

Financial Services (Banking Reform) Bill

Government annotated amendments: FCA and PRA rule making powers over parent undertakings

Clause 4

Page 9, line 27, at end insert “and of any rules made by it under section 192JA (rules applying to parent undertakings of ring-fenced bodies)”.

The PRA will have to report on any rules it makes that apply to parent undertakings.

Before Clause 13

Insert the following new Clause –

“Power of FCA and PRA to make rules applying to parent undertakings

(1) After section 192J of FSMA 2000 insert –

“Rules applying to parent undertakings of ring-fenced bodies

192JA Rules applying to parent undertakings of ring-fenced bodies

(1) The appropriate regulator may make such rules applying to bodies corporate falling within subsection (2) as appear to the regulator to be necessary or expedient for the group ring-fencing purposes.

This gives the regulator the power to make rules applying to parent undertakings of ring-fenced bodies to enforce the group ring-fencing purposes, which are set out in section 142H(4) of the Bill, which are concerned with ensuring the independence of the ring-fenced bank from the rest of its group.

(2) A body corporate falls within this subsection if –

- (a) it is incorporated in the United Kingdom or has a place of business in the United Kingdom,
- (b) it is a parent undertaking of a ring-fenced body, and
- (c) it is not itself an authorised person.

This describes which entities the regulator may make rules for. They will be UK companies, or at least have a place of business in the UK, and they will not be authorised persons.

(3) The “group ring-fencing purposes” are the purposes set out in section 142H(4).

(4) “The appropriate regulator” means.

- (a) in relation to the parent undertaking of a ring-fenced body that is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.

Where the parent undertaking in question is the parent undertaking of a qualifying authorised person who is authorised by the PRA, then this power may be exercised by either the PRA or the FCA.

Where this is not the case (i.e. where the qualifying authorised person is not authorised by the PRA), the FCA is the appropriate regulator.

Rules requiring parent undertakings to facilitate resolution

192JB Rules requiring parent undertakings to facilitate resolution

(1) The appropriate regulator may make rules requiring a qualifying parent undertaking to make arrangements that would in the opinion of the regulator allow or facilitate the exercise of the resolution powers in relation to the qualifying parent undertaking or any of its subsidiary undertakings in the event of a situation arising where all or part of the business of the parent undertaking or the subsidiary undertaking encounters or is likely to encounter financial difficulties.

This provision will enable the appropriate regulator (the PRA or the FCA as the case may be) to make rules applying to qualifying parent undertakings to assist the resolution authorities (the Treasury and the Bank of England) to exercise their resolution powers in relation to either the parent undertaking or any of its subsidiary undertakings if the business of that group runs into financial difficulty.

- (2) The “resolution powers” are –
- (a) the powers conferred on the Treasury and the Bank of England by or under Parts 1 to 3 of the Banking Act 2009, and
 - (b) any similar powers exercisable by an authority outside the United Kingdom.

This defines “resolution powers” as the powers conferred on the Treasury and the Bank of England in Parts 1 to 3 of the Banking Act 2009, or equivalent powers of authorities outside the United Kingdom.

The relevant powers in the Banking Act 2009 are those to effect the stabilisation options in that Act (which, if Government amendments [32] and [[75] to this Bill are accepted, will also include the new bail-in stabilisation option) or to put the bank into the bank insolvency procedure (BIP) or bank administration procedure (BAP).

Extending the definition to include similar powers exercisable by foreign authorities will allow the regulator to make rules relating to a qualifying parent undertaking in order to assist an overseas regulator in exercising powers equivalent to the resolution powers set out in the Banking Act 2009.

- (3) The arrangements that may be required include arrangements relating to –

This is a non-exhaustive list specifying examples of the arrangements the qualifying parent undertaking may be required to make.

- (a) the issue of debt instruments by the parent undertaking;

The arrangements may include measures to ensure that qualifying parent undertakings have sufficient loss absorbing securities (debt or equity) issued to the market to ensure that the bank (and other relevant subsidiaries) can be resolved together in an orderly manner. This is necessary as the regulated subsidiaries may wish to meet their debt requirement through debt issued internally to the qualifying parent undertaking. If this is done the qualifying parent undertaking will itself need issue a sufficient amount of debt to the market to cover this.

- (b) the provision to a subsidiary undertaking ("S") or a transferee by the parent undertaking, or by any other subsidiary undertaking of the parent undertaking, of such services and facilities as would be required to enable S or the transferee to operate the business, or part of the business, effectively.

Rules made in exercise of this power are intended, among other things, to ensure that banks (and other relevant regulated entities) can be resolved in an orderly manner, for example, by ensuring regulated subsidiaries may be separated from the rest of the group, if part of the business of the group fails. It may be necessary for a subsidiary which has been transferred to another person through the use of powers under the Banking Act 2009 to continue to receive operational services from another company in the failed group. These powers are necessary as the regulated subsidiaries may not be in a position of control in relation to, for example, group companies who provide services to the regulated entity concerned (for example, where the service company is wholly owned by the parent undertaking and not the regulated entity).

- (4) In subsection (3)(b) "transferee" means a person to whom all or part of the business of the parent undertaking or the subsidiary undertaking could be transferred as a result of the exercise of the resolution powers.

"Transferee" includes any person that could, as a result of the exercise of the resolution powers, have all or part of the business of either the parent undertaking or the subsidiary undertaking transferred to them, for example a commercial purchaser.

- (5) "Debt instrument" has the same meaning as in section 142Y.

- (6) "The appropriate regulator" means –

- (a) where the subsidiary undertakings of the qualifying parent undertaking include a ring-fenced body that is a PRA-authorised person, the PRA;

In all cases where the qualifying parent undertaking has a subsidiary that is a ring-fenced body which is authorised by the PRA, this power is exercisable by the PRA (initially all ring-fenced bodies are expected to be PRA authorised bodies).

- (b) where the subsidiary undertakings of the qualifying parent undertaking include one or more PRA-authorised persons but do not include any authorised person that is not a PRA-authorised person, the PRA;

Where the parent undertaking in question is the parent undertaking only of subsidiaries which are PRA-authorised persons, then this power may be exercised by the PRA.

- (c) where the subsidiary undertakings of the qualifying parent undertaking do not include any PRA-authorised person, the FCA;

Where the parent undertaking in question only holds subsidiary undertakings which are not PRA-authorised persons, but are authorised persons, then this power may be exercised by the FCA.

- (d) in any other case, the PRA or the FCA."

In any other case (i.e. where the parent undertaking does not hold a ring-fenced body, but holds any other combination of subsidiary undertakings where one or more is a PRA-authorised person and one or more is an authorised person but not a PRA-authorised person) then the power is exercisable by either the PRA or the FCA.

- (2) In section 192K of FSMA 2000 (power to impose penalty or issue censure) –
 - (a) in subsection 1, after "section 192J" insert "or 192JB", and

This extends Section 192K of FSMA 2000 to include this new rule-making power. The effect of this is to give the PRA a power to fine or censure a qualifying parent undertaking in the event of a breach of a rule made under this Section.

- (b) after that subsection insert –

(1A) This section also applies if a regulator is satisfied that a person who is or has been a parent undertaking of a ring-fenced body ("P") has contravened a provision of rules made by that regulator under section 192JA."

This extends the PRA's power to fine or censure a parent undertaking under 192K of FSMA 2000 to instances where the rules in relation to group ring-fencing purposes have been contravened by a parent undertaking of a ring-fenced body.