appropriate regulator”) is amended as follows.
- (2) In subsection (1), in paragraph (a), for “a scheme” substitute “a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme)”. 10
- (3) At the end of subsection (2) insert –
- “(d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates.”
- 4 In section 106 (banking business transfer schemes), at the end of subsection (1)(c) insert “or a ring-fencing transfer scheme”. 15
- 5 After section 106A insert –
- “106B Ring-fencing transfer scheme**
- (1) A scheme is a ring-fencing transfer scheme if it –
- (a) is one under which the whole or part of the business carried on – 20
- (i) by a UK authorised person, or
- (ii) by a qualifying body,
- is to be transferred to another body (“the transferee”),
- (b) is to be made for one or more of the purposes mentioned in subsection (3), and 25
- (c) is not an excluded scheme or an insurance business transfer scheme.
- (2) “Qualifying body” means a body which –
- (a) is incorporated in the United Kingdom, 30
- (b) is a member of the group of a UK authorised person, and
- (c) is not itself an authorised person.
- (3) The purposes are –
- (a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions; 35

- 
- (b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
- (c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies; 5
- (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. 10
- (4) A scheme is an excluded scheme for the purposes of this section if—
- (a) the body to whose business the scheme relates is a building society or credit union, or 15
- (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.
- (5) For the purposes of subsection (1)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom. 20
- (6) “UK authorised person” has the same meaning as in section 105.
- (7) “Building society” and “credit union” have the same meanings as in section 106.
- (8) “The ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.” 25
- 6 (1) Section 107 (application for order sanctioning transfer scheme) is amended as follows.
- (2) In subsection (1), for “or a reclaim fund business transfer scheme” substitute “, a reclaim fund business transfer scheme or a ring-fencing transfer scheme”. 30
- (3) After subsection (2) insert—
- “(2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.
- (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.” 35
- 7 For the heading to section 109 substitute “Scheme reports: insurance business transfer schemes”.
- 8 After section 109 insert—
- “109A Scheme reports: ring-fencing transfer schemes” 40**
- (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 – 5
      - (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. 10
    - (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).”
  - 9 (1) Section 110 (right to participate in proceedings) is amended as follows.
    - (2) In subsection (1), after “section 107” insert “relating to an insurance business transfer scheme, a banking business transfer scheme or a reclaim fund business transfer scheme”. 15
    - (3) After subsection (2) insert –
      - “(3) Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme. 20
      - (4) The following are also entitled to be heard –
        - (a) the PRA,
        - (b) where the transferee is an authorised person, the FCA, and
        - (c) any person (“P”) (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme. 25
      - (5) P is not entitled to be heard by virtue of subsection (4)(c) unless before the hearing P has –
        - (a) filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and 30
        - (b) served copies of the statement on the PRA and the transferor concerned.”
  - 10 (1) Section 111 (sanction of court for business transfer schemes) is amended as follows.
    - (2) In subsection (1), for “or a reclaim fund business transfer scheme” substitute “, a reclaim fund business transfer scheme or a ring-fencing transfer scheme”. 35
    - (3) In subsection (2), after paragraph (aa) insert –
      - “(ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);” 40
  - 11 In section 112 (effect of order sanctioning business transfer scheme), in subsection (10), after “transfer scheme” insert “or ring-fencing transfer scheme”.

- 12 In section 112A (rights to terminate etc.), in subsection (1), for “or a banking business transfer scheme” substitute “, a banking business transfer scheme or a ring-fencing transfer scheme”.
- 13 In Schedule 12 (transfer schemes: certificates) after Part 2A insert—

“PART 2B

5

RING-FENCING TRANSFER SCHEMES

*Appropriate certificates*

- 9B (1) For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—
- (a) a certificate given by the PRA certifying its approval of the application, 10
  - (b) a certificate under paragraph 9C, and
  - (c) if sub-paragraph (2) applies, a certificate under paragraph 9D.
- (2) This sub-paragraph applies if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3. 15

*Certificate as to financial resources*

- 9C (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources. 20
- (2) “Relevant authority” means—
- (a) if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4, the PRA;
  - (b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator; 25
  - (c) if the transferee does not fall within paragraph (a) or (b) but is subject to regulation in a country or territory outside the United Kingdom, the authority responsible for the supervision of the transferee’s business in the place in which the transferee has its head office; 30
  - (d) in any other case, the FCA.
- (3) In sub-paragraph (2), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed ring-fencing transfer scheme takes effect. 35

*Certificate as to consent of home state regulator*

- 9D A certificate under this paragraph is one given by the appropriate regulator and certifying that the home state regulator of the transferee has been notified of the proposed scheme and that— 40
- (a) the home state regulator has responded to the notification, or

- (b) the period of 3 months beginning with the notification has elapsed.”

## SCHEDULE 2

Section 16

## MINOR AMENDMENTS

<i>Companies Act 1985 (c. 6)</i>		5
1	In Schedule 15D to the Companies Act 1985 (disclosures), omit paragraph 29.	
<i>Financial Services and Markets Act 2000 (c. 8)</i>		
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”.	10
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)”.	
<i>Income Tax Act 2007 (c. 3)</i>		15
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”.	
<i>Banking Act 2009 (c. 1)</i>		
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—	20
	“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”.	25
<i>Financial Services Act 2012 (c. 21)</i>		
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	30
	(b) for “or for the regulation of collective investment schemes” substitute “, for the regulation of collective investment schemes or for the regulation of recognised investment exchanges,”.	
8	(1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.	35

(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.”

5

(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.”

10

(4) In subsections (4) and (5), for “subsection (2)” substitute “subsection (2)(a)”.

(5) In subsections (6) and (7), for “subsection (3)” substitute “subsection (3)(a)”.

(6) After subsection (7) insert –

“(8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply.”

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# Financial Services (Banking Reform) Bill

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## B I L L

To make further provision about banking and other financial services, including provision about the Financial Services Compensation Scheme; to make provision for the amounts owed in respect of certain deposits to be treated as a preferential debt on insolvency; to make provision about the accounts of the Bank of England and its wholly owned subsidiaries; and for connected purposes.

*Brought from the Commons on 10th July 2013*

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