Financial Services (Banking Reform) Bill

Annotated copy of Bill brought from the Commons on 10th July 2013

Ring-fencing

1 Objectives of Prudential Regulation Authority

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

The PRA's general objective under FSMA 2000 is to "promote the safety and soundness" of the entities it regulates. This clause makes a new continuity objective part of that general objective, when the PRA is dealing with ring-fencing matters.

(2) In subsection (3)—

(a) at the end of paragraph (a), omit "and", and

(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,

The PRA must ensure that ring-fenced bodies do not do things that put the continuity of core services in the UK at risk. 'Core services' are defined in new section 142C (inserted into FSMA by clause 4). They are the services associated with the core activity of accepting deposits. They include withdrawing money and making payments from accounts, and overdraft facilities.

(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

The PRA must ensure that ring-fenced bodies ("RFBs") are also insulated from **external risks**. Such risks include for example the fall in value of trading assets, or foreign assets.

(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 provision in the United Kingdom of core services."

The PRA must ensure that RFBs can be easily resolved, so that the failure of a RFB, or of a member of a RFB's group, would not affect the continuous provision of 'core services' in the UK.

These three subsections reflect the three objectives that the ICB said the ring-fence should achieve. They focus on the continuity of the core services in the UK, not on the provision of

services by any one bank. This means that for example if a ring-fenced bank were to fail and it was taken over by another bank, core services could be preserved.

(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—

(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 ringfenced body."

This subsection defines the ring-fencing matters in relation to which the PRA must advance the continuity objective.

(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—

"(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)".

This subsection clarifies that the 'failure' of a group company which is not an authorised person includes its insolvency. (This is necessary because 'failure' is defined for regulated companies, but not unregulated ones, where we use the concept of insolvency instead.)

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.

The continuity objective given to the FCA in this clause will only apply if the FCA becomes the prudential regulator of a core activity.

Currently, the only core activity is deposit-taking, which is regulated by the PRA. At present there are no plans to create additional core activities. There could in the future be a need to create additional core activities. If the FCA had more expertise at dealing with these then it could be a more appropriate regulator.

(2) Section 1B is to have effect as if—

(a) in subsection (3) after paragraph (c) there were inserted—
"(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,".

(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).

The continuity objective would be added to the FCA's existing objectives: competition, consumer protection and market integrity. It would not 'trump' the competition objective or any others.

(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.

This subsection defines the ring-fencing matters to which the FCA's continuity objective would apply, and is identical to the subsection defining when the PRA's continuity objective will apply.

The continuity objective will only apply to ring-fencing matters (i.e. not to the FCA's regulation of insurers, pension funds etc).

(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,
(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
(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."."

These three principles are identical to those set out for the PRA above.

(4) In subsection (3)(c), "failure" is to be read in accordance with section 2J(3) to (4)."."

This subsection ensures that references to the failure of a member of the ring-fenced body's group, or of the ring-fenced body itself in the FCA's continuity objective is to be defined in the same way as such references in the PRA's objective (in Clause 1).

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)—

(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."

FSMA 2000 gives the PRA a veto over the FCA to stop it from doing anything in relation to PRA-authorised persons that might (in the PRA's opinion) threaten UK financial stability. This clause extends that veto to ring-fencing issues as well. It could be that, if another core activity was created in the future and the FCA was the regulator of that, the FCA and the PRA could regulate two core activities in one bank. If a conflict arose, this veto could resolve it.

4 Ring-fencing of certain activities

(1) After Part 9A of FSMA 2000 insert—

"PART 9B
RING-FENCING

Introductory

142A "Ring-fenced body"

(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.

This section defines a 'ring-fenced body' as a UK regulated firm which carries out a core activity. The only core activity defined in the Bill is accepting deposits.

(2) But "ring-fenced body" does not include—

(a) a building society within the meaning of the Building Societies Act 1986, or

Building societies' activities are already restricted under the Building Societies Act 1986. The ring-fencing regime may be applied to building societies, but this would be achieved by changing the restrictions on Building Societies under the Building Societies Act 1986.

Clause 8 of this Bill gives HMT the power to amend the Building Societies Act 1986 in order to bring the restrictions on Building Societies into line with those on ring-fenced banks.

(b) a UK institution of a class exempted by order made by the Treasury.

This power allows the Treasury to exempt certain institutions from the definition of ring-fenced body. It will be used to create a *de minimis* exemption from ring-fencing, by exempting banks below a specified size threshold from ring-fencing, by secondary legislation.

The Government has published a draft Order for consultation which exempts banks with core deposits of £25bn or less.[1]

This power also allows the Government to exempt non-banks from ring-fencing, e.g. insurance firms who for largely historical reasons have permission to accept deposits and therefore fall within the definition of a ring-fenced body. This will ensure that ring-fencing only applies to banks, as is the Government's intention.

(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.

This means that the Treasury may only exempt institutions (e.g. small banks) from ring-fencing if the Treasury believes that ring-fencing them is not necessary to improve their resolvability, or if for example the Treasury does not consider that the failure of the bank would have a significant adverse effect on the availability of the core services in the UK.

In the case of small banks, the Government believes that ring-fencing would only marginally increase their resolvability, and at a disproportionately high cost. Hence it is right to exempt them.

(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.

(5) In subsection (3A) "the ring-fencing provisions" means ring-fencing rules and the duty imposed as a result of section 142G.

The Treasury must also have regard for minimising any adverse effect an exemption might have on competition in the market, and in particular on the ease with which new entrants can enter the market, when creating or amending that exemption. Subsections (4) & (5) were introduced in response to the PCBS recommendation that the Government's commitment to consider competition when making exemptions be made explicit on the face of the Bill.

[1] See *Banking Reform: draft secondary legislation* July 2013.

(6) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.

The Treasury may make any exemptions it creates subject to conditions, which it can also specify.

(7) In this section "UK institution" means a body corporate incorporated in the United Kingdom.

This subsection defines "UK institution".

142B Core activities

(1) References in this Act to a "core activity" are to be read in accordance with this section.

This section defines 'core activity'.

(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.

This section makes accepting any deposits a 'core activity', but gives the Treasury power to create exemptions, by specifying the circumstances in which accepting deposits is not a core activity.

This power will allow the Treasury through secondary legislation to provide that accepting certain types of deposits is **not** a core activity, e.g. the deposits of specified types of depositor.
The draft Order published by the Treasury for consultation provides that accepting the deposits of high-net-worth individuals or the deposits of large corporates is not a core activity.

This exemption would mean that high-net-worth individuals and large corporates will be able to deposit with non-ring-fenced banks (meaning the non-ring-fenced part of a group containing a ring-fenced bank) if they choose – as the ICB recommended.

(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.

This subsection limits the Treasury's power to exempt types of deposit from being 'core'.

The Treasury may only exempt deposits that the Treasury believes do not need to be 'core' in order to achieve the purposes specified in subsection (4).

(4) Those purposes are—

(a) to secure an appropriate degree of protection for the depositors concerned, or

The rationale for the ring-fence is to protect the deposits of individuals and small businesses who are not well-placed to cope with an interruption in access to their deposits (the ring-fence does this by insulating those deposits against risks, and by ensuring that even if a ring-fenced bank fails, deposit services can be kept running as the bank is resolved).

This level of protection is not necessary for sophisticated individual investors or for large companies, as they are likely to have a greater ability to cope with a temporary disruption to their banking services. So the deposits of these individuals/firms may be exempted from being 'core'.

But the Treasury may not exempt the deposits of individuals/firms who need the protection of the ring-fence.

(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.

This purpose requires the Treasury to consider the impact of exempting some deposits from being 'core' on those deposits that will not be exempted (and so will still be 'core').

If too great a proportion of all deposits were to be exempted, then the ring-fence's ability to ensure continuity of service for those depositors inside might be compromised if all exempt depositors chose to bank in non-ring-fenced banks. Taken to an extreme, this might reduce 'core' depositors' continuous ability to make payments or liquidity within the ring-fence.

The Treasury may not, therefore, exempt deposits from being 'core' if this would threaten the continuity of service to 'core' depositors inside the ring-fence.

(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.

This enables the Treasury to create additional core activities by secondary legislation.

We do not currently intend to use this power.

(6) An order under subsection (5) may be made only if the Treasury are of the opinion—

(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

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

This subsection sets out the conditions that must be met before the Treasury can create a new core activity.

An activity may only be made 'core' if the Treasury believes that two conditions are met:

The first is that ring-fencing is **necessary** – i.e. that the services connected to that activity are so critical that an interruption to those services would be harmful to UK financial stability.

The second is that ring-fencing would be **helpful** – i.e. that putting those services inside the ring-fence would help to ensure the continuity of the services.

The Treasury does not currently intend to create additional core activities under these subsections. They are included as a future-proofing measure.

142C Core services

(1) References in this Act to "core services" are to be read in accordance with this section.

This section defines 'core services'. These need to be defined in addition to 'core activity' because the economic damage associated with a disorderly bank failure would be caused not just by an interruption in deposit-taking (the activity), but also by an interruption in the services associated with it, e.g. the ability to make payments from a deposit account.

Hence the regulator's objective (in Clauses 1 and 2 above), and the conditions for creating new core activities and for exemptions refer to the continuity of core services.

(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;

(c) overdraft facilities in connection with such an account.

This is intended to be a comprehensive list of the 'core services' associated with the core activity of accepting deposits. Any service not listed here or specified as a core service by the Treasury in the future under subsection (3) is not a core service.

This does not mean that all ring-fenced banks must provide every service falling under these categories, or provide these services to everyone.

But these are the services to which the regulator's "continuity objective" applies: the regulator is required to seek to ensure the continuous provision of these services in the UK.

(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.

This enables the Treasury to create additional core services in relation to the core activity of accepting deposits. There are no current plans to do this.

(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.

If and when the Treasury creates a new core activity, it must specify the core services associated with it.

(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).

I.e. these new core services must be the ones that the new core activity was created to protect.

142D Excluded activities

(1) References in this Act to an "excluded activity" are to be read in accordance with this section.

In addition to core services which must be carried out in a ring-fenced bank, the ICB also wanted to make sure that ring-fenced banks do not do things that would threaten financial stability and the provision of core services. This section defines 'excluded activities' – those that cannot be carried out within a ring-fenced bank.

(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.

This section names one excluded activity on the face of the Bill. 'Dealing in investments as principal' includes buying, selling, subscribing for or underwriting securities or contractually based investments. This includes stocks, shares and debt instruments, securities and derivatives. It means that banks cannot engage in 'proprietary trading' or hold trading assets unless specifically allowed in an Order made by the Treasury.

It is a wide category, which includes many of the ICB's recommendations.

This subsection also gives the Treasury the power to make exceptions by Order, allowing ring-fenced bodies to undertake this activity in specified circumstances.

The draft Order published by the Government for consultation allows RFBs to deal in investments as principal for the purposes of managing their own risks (using derivatives to manage for example the interest rate risk on the loans they hold), and to sell simple derivatives as risk management products to customers.

(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.

This limits the Treasury's ability to make exceptions. Exceptions need to be consistent with the aims of ring-fencing. They must not threaten the continuity of core services in the UK.

As an example, the exemption referred to in the note on subsection (2) above for simple derivatives will be subject to safeguards, so that it does not introduce disproportionate risks to the RFB.

(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.

The Treasury will use this power to create additional excluded activities which will cover those activities the ICB recommended for exclusion, but are not captured by 'dealing in investments as principal'.

We are currently mapping which of the ICB's recommendations are not yet covered. The draft Order published by the Government for consultation provides that trading in commodities is an additional excluded activity.

(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.

The Treasury will have the power to exclude any activity, even if that activity is not regulated, or carried on outside of the UK. This is a way of future-proofing the Bill, ensuring that even risks that are not yet known and regulated, can be excluded from the ring-fence if it becomes necessary to do this.

(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.

If and when the Treasury creates a new excluded activity, it must consider the risks which would arise for the RFB if it carried on that activity, and whether this would risk the continued provision of core services in the UK.

a) relates to external risks that could affect the RFB via activities that the RFB carries out.

b) relates to risks that activities could pose to the successful resolution of a ring-fenced body and whether these activities could cause 'contagion' across the UK financial system in the event of the RFB's failure.

(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.

While subsection (6) sets out the factors which the Treasury must take into account if it wants to create new excluded activities, this subsection sets the test: the Treasury must be satisfied that it is, at least, helpful to create a new excluded activity to protect the continuous provision of the core services in the UK.

142E Power of Treasury to impose prohibitions

The power to impose prohibitions allows the Treasury to ban RFBs from doing things that the ICB recommended they should be banned from doing, but which cannot easily be defined as 'activities', e.g. because the defining characteristic of the transactions to be banned is the *counterparty* not the *type* of transaction.

This power will enable the Treasury to implement the ICB's recommendation that RFBs should be prohibited from having exposures to financial institutions via secondary legislation. The Government has published a draft Order which prohibits ring-fenced banks from having exposures to other financial institutions, except in the circumstances set out in the Order.

(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;

(c) holding in specified circumstances shares or voting power in companies of a specified description.

The draft Order published by the Government for consultation also prohibits ring-fenced bodies from having branches or subsidiaries outside the EEA, except in specified circumstances. Banning non-EEA branches and subsidiaries is a slight adjustment to the ICB's recommendation (which was that services to non-EEA customers should be banned). The adjustment was made to avoid RFBs being prevented from supporting trade and investment into the UK.

(2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—

(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.

Before the Treasury imposes a prohibition, it must consider:

- The riskiness of the activity that the Treasury is considering banning; and
- The impact of doing that activity on RFB resolvability.

These factors to consider mirror those for creating new excluded activities in 142D(6).

(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.

The Treasury may only impose a prohibition if it is satisfied that this is necessary or expedient to protect the continuous provision of core services in the UK.
This requirement mirrors that in 142D(7) for creating new excluded activities.

(4) An order under this section may in particular—

(a) provide for any prohibition to be subject to exemptions specified in the order;

E.g. Govt can allow RFBs to have exposures to financial institutions in specified circumstances.

(b) provide for any exemption to be subject to conditions specified in the order.

E.g. Govt can prescribe the conditions that must be met before any such exposure is permitted.

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;

This power will enable the Treasury, in the statutory instruments to be made under this Bill, to empower or require the regulator to set the technical standards for the calibration of the ring-fence in rules or other instruments.

(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.

For example, technical standards written by bodies like the Financial Stability Board or the International Chamber of Commerce, covering areas such as derivatives contracts or letters of credit. This avoids having to write those standards into the legislation.

(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—

(a) impose conditions on the exercise of any power conferred on the regulator;

The Treasury may impose conditions on how the regulator may exercise a power delegated to it.

(b) impose consultation requirements on the regulator;

The Treasury may require the regulator to carry out appropriate consultations as part of the rule-making process.

(c) make the exercise of a power by the regulator subject to the consent of the Treasury.

The Treasury may make the regulator's ability to exercise a delegated power subject to its consent.

This section in the draft Bill also gave the Treasury power to confer powers on the Treasury, and to require the regulator to issue firm-specific directions. In PLS, the House of Lords Delegated Powers Committee objected to these powers, which were then removed from the Bill before its introduction into the House of Commons.

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.

If an RFB carries on an excluded activity or contravenes a prohibition, it will be treated as having contravened a requirement imposed by the regulator under FSMA. This means that the regulator may impose financial penalties on the RFB, or expose it to public censure.

(2) The contravention does not—

(a) make a person guilty of an offence;

Carrying on an excluded activity or contravening a prohibition is not a criminal offence. This is in line with the way other contraventions of requirements imposed by the regulator are treated in the Financial Services and Markets Act 2000.

(b) make a transaction void or unenforceable;

Any transactions entered into contrary to a prohibition remain valid. This is a 'safe harbour' provision which protects the counterparty of any such transaction from suffering loss as a result of the RFB's contravention.

(c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

There is no automatic entitlement to bring an action for breach of statutory duty against an RFB who has carried on an excluded activity or contravened a requirement.

(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.

This enables the Treasury to specify those cases in which a person who has suffered loss as a result of a contravention may bring an action for breach of statutory duty.

(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.

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.

The PRA must make rules governing the relationship between an RFB and any other members of the RFB's group. These rules govern the degree of separation between the ring-fenced and the non ring-fenced part of the group.

The rules must also ensure that ring-fenced bodies have appropriate arrangements in place for the supply of the services and facilities which they need to carry out core activities.

(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).

The regulator may limit what shares and voting power an RFB may hold in another company. This limits the exposure a ring-fenced body may have to other companies. The regulator will be able to impose limits on ring-fenced banks owning non-ring fenced banks. If a ring-fenced bank owned a non ring-fenced bank that failed, it would endanger the finances of the ring-fenced bank.

Any such rules will be subject to prohibitions made by the Treasury under 142E.

(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;

The PRA must make rules to ensure that the core activities of an RFB are not adversely affected by other members of the same group. So for example, particularly risky conduct by another member of the group, even conduct which puts that member at risk of insolvency, should not affect the provision of services by the ring-fenced part of the group.

(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

The PRA must make rules to ensure that RFBs are able to make decisions independently of other members of the same group. The RFB needs to be able to make different commercial decisions to those taken by the non-ring-fenced parts of the group. It must also be able to have a lower appetite for risk.

(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;

The PRA must make rules to ensure that RFBs do not rely on resources provided by other members of the group that would no

longer be available if that member failed – e.g. the provision of capital or liquidity resources. If the ring-fenced bank relied on resources of other members of the group and those members failed, the RFB would no longer be able to use these resources. This could result in an interruption of the continuity of services.

(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.

The PRA must make rules to ensure that RFBs are able to carry on their core activities if another member of its group failed.

Subsections (b)(ii) and (c) will provide the means for the PRA to give effect to the principle that RFBs should have sufficient capital and liquidity, independent of other members of the group.

(5) Ring-fencing rules made for the group ring-fencing purposes must include—

(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;
(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—
(i) members who are treated by the rules as being independent of other members of the ring-fenced body's group,
(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;
(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;
(h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).

These paragraphs identify each of the areas in relation to which the PRA is required to make rules. Paragraph (d) requires the PRA to provide for the independent governance of the RFB. Paragraphs (e), (f) and (g) require the PRA to impose requirements as to the remuneration policy, HR policy and risk management arrangements of the RFB. It is expected that rules made by the PRA in these areas

will give effect to the recommendation of the PCBS that the legislation make clear that RFBs must be operationally independent in the areas of governance, risk management, human resourcing (and remuneration). There is no express requirement for the PRA to ensure that the RFB should be operationally independent in relation to treasury management and capital and liquidity. This is expected to followed from the purpose set out in subsection (4)(b)(ii), and subsection (5)(h).

(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.

(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—

"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;

The government proposes to lay a minor and technical amendment to this definition for consideration at Lords' Committee stage to ensure that the term "appropriate regulator" is defined in relation to bodies which are not ring-fenced bodies.

"shares" has the meaning given in section 422;

"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—

(a) any of the matters mentioned in section 142H(5)(a) to (g), or

(b) any other specified matter.

This power enables the Treasury to make additional specifications as to what and how the regulator should secure the independence of RFBs, either by setting out in more detail what has to be included in rules made in relation to the areas specified in section 142H(5), or by requiring the PRA to make rules in relation to additional areas not referred to in section 142H(5).

(2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so—

(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.

If and when the Treasury makes additional specifications by order under subsection (1), it must be satisfied that it is necessary or expedient to do so for any of the group ring-fencing purposes set out in 142H(4), or otherwise to secure the independence of RFBs.

Those group ring-fencing purposes are: ensuring RFBs' core activities are not adversely affected by other group members; ensuring independent decision-making for RFBs; and ensuring RFBs do not rely on the resources of other group members.

(3) "Specified" means specified in the order.

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.

(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.

(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

This clause requires the PRA to review its ring-fencing rules not more than 5 years after they come into force, and not more than every 5 years thereafter. The report must be given to the Treasury, laid before Parliament, and published.

Group restructuring powers

New sections 142K to 142V ('group restructuring powers') extend the PRA and FCA's powers to require groups including a ring-fenced body to restructure themselves, and set out the procedure which must be followed when those powers are exercised.

The Government proposes to lay amendments to new sections 142M and 142N for consideration at Lords' Committee stage. Annotated versions of these sections will be provided to show the effect that the Government amendments would have on these provisions if they are accepted.

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.

(2) Condition A is that the carrying on of core activities by the ring-fenced body is being adversely affected by the acts or omissions of other members of its group.

(3) Condition B is that in carrying on its business the ring-fenced body—

(a) is unable to take decisions independently of other members of its group, or

(b) depends on resources which are provided by a member of its group and which would cease to be available in the event of the insolvency of the other member.

(4) Condition C is that in the event of the insolvency of one or more other members of its group the ring-fenced body would be unable to continue to carry on the core activities carried on by it.

(5) Condition D is that the ring-fenced body or another member of its group has engaged, or is engaged, in conduct which is having, or would apart from this section be likely to have, an adverse effect on the advancement by the appropriate regulator—

(a) in the case of the PRA, of the objective in section 2B(3)(c), or

(b) in the case of the FCA, of the continuity objective.

This section provides that the regulator can use its group restructuring powers if one or more of the following four conditions are met:

A. The acts or omissions of other members of RFB's group are having an adverse effect on the ability of the RFB to carry on core activities.
B. The RFB is either unable to take decisions independently of other members of its group, or depends on resources from another member of its group that would no longer be available if that member became insolvent.
C. The RFB wouldn't be able to carry on core activities in the event of the insolvency of another member of its group.
D. The RFB or a member of its group acting in a way which harms the regulator's ability to advance its continuity objective (or would be likely to do so if group restructuring powers had not been used) .

Conditions A to C are the inverse of the 'group ring-fencing purposes' in 142H (ring-fencing rules) and Condition D reflects the continuity objective from clause 1. The significance of this is that the regulator can only use the restructuring power to advance objectives that it has already been given in the Bill.

(6) The appropriate regulator may not exercise the group restructuring powers in relation to any person if—

(a) either regulator has previously exercised the group restructuring powers in relation to that person, and

(b) the decision notice in relation to the current exercise is given before the second anniversary of the day on which the decision notice in relation to the previous exercise was given.

This subsection prevents group restructuring powers being used on a group within 2 years of having previously been used on that group.

(7)In this section and sections 142L to 142Q "the appropriate regulator" means—

(a) where the ring-fenced body is a PRA-authorised person, the PRA;

(b) where it is not, the FCA.

This subsection defines the 'appropriate regulator' as the PRA where a group's ring-fenced bank is PRA-authorised, and as the FCA in all other cases.

142L Group restructuring powers

This section describes the powers being conferred on the PRA and FCA under 'group restructuring powers'.

(1) In this Part "the group restructuring powers" means one or more of the powers conferred by this section.

(2) Where the appropriate regulator is the PRA, the powers conferred by this section are as follows—

(a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),

(b) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to impose a 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

(d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(3) Where the appropriate regulator is the FCA, the powers conferred by this section are as follows—

(a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),

(b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6),

(c) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
(d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(4) A parent undertaking of a ring-fenced body by reference to which the group restructuring powers are exercisable is for the purposes of this Part a "qualifying parent undertaking" if —
(a) it is a body corporate which is incorporated in the United Kingdom and has a place of business in the United Kingdom, and
(b) it is not itself an authorised person.

(5) The steps that the ring-fenced body may be required to take are—
(a) to dispose of specified property or rights to an outside person;
(b) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the ring-fenced body to an outside person;
(c) otherwise to make arrangements discharging the ring-fenced body from specified liabilities.

(6) The steps that another authorised person or a qualifying parent undertaking may be required to take are—
(a) to dispose of any shares in, or securities of, the ring-fenced body to an outside person;
(b) to dispose of any interest in any other body corporate that is a member of the ring-fenced body's group to an outside person;
(c) to dispose of other specified property or rights to an outside person;
(d) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the authorised person or qualifying parent undertaking to an outside person.

Subsections (5) & (6) set out the steps that the regulator has the power to require firms to take under their group restructuring powers.
Subsection (5) describes the steps that the regulator may require **ring-fenced banks** to take:

- Dispose of specified property or rights to an outside person (defined below);
- Apply to the court for a transfer of all or part of its business (via a ring-fencing transfer scheme) to an outside person; or
- Make other arrangements to be discharged from specified liabilities.

Subsection (6) describes the sets the regulator may require **other authorised persons or qualifying parent undertakings** to take:

- Dispose of shares in the ring-fenced bank to an outside person (defined below);

- Dispose of shares in any other group member to an outside person;
- Dispose of other specified property to an outside person; or
- Apply to the court for a transfer of all or part of its business (via ring-fencing transfer) to an outside person.

A 'qualifying parent undertaking' is defined in subsection (4) as the parent undertaking of a ring-fence body which is UK incorporated body, and is not an authorised person. The power to direct parent undertakings is required so that if the regulator decides that the ring-fenced bank needs to be removed from the group, it can, for example, direct the parent company of a group to sell off the ring-fenced bank.

Subsections (2) and (3) set out the division of responsibilities between the PRA and the FCA for exercising the powers set out in subsections (5) and (6) (above). Subsection (2) specifies that if the ring-fenced body is a PRA authorised person the PRA will have the power to: impose requirements on the ring-fenced body and the members of the RFB's group that are PRA-authorised; give a direction to a 'qualifying parent undertaking' (defined in subsection 4); and to direct the FCA to impose requirements on any member of the RFB's group which is not an authorised person. Subsection (3) gives the FCA similar powers if the ring-fenced body is not PRA-authorised.

(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).

This subsection defines an 'outside person' as a person who will not be a member of the group of the ring-fenced body after the restructuring power has been exercised, regardless of whether the ring-fenced body remains a ring-fenced body after the restructuring.

(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.

This subsection ensures that the regulator's ability to impose restrictions by using its existing powers in FSMA to vary the permission of authorised persons under sections 55L or M (its OIVOP powers) do not prevent the regulator from imposing restrictions through the use of the group restructuring powers.

142M Procedure: preliminary notices

The Government proposes to lay amendments to new sections 142M and 142N for consideration at Lords' Committee stage. Annotated versions of these sections will

be provided to show the effect that the Government amendments would have on these provisions if they are accepted.

(1) If the appropriate regulator proposes to exercise the group restructuring powers in relation to any authorised person or qualifying parent undertaking ("the person concerned"), the regulator must give each of the relevant persons a first preliminary notice stating—

(a) that the regulator is of the opinion that the group ring-fencing powers have become exercisable in relation to the person concerned, and

(b) its reasons for being satisfied as to the matters mentioned in section 142K(1).

(2) Before giving a first preliminary notice, the regulator must—

(a) give the Treasury a draft of the notice,

(b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and

(c) obtain the consent of the Treasury.

(3) The first preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator.

(4) The relevant persons are—

(a) the person concerned,

(b) the ring-fenced body, if not the person concerned, and

(c) any other authorised person who will, in the opinion of the appropriate regulator, be significantly affected by the exercise of the group restructuring powers.

(5) After considering any representations made by any of the relevant persons, the regulator must either—

(a) with the consent of the Treasury, give each of the persons a second preliminary notice, or

(b) give each of them a notice stating that it has decided not to exercise its group restructuring powers.

(6) A second preliminary notice is a notice stating—

(a) that the regulator proposes to exercise the group restructuring powers, and

(b) the manner in which it proposes to do so.

(7) The second preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator about the proposals.

(8)The regulator must after considering any representations made in response to the second preliminary notice give each of the relevant persons a third preliminary notice stating—

(a) whether it has made any revisions to the proposals, and

(b) if so, what the revisions are.

142N Procedure: warning notice and decision notice

The Government proposes to lay amendments to new sections 142M and 142N for consideration at Lords' Committee stage. Annotated versions of these sections will be provided to show the effect that Government amendments would have on these provisions if they are accepted.

(1) If the appropriate regulator has given a third preliminary notice, it must either—

(a) if it still proposes to exercise the group restructuring powers, give each of the relevant persons a warning notice during the warning notice period, or

(b) before the end of the warning notice period, give each of them a notice stating that it has decided not to exercise the powers.

(2) The "warning notice period" is the period of 6 months beginning with the first anniversary of the day on which the third preliminary notice was given.

(3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must —

(a) give the Treasury a draft of the notice,

(b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and

(c) obtain the consent of the Treasury.

(4) The action specified in the warning notice may be different from that specified in the third preliminary notice if—

(a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the third preliminary notice was given, or

(b) the person concerned consents to the change.

(5) The regulator must, in particular, have regard to anything that—

(a) has been done by the person concerned since the giving of the third preliminary notice, and

(b) represents action that would have been required in pursuance of the proposals in that notice.

(6) If the regulator decides to exercise the group restructuring powers it must give each of the relevant persons a decision notice.

(7) The decision notice must allow at least 5 years from the date of the decision notice for the completion of—

(a) any disposal of shares, securities or other property that is required by the notice, or

(b) any transfer of liabilities for which the notice requires arrangements to be made.

(8)The giving of consent for the purpose of subsection (4)(b) does not affect any right to refer to the Tribunal the matter to which any decision notice resulting from the warning notice relates.

(9)"The relevant persons" has the same meaning as in section 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),

(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),

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.

This section establishes an appeal procedure against the exercise of group restructuring powers. It provides that a notified person who feels aggrieved by anything required by the regulator in the decision notice may appeal to the Tribunal. This right of appeal is only to appeal against the decision of the regulator (given in the decision notice), not against any earlier parts of the process. A 'notified person' is any person to whom a decision notice (under s142N) was given, or should have been given.

142P Subsequent variation of requirement or direction

This section provides that the any person subject to requirements imposed by the group restructuring powers may at any time apply to the regulator to have a requirement imposed changed (subsection (2)), and that the regulator may, at any time, with the consent of the person concerned, vary the requirements imposed (subsection (1)). This means that if circumstance change and the bank agrees, the regulator can change the details of the requirement to separate, e.g. requiring that different entities or business lines be removed from the group.

(1) A regulator may at any time with the consent of the person concerned vary—

(a) a requirement imposed by it as a result of section 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).

(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).

(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.

Subsection (3) ensures that the procedure applying to applications by an authorised person to vary a Part 4A permission under sections 55U (applications under Part 4A), 55V (determination of applications under Part 4A), 55X (Determination of applications: warning notices and decision notices) and 55Z3 (right to refer matters to the Tribunal) will apply to applications under subsection (2).

142Q Consultation etc. between regulators

This section sets out how the regulators must consult with each other when exercising their group restructuring powers.

(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—

(a) consult the other regulator before giving the notice, and

(b) give a copy of the notice to the other regulator.

Subsection (1) requires that before issuing a preliminary notice under s142M, or a warning notice or decision notice under s142N, the appropriate regulator (e.g. PRA) must consult the other regulator (e.g. FCA), and give the other regulator a copy of the notice.

(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).

Subsection (2) requires that the regulators consult each other before varying the requirements imposed via the group restructuring powers.

(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.

Subsection (3) ensures that the PRA can use its power under section 3I (power of the PRA to require FCA to refrain from specified action) to direct the FCA not to issue a direction to the PRA to exercise the group restructuring powers in relation to a PRA authorised person. The PRA's power trumps the FCA's power under s.142L(3)(c).

142R Relationship with regulators' powers under Parts 4A and 12A

This section clarifies the relationship between the group restructuring powers and the regulators' general powers. The regulator may not use its general powers to separate a ring-fenced body from its existing banking group, or to require that no

company in the same banking group undertakes excluded activities. To achieve either of these results, the regulator must use the group restructuring powers, following the procedure set out in these provisions.

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

(2) A regulator may not exercise its general powers in relation to the ring-fenced body or parent undertaking so as to achieve either of the results in subsection (3).

(3) Those results are—
(a) that no existing group member is a parent undertaking of the ring-fenced body;
(b) that the ring-fenced body is not a member of a mixed group.

(4) In subsection (3)(a) "existing group member" means a person who is a member of the ring-fenced body's group at the time when the requirement is imposed or the direction given.
(5) Except as provided by subsections (1) to (4), the provisions of sections 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—
(a) section 55L or 55M (imposition of requirements in connection with Part 4A permission);
(b) section 192C (power to direct qualifying parent undertaking).

(7) For the purposes of this section, a ring-fenced body is a member of a mixed group if a member of the ring-fenced body's group carries on an excluded activity.

Failure of parent undertaking to comply with direction

142S Power to impose penalty or issue censure

These provisions are the same as those applying where a parent undertaking breaches a requirement imposed under section 192C.

Subsection (1) provides that this section applies to a qualifying parent undertaking who has contravened a direction under the group restructuring powers.

(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).

(2) The regulator may impose a penalty of such amount as it considers appropriate on—

(a) P, or
(b) any person who was knowingly concerned in the contravention.

(3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.

Subsections (2) & (3) set out the actions the regulator make take against a parent undertaking who has convened a direction under the group restructuring powers. Subsection (2) allows the regulator to fine such a parent undertaking, or any other person knowingly concerned in the contravention, as much as the regulator believes appropriate and subsection (3) gives the regulator the power to censure a person instead of imposing a fine.

(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.

(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.

The regulator may not take action on a person after the end of the 'limitation period' unless it has given that person a warning notice under s142T (subsection (4)).The limitation period is defined as 3 years from the date on which the regulator first knew of the contravention (subsection (5)). The regulator can be considered to have known of a contravention from the time when it possessed information from which the contravention might reasonably have been inferred (subsection (6)).

(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.

Subsection (7) provides that if one regulator is directed by the other regulator to impose a requirement under the restructuring powers, it may do so, even if it would otherwise have had no power to do so.

142T Procedure and right to refer to Tribunal

(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.

(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.

(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.

Subsection (1) requires the regulator to give a warning notice to any person against whom the regulator is considering imposing a penalty or issuing a censure under section 142S for breach of a requirement imposed on a parent undertaking. Subsections (2) – (6) set out the other procedures the regulator must follow when taking enforcement action against a person. Subsection (7) provides that a person who has received a penalty or been the subject of a statement of censure may refer the matter to the Tribunal.

142U Duty on publication of statement

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).

This section requires the regulator to provide a copy of any statement of censure published issued under section 142S to the person referred to in the statement, and to anyone else who received a copy of the decision notice in relation to that matter.

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.

(2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention,

(b) the extent to which the contravention was deliberate or reckless, and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) A regulator may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, a power under section 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.

(6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.

(8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.'

This section requires the regulator to publish a statement of its policies on the penalties which may be imposed under section 142S, and their amount (subsection (1)). This statement must be published in such a way as to ensure that it will come to the attention of the public (subsection (6)), but the regulator is permitted to charge a fee to provide anyone with a copy of the statement (subsection (7)). The regulator must give the Treasury a copy of the statement (subsection (8)).

The statement of policy must include, as factors which the regulator must consider in setting the amount of the penalty, how serious the breach of the requirement was, whether it was deliberate or reckless, and whether it is being imposed on an individual (subsection (2). The regulator is required to have regard to its statement of policy in any case in which it is deciding whether or not to impose a penalty or issue a statement of censure under section 142S (subsection (5)).The regulator is permitted to amend any statement of policy it has produced, or to issue a completely new statement replacing it (subsection (3)), where the regulator has revised a previous statement of policy, it must publish the new policy (subsection (4)).

Pension liabilities

142W Pension liabilities

The Government proposes to lay amendments to sections 142W and 142X for consideration during Lords' Committee stage. Annotated versions of these sections will be provided to show the effect that Government amendments would have on these provisions if they are accepted.

(1) For the purposes of this section an occupational pension scheme is a "relevant pension scheme" if—

(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,
(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—

(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

(ii) to the extent that it is not possible to ensure that result, minimising any potential liability falling within subparagraph (i);

(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—

(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;
(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;
(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;
(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;
(g) require a ring-fenced body to make an application for clearance in connection with the making of the arrangements;

(h) confer exemption from any provision of the regulations in prescribed cases;
(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—
(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);
(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).

(5) In relation to a ring-fenced body that is not a PRA-authorised 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 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

The Government proposes to lay amendments to new sections 142W and 142X for consideration during Lords' Committee stage. Annotated versions of these sections will be provided to show the effect that Government amendments would have on these provisions if they are accepted.

(1) The following provisions have effect for the interpretation of section 142W.

(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.

(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—
(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

(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

(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.

This clause gives the Treasury power to regulate in secondary legislation the way in which the regulator exercises its existing powers to require banks to hold certain amounts of debt instruments. Debt is an important element of the Primary Loss-Absorbing Capacity UK banks will be required to have, that is, debt instruments that can reliably bear losses in the event of a bank going into resolution

This new section also establishes a framework for implementing the European Recovery and Resolution Directive loss absorbency requirements in the UK.

(2) A "relevant body" is—

(a) a ring-fenced body,

(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).

The Treasury may make an Order regulating the way in which the PRA may impose debt requirements on any relevant body. Ring-fenced bodies, any authorised deposit taker (including building societies, credit unions, and small banks), are relevant bodies. So are members of the same group as a ring-fenced body or an authorised deposit taker.

However, we only propose to exercise this power in relation to a small subset of relevant bodies, as provided for in the draft Order produced by the Government for consultation. The draft Order applies to, ring-fenced bodies, other relevant bodies that the regulator identifies as domestic systemically important institutions (including building societies), and authorised persons in the same group as global systemically important banks which have their headquarters in the UK.

(3) "Debt instrument" means—

(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);
(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
(ii) to have regard, or not to have regard, to specified matters;

The Treasury will have the power to shape the way in which the regulator imposes debt requirements on banks.

The draft Order produced by the Government closely follows the ICB's recommendations. For example, eligible debt instruments, which may count towards Primary Loss-Absorbing Capacity (PLAC) requirements are required by the draft order to have a remaining term of at least 12 months. It also sets the minimum levels of debt relevant bodies should have and the framework for setting higher debt requirements.

(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;

This requirement reflects the Government's key interest in ensuring that banks can be easily resolved without threatening financial stability, putting public funds at risk, or jeopardising long-term economic wellbeing. The draft Order issued by the Government requires the regulator to consult the Treasury before imposing any debt requirements on a relevant body.

(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.

Paragraph (f) makes it possible for an Order made under this provision to refer, for example, to the list of global systemically important banks which is published each year by the Financial Stability Board (see the definition of "G-SIB" in article 1(3) of the draft Order published by the Government for consultation.

(5) "Specified" means specified in the order.

General

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

This new section sets out where the affirmative resolution procedure will apply to statutory instruments made under the Bill.

(1) This section applies to an order containing provision made under any of the following provisions of this Part—

(a) section 142A(2)(b); (exceptions to the definition of an RFB)
(b) section 142B(2) or (5); (exceptions to the core activity and new core activities)
(c) section 142C; (exceptions to the core services and new core services)
(c) section 142D(2) or (4); (exceptions to the excluded activity and new excluded activities)
(d) section 142E; (imposing prohibitions)
(e) section 142I; (requiring the regulator to make ring-fencing rules)
(f) section 142Y. (requiring the regulator to impose debt requirements)

(The application of the affirmative procedure to orders under section 142C (core services) was added by an Opposition amendment accepted in Committee in the Commons).

(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
(b) subsection (4) applies.

Secondary legislation made under any of these sections will be subject to the affirmative resolution procedure. This means that a motion approving the secondary legislation must be passed by both Houses of Parliament.

(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.

(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).

(5) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

(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.

Subsections (3) – (6) provide for the application of the 'made affirmative procedure'. If the Treasury considers that secondary legislation is urgently required to create a new excluded activity or impose a prohibition, the 'made affirmative' resolution procedure may be used. This means that the secondary legislation can be retrospectively approved by each House of

Parliament, as long as this happens within 28 days of it being made. In the event that the Order is not approved by Parliament in this period, it will cease to have effect.

142Z1 Interpretation of Part 9B

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

(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."

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

This new section simply explains how the regulated activities of accepting deposits and dealing in investments as principal are to be understood for the purpose of Part 9B of FSMA. It also clarifies the meaning of references to 'group restructuring powers'.

(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;".

(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—

""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

(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;".

(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,".

Subsections (2) to (5) of clause 4 of the Bill make minor amendments of FSMA. Subsections (2) and (3) include references to the Tribunal in relation to decisions to impose a penalty or to issue a censure) against a qualifying parent undertaking in the list of "disciplinary references" for the purposes of section 133 (Proceedings before Tribunal: general provision). Subsection (4) amends FSMA to include definitions of various terms being introduced into

the Act by this Bill. Subsections (5) and (6) ensure that issuing statements of policy under section 142V is treated as a legislative function of both the PRA and the FCA.

5 Directors of ring-fenced bodies to be approved persons

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)—

(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."

All controlled functions must be carried on by 'approved persons'. The regulator is responsible for specifying which functions are 'controlled functions' in rules. Only significant influence functions may be controlled functions. This clause means that a director of an RFB will always be an approved person, subject to disciplinary action by the regulator if they knowingly breach the ring-fencing rules. Acting as a director is currently a function which must be undertaken by an approved person. This provision ensures that it is not possible for the PRA to change this.

6 PRA annual report

The Government proposes to lay amendments to clause 6 for consideration during Lords Committee stage. Annotated versions of this clause will be provided to show the effect that Government amendments would have on it if they are accepted.

(1) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), paragraph 19 (annual report) is amended as follows.

(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,

(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.

(1B) In sub-paragraph (1A)—

(a) references to "ring-fenced bodies" relate only to ring-fenced bodies that are PRA-authorised persons, and
(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 "Subparagraphs (1) and (1A) do not"."

7 Ring-fencing transfer schemes

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

See the notes to Schedule 1.

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
(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).

This clause enables the Treasury to apply the ring-fencing regime to building societies in secondary legislation.

(2) The regulations may, in particular—
(a) amend the Building Societies Act 1986;

The Building Societies Act 1986 places significant restrictions on building societies. Applying ring-fencing to building societies by amending this and other existing building society legislation will preserve the distinct nature of the building society sector.

(b) apply any of the provisions contained in, or made under, Part 9B of FSMA 2000, with such modifications as the Treasury consider appropriate;

This enables the Treasury to expand the continuity objective of the PRA or FCA to cover any functions they are given in relation to building societies.

(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.

(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.

This subsection clarifies that the Treasury's power to regulate the way in which the PRA exercises its power to impose debt requirements in relation to building societies under section 142M is not affected by this clause.

(4) In this section—
"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
(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—

"*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.

This ensures that all deposits which are eligible for compensation under the FSCS will be treated as preferential debts. This means that, on insolvency, they will rank ahead of the claims of other unsecured creditors.

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.
(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
(b) section 1(2)(b) of the Dormant Bank and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund)."

Deposits which were held in dormant accounts and have been transferred to authorised reclaim funds under the Dormant Bank and Building Society

Accounts Act 2008 will also be treated as preferential debts if they are eligible for compensation under the FSCS.

(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".

(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."

The Insolvency Act 1986 covers corporate insolvency in England, Wales and Scotland, but only covers bankruptcy in England and Wales. This paragraph applies the policy in relation to bankruptcy in Scotland.

(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

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)."

Financial Services Compensation Scheme

10 Discharge of functions by the scheme manager

After section 224 of FSMA 2000 insert—

"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

This clause requires the scheme manager to have regard to the need to operate the FSCS efficiently and effectively.

(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.

This requires the scheme manager to have regard to the need to minimise public expenditure on any loans or financial assistance it receives from the Government. For example, the FSCS would be expected to ensure that it repays the cost to the Government of any such loan.

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

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.

The FSCS's current governance framework does not give the Treasury the access to its activities that HMT requires to ensure that they are being carried out to the standard required under 'Managing Public Money'.

This is necessary in order to consolidate FSCS's accounts within the Treasury Group accounts, which is required following the reclassification of the FSCS as a central government body.

This new section enables the Treasury to fulfil its duties in this regard.

(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)—
(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".

This amends FSMA so that the scheme manager of the FSCS is required to have a chief executive, who must be a member of the board of the scheme manager, and who must also be the accounting officer. The scheme manager of the FSCS is required to have an accounting officer (who is accountable to parliament for the stewardship of FSCS's resources) following its reclassification as a central government body.

(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".

This amends FSMA so that the chief executive of the scheme manager of the FSCS must be appointed by the PRA and the FCA. This appointment will be subject to the Treasury's approval.

Fees to meet Treasury expenditure

13 Fees to meet Treasury expenditure relating to international organisations

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;
(b) make provision about how the regulator to which a direction is given is to comply with the direction;
(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.

This clause enables the Treasury to require the regulator to impose fees on relevant bodies to meet specific expenses incurred by the Treasury.

The Government has published draft regulations for consultation, which enable the Treasury to direct the regulator to impose fees on the financial services industry to recover expenses incurred as a result of the UK's membership of the Financial Stability Board.

(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

(b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.

These expenses must be incurred by the Treasury as a result of the UK's membership of international organisations concerned with financial stability or financial services. This could include subscription fees, indirect funding (including funding of a capital nature), and the provision of resources such as seconded staff or IT equipment – but not the ordinary running costs of the Treasury.

(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.

The regulator must impose such fees through rules.

(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;

(b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.

This means that the regulator can charge fees for this purpose in the same way as it is able to levy the industry for expenses connected with the discharge of its functions under FSMA.

(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.

Fees charged by the Bank of England for this purpose will be subject to the same provisions as the fees the Bank charges to clearing houses.

(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;

(c) enable a direction to be varied or revoked by a subsequent direction;

(d) confer functions on a regulator.

The Treasury may specify the types of expense which can be recovered through such fees.

(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

(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.

The regulator may treat any such fee as a debt owed to it.

(8) "Relevant persons" means—

(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;
(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).

The fees may be imposed on PRA-authorised persons, FCA-authorised persons, recognised investment exchanges, and recognised clearing houses.

(9) This section is subject to section 410B.

410B Directions in pursuance of section 410A

(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.

The Treasury must consult the regulator before requiring it to impose such fees.

(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 charged by the regulator and explain how that amount is calculated;
(c) contain such other information as may be prescribed.

If and when the Treasury directs the regulator to impose a fee, it must do so in writing, and specify the total amount which needs to be raised.

(4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction."

Any such direction to the regulator must be laid before parliament.

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)".

This simply changes the order of the sections referred to so they follow a logical sequence.

(3) In subsection (2) (regulations subject to affirmative procedure), after "90B," insert "142W,"

Regulations made by the Treasury in relation to pension liabilities will be subject to the affirmative resolution procedure. This means that a motion approving the secondary legislation must be passed by both Houses of Parliament.

(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.

Treasury regulations requiring the imposition of fees on the industry to meet Treasury expenses will be subject to the affirmative resolution procedure. This means that a motion approving the secondary legislation must be passed by both Houses of Parliament.

(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."

However, changes to the list of international organisations in relation to which expenses may be claimed will be subject to the negative resolution procedure. This is because these decisions are more technical in nature, and may sometimes simply reflect a change in an organisation's name.

(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".

The Bank of England may currently disregard the requirements of the Companies Act 2006 relating to the preparation of its accounts, if it considers it appropriate. This amendment tightens this power so that the Bank will only be able to disregard these requirements if it considers it necessary to fulfil its financial stability objective.

(3) After section 7 insert—

"7A Accounts of companies wholly owned by the Bank

This section extends the above power to cover the BoE's wholly-owned subsidiaries. This is so covert support operations (such as extraordinary liquidity support), which are often carried out by specially created subsidiaries of the Bank, can be undertaken without disclosing information that might trigger financial stability concerns.

(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.

The BoE will be able to exempt certain of its wholly-owned subsidiaries from particular requirements of the Companies Act.

(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.

These subsidiaries may be exempted from those Companies Act requirements that relate to the preparation of accounts.

(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).

The BoE must consult the Treasury before granting such an exemption.

(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.

The Treasury will still have the power to compel the Bank to disclose information (specified by the Treasury) about its subsidiaries' accounts, even if that subsidiary has been granted an exemption by the Bank.

(7) The Treasury must consult the Bank before giving a notice under subsection (5).

The Treasury must consult the Bank before it compels it to disclose such information.

(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.

Any company that is wholly owned by the Bank can be exempted, other than the PRA and bridge banks.

(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)."

Miscellaneous

16 Minor amendments

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

This clause introduces a new schedule of amendments which correct a series of minor and technical points in connection with the Financial Services Act 2012. – Schedule 2: 'Minor amendments'.

The most substantial amendment tightens the complaints regime of the PRA and FCA, which was widened by the Financial Services Act to include all functions of these regulators. The amendment narrows the scope of the scheme to the FCA and PRA's non-legislative functions under the Financial Services and Markets Act (FSMA), but gives HMT the power to extend the scheme to non-FSMA functions (for example, in relation to payment services).

Final provisions

17 Orders and regulations

(1) Any power of the Treasury to make an order or regulations under this Act is exercisable by statutory instrument.

The powers given to the Treasury under the Bill to make secondary legislation must be exercised by statutory instruments.

(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.

Any secondary legislation that the Treasury makes to apply the ring-fencing regime to building societies will be subject to the affirmative resolution procedure. This means that a motion approving the secondary legislation must be passed by both Houses of Parliament.

(3) A statutory instrument containing an order under section 18 (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.

Any secondary legislation made by the Treasury relating to transitional provisions and savings will be subject to the negative resolution procedure. This means that the secondary legislation must be laid before Parliament, and can be made after 40 days have passed, unless either House of Parliament passes a motion of disapproval in that time. Transitional and savings provisions will by their nature be temporary, so in this case the affirmative procedure is not necessary.

However, if the secondary legislation also contains provisions relating to an area which is subject to the affirmative resolution procedure, the whole statutory instrument will be subject to the affirmative procedure. This means that a motion approving the S.I. must be passed by both Houses of Parliament.

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,

(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;

"the FCA" means the Financial Conduct Authority;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"the PRA" means the Prudential Regulation Authority.

This clause simply defines 'enactment', 'the FCA', 'FSMA 2000' and 'the PRA'. 'Enactment' is defined to include instruments made by the devolved assemblies.

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.

This clause enables the Treasury to make provisions necessary to facilitate the transition between current arrangements and the new regulatory regime brought in by the Bill.

(2) An order under this section may—

(a) confer functions on the FCA or the PRA;

The Treasury will be able to give the FCA or PRA powers for this purpose.

(b) modify, exclude or apply (with or without modifications) any enactment (including any provision of, or made under, this Act).

This power can be used to amend other legislation, but only for the purposes of enabling the changes brought in by this Bill. For example, permission could be given to ring-fenced banks to continue carrying out an excluded activity for a limited period of time whilst these activities are wound down.

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.

The Bill applies to the whole of the UK, apart from the section on preferential debts, which does not apply to Northern Ireland, where insolvency is a devolved matter. The devolved administration intends to make equivalent changes to the law in Northern Ireland in an Insolvency Bill to be brought before the Northern Ireland Assembly.

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.

The Treasury will have the power to decide the date on which clauses 1-16 come into effect. It must do this by statutory instrument, but this is not subject to any parliamentary procedure.

(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.

Part 7 of FSMA provides a mechanism for transferring, with the approval of the court, all or part of the business of banks, insurance companies and reclaim funds, without seeking the approval of all those affected by the transfer. This schedule provides for an additional form of transfer scheme, enabling all or part of a bank's business to be transferred to another company in order to comply with the ring-fencing regime, without having to obtain the consent of all those affected by the transfer.

2. For "the authorised person concerned", wherever occurring in Part 7 (including Schedule 12), substitute "the transferor concerned".

This provides for the possibility that the transferor in question may not be an authorised person.

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)".

(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".

This excludes ring-fencing transfer schemes from banking business transfer schemes, so that these two categories of scheme are distinct.

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—

(i) by a UK authorised person, or

(ii) by a qualifying body,

is to be transferred to another body ("the transferee"),

This subsection defines 'ring-fencing transfer scheme' as one in which the transferor is a UK authorised person, or a qualifying body.

(b) is to be made for one or more of the purposes mentioned in subsection (3), and

The ring-fencing transfer scheme must be established for one of the purposes set out in subsection (3), below.

(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,
(b) is a member of the group of a UK authorised person, and
(c) is not itself an authorised person.

Qualifying bodies do not themselves have to be an authorised person (or direct subsidiaries of 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;
(b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;

Ring-fencing transfer schemes may be established in order to enable either the body transferring the business, or the body to whom it is transferred, to carry on core activities in the manner required by the ring-fence.

(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.

(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.

Ring-fencing transfer schemes may also be used to restructure a group so that one or more of its members can become RFBs, whilst other members remain non-RFBs, whether it is the transferor under the scheme (paragraph (c)) or the transferee (paragraph (d)) whose group will contain a ring-fenced body.

(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

Building societies and credit unions are not able to transfer their business through a ring-fencing transfer scheme. This should not be necessary, as the ring-fencing regime will be applied to these types of body by changing the restrictions which govern what they can and cannot do, rather than by requiring them to divide or restructure.

(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

A scheme cannot be a ring-fencing transfer scheme if Part 27 of the Companies Act 2006, which relates to mergers and divisions of public companies, applies to it. This is because the approval of these mergers and

divisions is subject to EU law, implemented in Part 27 of the Companies Act 2006.

(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.

In determining whether a business transfer is a ring-fencing transfer scheme, it does not matter whether the business being transferred is carried on in the UK.

(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."

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".

(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.'"

Bodies may only apply to the court for approval of a ring-fencing transfer if the PRA has consented to the application. The PRA must consider the 'scheme report' when deciding whether to consent to a transfer application going to the court.

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

(1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a "scheme report").

(2) A scheme report may be made only by a person—

(a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and

(b) nominated or approved for the purpose by the PRA.

(3) A scheme report must be made in a form approved by the PRA.

(4) A scheme report must state—
  (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
  (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.

(5) The PRA must consult the FCA before—
  (a) nominating or approving a person under subsection (2)(b), or
  (b) approving a form under subsection (3)."

This paragraph requires that, before the PRA can consent to a proposed ring-fencing transfer scheme, it must first commission an independent report on that scheme. This scheme report must be made by a qualified expert appointed by the PRA, in consultation with the FCA. The report must address first whether anyone other than the bank itself will be adversely affected by the transfer, and then whether any adverse affect is beyond what is reasonably necessary for the bank to implement the ring-fence. In other words, whether the costs to third parties involved in the transfer scheme are just the inevitable result of having to comply with the ring-fence, or whether the bank is seeking to impose further costs on its customers, creditors or counterparties.

9.

(1) Section 110 (right to participate in proceedings) is amended as follows.

This paragraph determines who is entitled to be heard before the court as part of the court's consideration of an application for approval of a ring-fencing transfer.

(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".

(3) After subsection (2) insert—

"(3) Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme.

(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.

Any person who alleges that he or she would be adversely affected by a transfer scheme is entitled to be heard before the court.

(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
(b) served copies of the statement on the PRA and the transferor concerned."

Such a person will only be entitled to be heard before the court if they have filed with the court a written statement of the case they wish the court to consider before the hearing, and given copies of that statement to the PRA and the body proposing to make the transfer.

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".

This extends the power of the court to sanction transfer schemes to apply to ring-fencing transfer schemes.

(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);"

This sets out the conditions which must be satisfied before the court may sanction a ring-fencing transfer scheme. (See Part 2B below).

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
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,
(b) a certificate under paragraph 9C, and
(c) if sub-paragraph (2) applies, a certificate under paragraph 9D.

This paragraph sets out the certificates that must be obtained in support of an application before it can be considered by the court.

(2) This sub-paragraph applies if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3.

An EEA firm whose head office is not based in the UK, and which is authorised by its home state regulator, must obtain a certificate described under paragraph 9D, below.

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.

The transferee must obtain a certificate from the relevant authority, confirming that it has adequate financial resources to undertake the transfer.

(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;

PRA-authorised persons must obtain this certificate from the PRA.

(b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator;

EEA firms whose head office is not based in the UK, and which are authorised by their home state regulator, must obtain this certificate from their home state regulator.

(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;

Any other transferee who is subject to regulation outside the UK must obtain this certificate from the relevant authority in the place where it has its head office.

(d) in any other case, the FCA.

Any other transferee must obtain this certificate from 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.

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—

(a) the home state regulator has responded to the notification, or

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

This paragraph sets out what must be certified by the home state regulator of a transferee.

SCHEDULE 2

Section 16

MINOR AMENDMENTS

This schedule makes some minor and technical amendments in connection with the Financial Services Act 2012.

Companies Act 1985 (c. 6)

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

Financial Services and Markets Act 2000 (c. 8)

2 In section 376 of FSMA 2000 (continuation of contracts of long-term insurance where insurer in liquidation), in subsection (11B), for "PRA-authorised" substitute "PRA-regulated".

3 In Schedule 17A to FSMA 2000 (further provision in relation to exercise of Part 18 functions by Bank of England), in paragraph 10(1)(j), for "subsections (1) and (3)" substitute "subsection (1)".

Income Tax Act 2007 (c. 3)

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

Banking Act 2009 (c. 1)

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

"In subsection (2), for "PRA" substitute "Bank of England"."

5

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

Financial Services Act 2012 (c. 21)

7 In section 73 of the Financial Services Act 2012 (duty of FCA to investigate and report on possible regulatory failure), in subsection (1)(b)(i)—

(a) for "their activities," substitute "of the carrying on of regulated activities,", and

(b) for "or for the regulation of collective investment schemes" substitute ", for the regulation of collective investment schemes or for the regulation of recognised investment exchanges,"'.

8 (1) Section 85 of the Financial Services Act 2012 (relevant functions in relation to complaints scheme) is amended as follows.

(2) For subsection (2) substitute—

"(2) The relevant functions of the FCA or the PRA are—

(a) its functions conferred by or under FSMA 2000, other than its legislative functions, and

(b) such other functions as the Treasury may by order provide."

(3) For subsection (3) substitute—

"(3) The relevant functions of the Bank of England are—

(a) its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions, and

(b) such other functions as the Treasury may by order provide."

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

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

(6) After subsection (7) insert—

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

The schedule corrects a total of seven minor and technical errors:

- Paragraph 1 repeals a redundant provision in the information disclosure provisions of the Companies Act 1985 (paragraph 29 of Schedule 15D to that Act adds nothing to paragraph 28),
- Paragraph 2 amends section 376(11B) of the Financial Services and Markets Act 2000 (continuation of contracts of long-term insurance where insurer in liquidation) to change the references to "PRA-authorised" to "PRA-regulated" (under FSMA, activities are "regulated", and only firms are "authorised"). Paragraph 2 refers to an activity, and the correct phrase is therefore "PRA-regulated activity" .
- Paragraph 3 amends paragraph 10(1)(j) of Schedule 17A to FSMA (application of provisions of FSMA in relation to the Bank of England) so that the reference to "subsections (1) and (3)" is replaced with a reference to "subsection (1)".
- Paragraph 4 amends section 991 of the Income Tax Act 2007 so that it refers to "Part 4A" of FSMA instead of "Part 4" of that Act.
- Paragraph 5 amends section 81B(2) of the Banking Act 2009 as that section is applied to recognised central counter parties by section 89B of that Act, so that it refers to the Bank of England" instead of the "PRA".
- Paragraph 6 amends section 191 of the Banking Act 2009 to add the word "payment" after "inter-bank".
- Paragraph 7 makes some minor clarifications in relation to the scope of section 73(1)(b)(i) of the Financial Services Act 2012 which covers the duty of the FCA to investigate and report on possible regulatory failure.
- Paragraph 8 is the most substantial amendment in this Schedule. It tightens the complaints regime of the PRA and FCA, which was widened by the Financial Services Act to include all functions of these regulators. The amendment narrows the scope of the scheme to the FCA and PRA's non-legislative functions under the

Financial Services and Markets Act (FSMA), but gives HMT the power to extend the scheme to non-FSMA functions (for example, in relation to payment services).