

Financial Services (Banking Reform) Bill

Government annotated amendments: Provisions for 'Group Restructuring Powers' Procedure (clause 4, sections 142M and 142N)

142M Procedure: preliminary notices

This section sets out the first stages of the procedure for exercising the group restructuring powers.

(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 notice (a "preliminary notice").

This subsection provides that if the regulator proposes to use the group restructuring powers, it must first give the bank concerned a preliminary notice.

(1A) The preliminary notice must—

- (a) state that it is a preliminary notice,
- (b) state that the regulator proposes to exercise the group restructuring powers,
- (c) state the action which the regulator proposes to take in the exercise of those powers,
- (d) be in writing, and
- (e) give reasons for the proposed action (which must include the regulator's reasons for being satisfied as to the matters mentioned in section 142K(1)).

This subsection sets out the requirements which must be satisfied by the preliminary notice. The preliminary notice must state that the regulator intends to use the group restructuring powers, and what specific actions the regulator proposes to take.

The preliminary notice must also state the regulator's reasons for believing that the conditions for exercising the group restructuring powers have been met, and the regulator's reasons for requiring the specific steps in the preliminary notice.

(2) The appropriate regulator must give a copy of the preliminary notice to the Treasury.

This subsection provides that the regulator must give the Treasury a copy of the preliminary notice. The regulator does not need to seek Treasury consent at this stage.

(3) The 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.

Subsection (3) requires that the preliminary notice must give ‘relevant persons’ a reasonable period (at least 14 days) to make representations. ‘Relevant persons’ is defined (in subsection (4)) as the target of the restructuring powers, the ring-fenced body (if not the target) and any other authorised person who may be significantly affected. 14 days is the standard period which must be allowed for representations to be made in response to notices issued by the PRA or the FCA under FSMA.

142N Procedure: warning notice and decision notice

This section sets out the warning and decision phases of the procedure for exercising the ‘group restructuring powers’, which must be undertaken by the regulator after it has issued a preliminary notice.

(1) If the appropriate regulator has given a preliminary notice under section 142M, it must either –

- (a) if, having considered any representations made by any of the relevant persons, 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 written notice stating that it has decided not to exercise the powers and give a copy of that notice to the Treasury.

(2) The “warning notice period” is the period –

- (a) beginning 3 months after the end of the period specified under section 142M(3) as that within which any representations must be made, and
- (b) ending 6 months after the end of that period.

Subsection (1) provides that after having issued a preliminary notice to a bank, within the “warning notice period” the regulator must either, after considering any representations, issue a warning notice, giving notice of its intentions to exercise its powers; or must give a written notice that it has decided not to exercise the group restructuring powers.

Subsection (2) defines the “warning notice period” as the period of 3 months, beginning 3 months after the deadline set by the regulator for representations to be made on the preliminary notice. Once this period has expired, the regulator may not take further action following the preliminary notice. If the regulator has decided to take no further action, the Treasury must be informed.

The pause before the regulator can issue a warning notice gives the bank (and any other company in the group affected) an opportunity to address any of the problems identified in the preliminary notice on its own initiative.

(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.

Before issuing a warning notice, the regulator must obtain the consent of the Treasury.

This is the only point at which Treasury consent is required.

In seeking Treasury consent to a warning notice, the regulator must give the Treasury a draft of the notice, and any information the Treasury needs to decide whether or not to consent.

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

- (a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the preliminary notice was given, or
- (b) the person concerned consents to the change.

The action specified in the warning notice may be different from that in the preliminary notice either if the regulator considers this appropriate in the light of changed circumstances, or if the person concerned consents to the change. For example, if new evidence were to come to light during the warning notice period, it may be appropriate for the regulator to impose a different requirement on the group.

- (5) The regulator must, in particular, have regard to anything that –
- (a) has been done by the person concerned since the giving of the preliminary notice, and
 - (b) represents action that would have been required in pursuance of the proposals in that notice.

The regulator must have particular regard to anything the bank or other person concerned has done since the preliminary notice was issued, which would have been required under that notice.

This means that the regulator must have regard to action which has been taken since the preliminary notice to fix the problem voluntarily.

- (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 specify the date or dates by which each of the following must be completed –
- (a) any disposal of shares, securities or other property that is required by the notice,
 - (b) any transfer of liabilities for which the notice requires arrangements to be made.

Subsection (6) provides that if the regulator decides to use the group restructuring powers, it must give a decision notice to each 'relevant person' (defined in subsection (9) as the target of the restructuring powers, the ring-fenced body (if not the target) and any other authorised person who may be significantly affected).

The decision notice must set out what specific actions the group must take (what divestments, transfers of business etc), and the deadline by when these actions must have been taken (subsection (7)).

The deadline for action to have been taken is to be set by the regulator, who has full discretion to determine when any requirements imposed must be complied with.

- (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.

A bank may still appeal to the Tribunal against a requirement of a decision notice, even if it consented to a change in the action required by the third preliminary notice (under subsection (4)(b)).

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

“The relevant persons” is defined as in section 142 M (as the target of the restructuring powers, the ring-fenced body (if not the target) and any other authorised person who may be significantly affected). The same definition applies for section 142N.