Financial Services (Banking Reform) Bill

Government annotated amendments: Provisions for pension liabilities of ring-fenced bodies (clause 4, sections 142W and 142X)

142W Pension liabilities

(1A)The Treasury may by regulations require a ring-fenced body to make arrangements for any one or more of the following purposes —

(a) ensuring that, except in prescribed cases, the ring-fenced body cannot become liable to meet, or contribute to the meeting of, pension liabilities which arise in connection with persons' service on or after a date specified in the regulations ("the specified date") in any employment, other than service in an employment in respect of which the employer is a ring-fenced body;

This paragraph gives the Treasury the power to make regulations requiring ring-fenced banks to take action to ensure that they are not liable for any pension liabilities arising from work, on or after the date specified in the regulations, unless the work is for a ring-fenced bank.(It is intended that the date specified in the regulations will be the date of ring-fencing. This paragraph therefore deals with pension liabilities arising from work *after* ring-fencing.)

(b) ensuring that, except in prescribed cases, the default of a person other than another ring-fenced body would not result in the ring-fenced body becoming liable to meet, or contribute to the meeting of, pension liabilities arising in connection with persons' service in any employment before the specified date;

This paragraph gives the Treasury the power to make regulations requiring ring-fenced bodies to take action to ensure that, in the event of the default of a non-ring-fenced body, they cannot become liable for pensions liabilities arising from service before the date specified in the regulations. (It is intended that the date specified in the regulations will be the date of ring fencing. This paragraph therefore deals with pension liabilities arising from work *prior* to ring-fencing.)

(c) to the extent that it is not possible to ensure the result mentioned in paragraph (a) or (b), minimising any potential liability falling within paragraph (a) or (b).

If it is not possible for a ring-fenced bank to make arrangements to prevent such liabilities or potential liabilities, the regulations can require ring-fenced banks to minimise them as much as possible.

(1B) The regulations may make provision enabling the trustees or managers of a relevant pension scheme in respect of which the employer or one of the employers is a ring-fenced body—

(a) to transfer to another relevant pension scheme part of the pension liabilities arising in connection with persons' service before the specified date together with part of the assets of the scheme, or

(b) to divide the scheme into two or more sections in relation to which prescribed conditions are met.

This subsection ensures that the regulations made by the Treasury may give trustees and managers of pension schemes additional powers to transfer liabilities and assets to a separate scheme, or to divide an existing scheme. This is intended to ensure that trustees are able to carry out the restructuring required to ensure that their pension liabilities are separated from those of non-ring-fenced banks.

(1C) The regulations may make provision—

(a) enabling a ring-fenced body to apply to the court in a case where the ring-fenced body has been unable to reach agreement with another person ("P") about the making of arrangements with that person on commercial terms for one or more of the purposes in subsection (1A), and

(b) enabling the court on such an application to order P to enter into arrangements with the ring-fenced body for those purposes on such terms as the court considers fair and reasonable in the circumstances.

Under subsection (1A), the regulations may require the ring-fenced bank to make arrangements to release themselves from any liabilities they may have in relation to the pension schemes of other bodies, which may arise where, for example, a ring-fenced body has guaranteed the liabilities of a non-ring-fenced body to its pension scheme.

Subsection (1C) provides that the regulations may make provision allowing ring-fenced bodies to apply to the court if they are unable to reach agreement with any person (such as the beneficiary of a guarantee given by the ring-fenced bank) about arrangements to release themselves from any such liability on commercial terms, and enabling the court to set the terms for the release of the ring-fenced body, providing those terms are fair and reasonable. This provides a mechanism enabling the ring-fenced bank to comply with its obligations under the regulations to prevent or minimise pension liabilities arising, even if other parties to agreements with the bank are not willing to release it from the pensions liabilities which are the subject of those agreements. The ability of the court to order another party to release a ring-fenced body from, e.g., guarantees or contractual arrangements on fair and reasonable terms prevents the other party from forcing the ring-fenced bank to pay more than it otherwise would have to in order to secure release.

(1D) The regulations must provide that any terms specified by the court by virtue of provision made under subsection (1C) —

(a) must be terms which, in the court's opinion, represent terms on which the arrangements might be entered into if they were being entered into for commercial reasons between willing parties dealing at arm's length, and

(b) may involve the payment of any sum by instalments.

Subsection 1D requires the regulations to provide that if the court orders a third party to release a ring-fenced bank from potential pension liabilities on certain terms, the the terms must terms which the court considers would be entered into if both parties were willing to enter into the deal for ordinary commercial reasons (ignoring the fact that the ring-fenced body will be required by law to prevent or minimise its pension liabilities to non-ring-fenced bodies). The regulations must also provide that the court may require payment (such as a payment by the ring-fenced body for its release from any pension liabilities) to be made by instalments.

(1E) The regulations may make other provision—

(a) about the making by a ring-fenced body of arrangements for one or more of the purposes in subsection (1A);

(b) about any transfer or division falling within subsection (1B).

This subsection allows the Treasury to make other provisions in the regulations about the steps banks must take for the purposes of subsection (1A), or about any transfer or division of the pension schemes made by the trustees/scheme managers within subsection (1B).

(3) The regulations may in particular—

This is a non-exhaustive list of provisions that may be included in the secondary legislation.

(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;

The Government anticipates that splitting or segregating pension schemes will be the most likely method for achieving the economic independence of RFBs in relation to their pension liabilities. This may involve an RFB departing from a

multi-employer scheme and either joining an existing scheme or setting up a new scheme, or arranging for the segregation of a multi-employer scheme so that it cannot become liable for pension liabilities allocated to other sections of the scheme.

(d) provide that any provision of a relevant pension scheme that might prevent the making of 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;

A pension scheme may include provisions which prevent the making of the arrangements to prevent or minimise pension liabilities to ring fenced banks. The regulations will be able to provide that such a provision is not to have effect, unless it is a provision requiring the consent of the trustees or managers of the scheme. Such provisions are dealt with separately, under the next paragraph.

(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 the arrangements to be made;

Trustees/managers may not currently have the power under the terms of their pension scheme to change the terms of the scheme. Under this paragraph, the Treasury could give them the power to modify the scheme, but only with the consent of the relevant employers.

( ) require the trustees or managers of a relevant pension scheme or any employer in relation to a relevant pension scheme to give notice of specified matters to specified persons;

The Treasury may wish to require the trustees, managers, or employers of a scheme to notify scheme members, or other persons affected by the restructuring of pension schemes, of any changes made during restructuring.

(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 arrangements to be made, to order that the step may be taken without that consent;

Paragraph (f) allows the regulations to provide for the employer to make an application to the court to bypass trustee consent for any step taken to enable separation, if the trustees are withholding consent unreasonably.

(h) confer exemptions 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;

Paragraph (j) allows the Treasury to enable the PRA to penalise any contravention of the regulations using the disciplinary powers available to them under FSMA. This means that the regulator may impose financial penalties on the RFB, or expose it to public censure.

( ) modify, exclude or apply (with or without modification) any primary or subordinate legislation.

The power allows the Treasury regulations to modify, exclude or apply any legislation (including primary legislation) for the purposes of the regulations. For example, the Treasury would be able to modify a legislative requirement (such as a requirement to obtain consent of scheme members to a modification of the scheme) if the requirement concerned would make it impossible for the ring-fenced body to comply with its obligations under the regulations.

(3A) The Treasury may by regulations require an authorised person who will or may be a ring-fenced body or an authorised person who will or may be the member of a ring-fenced body's group to do all it can to obtain from the Pensions Regulator a clearance statement in relation to any arrangements to be made for the purpose of complying with —
(a) regulations under this section, or
(b) any provision made by or under this Part (other than this section) when the provision comes into force.

This subsection allows the Treasury to require an authorised person who is or may be ring-fenced, and any authorised member of a group that will or may contain a ring-fenced body, to submit any arrangements they propose to make to comply with the regulations (or to comply with the ring-fencing obligations imposed in Part 9B of FSMA) to the Pensions Regulator for consideration by that regulator and to do all they can to obtain a clearance statement by, for example, satisfying any mitigation arrangements proposed by the Regulator to safeguard the interests of members of the pension scheme as a condition of giving such a statement.

(4) A "clearance statement" is a statement issued by the Pensions Regulator under any of the following provisions —
(a) section 42 of the Pensions Act 2004 (clearance statement relating to a 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).

This subsection defines a 'clearance statement' (referred to in subsection (3A) as a clearance statement issued by the Pensions Regulator under existing pension law.

(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.

In relation to the pension liabilities of RFBs that are non PRA-authorised persons, the regulations can give the FCA powers and can provide that a RFB which breaches requirements of the regulations is to be taken to have breached a requirement imposed by the FCA under FSMA.

(6) Regulations under this section 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.

RFBs will have until at least 2026 to ensure they have made the arrangements necessary to comply with the regulations. However, the Treasury may require preparatory steps to be taken earlier than this.

142X Further interpretive provisions for section 142W

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

(1A) "Relevant pension scheme" means an occupational pension scheme that is not a money purchase scheme.

(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, "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.

(3A) "Employer", in relation to a relevant pension scheme, means—

(a) a person who is for the purposes of Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995 an employer in relation to the scheme, and

(b) any other person who has or may have any liability under the scheme.

(3B) "Employment" 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.

(3C) "Pension liabilities" means liabilities attributable to or associated with the provision under a relevant pension scheme of pensions or other benefits.

(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.

This new section defines 'relevant pension scheme', 'occupational pension scheme', 'money purchase scheme', 'employer', 'employment', 'pension liabilities' and 'the court' for the interpretation of new section 142W.

A 'relevant pension scheme' is a scheme that is not a money purchase scheme, also known as a defined contribution scheme.