

DRAFT STATUTORY INSTRUMENTS

2014 No. *

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Banking Reform
Pensions) Regulations 2014**

Made - - - -

Coming into force - -

1st January 2015

The Treasury, in exercise of the powers conferred by sections 142W and 428(3) of the Financial Services and Markets Act 2000(a) make the following Regulations.

In accordance with section 429(2) of the Financial Services and Markets Act 2000(b), a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Banking Reform Pensions) Regulations 2014.

(2) These Regulations come into force on 1st January 2015.

(3) In these Regulations—

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

“the 2004 Act” means the Pensions Act 2004(c);

“the 1995 Northern Ireland Order” means the Pensions (Northern Ireland) Order 1995(d);

“the 2005 Northern Ireland Order” means the Pensions (Northern Ireland) Order 2005(e);

“the due date” in relation to a ring-fenced body means the date on which the requirements under regulation 2(2), (5) and (6) first apply to it;

“existing pension scheme” means a multi-employer scheme in relation to which the ring-fenced body is an employer;

“multi-employer scheme” means a relevant pension scheme in relation to which there is more than one employer;

(a) 2000 c.8. Sections 142A to 142Z1 were inserted into the Financial Services and Markets Act 2000 (c.8) by the Financial Services (Banking Reform) Act 2013 (c.33), section 4.

(b) Regulations made in accordance with section 142W Financial Services and Markets Act 2000 (c.8) were made subject to section 429(2) of that Act by the Financial Services (Banking Reform) Act 2013 (c.33), section 136.

(c) 2004 c.35.

(d) S.I. 1995/3213 (N.I. 22).

(e) S.I. 2005/255 (N.I. 1).

“the Pensions Regulator” means the body corporate established under section 1 of the 2004 Act;

“the relevant date” in relation to a ring-fenced body means the date on which section 142G of the Act first applies to it;

“scheme rules”, in relation to a scheme, has the same meaning as in section 67A of the Pensions Act 1995(a) or Article 67A of the 1995 Northern Ireland Order(b);

“segregated scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or to that member’s section; and
- (b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;

“shared liability arrangement” means an arrangement under which—

- (a) the ring-fenced body provides a guarantee, indemnity or bond in respect of pension liabilities of any company which is not—
 - (i) an employer in relation to a multi-employer scheme which meets condition A in regulation 2(3); or
 - (ii) an employer in relation to a section of a segregated scheme which meets condition B in regulation 2(4); or
- (b) the ring-fenced body is or may otherwise become liable for the whole or part of the pension liabilities of any company which is not—
 - (i) an employer in relation to a multi-employer scheme which meets condition A in regulation 2(3); or
 - (ii) an employer in relation to a section of a segregated scheme which meets condition B in regulation 2(4);

“survivor” means, in relation to a member of an existing pension scheme, a person who—

- (a) is the widow, widower or surviving civil partner of a member; or
- (b) has survived a member and has an entitlement to a benefit, or right to future benefits, under the rules of that existing pension scheme in respect of the member.

Requirements on ring-fenced bodies

2.—(1) The requirements in paragraphs (2), (5) and (6) shall apply to a ring-fenced body from—

- (a) 1st January 2026; or
- (b) if later, the date five years after the day on which the body became a ring-fenced body.

(2) No ring-fenced body may, after its due date, be an employer in relation to a multi-employer scheme unless either condition A in paragraph (3) or condition B in paragraph (4) is satisfied.

(3) Condition A is that the only other employers in relation to that scheme are—

- (a) wholly-owned subsidiaries of the ring-fenced body;
- (b) other ring-fenced bodies in the same group as the ring-fenced body; or
- (c) wholly-owned subsidiaries of a ring-fenced body which is an employer in relation to the scheme in accordance with sub-paragraph (b).

(4) Condition B is that the scheme is a segregated scheme, and—

- (a) the ring-fenced body is the only employer in relation to its section of the scheme; or
- (b) the only other employers in relation to that section are—

(a) 1995 c.26. Section 67A was substituted by the Pensions Act 2004 (c.35), section 262.

(b) S.I. 1995/3213 (N.I. 22). Article 67A was substituted by the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), Article 239.

- (i) wholly-owned subsidiaries of the ring-fenced body;
- (ii) other ring-fenced bodies in the same group as the ring-fenced body; or
- (iii) wholly-owned subsidiaries of a ring-fenced body which is an employer in relation to the scheme in accordance with sub-paragraph (b)(ii).

(5) No ring-fenced body may, after its due date, continue to be, or become, a party to a shared liability arrangement.

(6) No ring-fenced body may, after its due date, continue to be, or become, a party to an arrangement under which it is liable for the whole or part of the pension liabilities of its wholly-owned subsidiary, or a wholly-owned subsidiary of a ring-fenced body which is in the same group as the ring-fenced body, unless the liabilities in question relate to a multi-employer scheme which satisfies condition A in paragraph (3) or condition B in paragraph (4).

(7) Where—

- (a) a ring-fenced body, at the relevant date, is party to a shared liability arrangement; and
- (b) one or more of the other parties to the arrangement in question has refused to release the ring-fenced body from the shared liability arrangement, or will only grant release on terms which the ring-fenced body cannot reasonably be expected to meet,

the ring-fenced body may apply to the court for an order under regulation 6(1).

(8) A ring-fenced body which is a party to a shared liability arrangement after its due date does not contravene paragraph (5) if—

- (a) the ring-fenced body has made an application to the court under paragraph (7), and either—
 - (i) that application is still pending before the court; or
 - (ii) an order made under regulation 6(1) has yet to come into force; or
- (b) the other party to the shared liability arrangement is an overseas company and—
 - (i) the arrangement was entered into before the 1st January 2015; and
 - (ii) the ring-fenced body has used its best endeavours to obtain its release from the arrangement.

(9) For the purposes of paragraph (8), “overseas company” means a company incorporated outside the United Kingdom.

Trustee and manager powers

3.—(1) On the request of a ring-fenced body the trustees or managers of an existing pension scheme may by resolution make any of the modifications to that scheme set out in paragraph (2) for the purpose of enabling the ring-fenced body to comply with the requirement in regulation 2(2).

(2) The modifications which may be made under a power given to the trustees or managers in paragraph (1) are—

- (a) the restructuring of the existing pension scheme into a segregated scheme;
- (b) the allocation of assets and liabilities of the scheme to separate sections of the scheme;
- (c) provision for the transfer of assets and liabilities to a new pension scheme;
- (d) making modifications of the scheme which are consequential on, or incidental to, the modifications made in sub-paragraphs (a) to (c).

(3) No modification may be made under this regulation without the consent of the employers in relation to the existing pension scheme.

(4) Nothing in this regulation gives the trustees or managers of an existing pension scheme a power to make a regulated modification.

(5) For the purposes of paragraph (4) “regulated modification” has the same meaning as in section 67A of the Pensions Act 1995 or Article 67A of the 1995 Northern Ireland Order.

(6) Where one or more of the trustees or managers of an existing pension scheme unreasonably refuse to resolve to modify the scheme, or one or more of the employers in relation to that scheme unreasonably refuse to consent to the modification of the scheme in accordance with this regulation, the ring-fenced body may apply to the court for an order under regulation 6(4).

Applications for clearance

4. A ring-fenced body must apply for a clearance statement and must comply with any request for information made by the Pensions Regulator which in its view is required in order for it to consider whether to grant a clearance statement in relation to—

- (a) any corporate restructuring or other arrangements to which the ring-fenced body is a party which is proposed in order to enable the ring-fenced body to comply with the requirements set out under Part 9B of the Act^(a); and
- (b) any arrangements which the ring-fenced body proposes to make in order to comply with the requirement in regulation 2(2),

before entering into those arrangements.

Information to members and survivors

5.—(1) The trustees or managers of an existing pension scheme must provide information in accordance with paragraph (2) when any modifications are being proposed in relation to the existing pension scheme for the purposes of enabling a ring-fenced body to comply with the requirement in regulation 2(2) to—

- (a) any member of that scheme; and
- (b) any survivor of a member of that scheme.

(2) That information must explain—

- (a) the nature of the modifications being proposed; and
- (b) what, if any, effect the modifications may have on the rights of members.

(3) Nothing in this regulation affects the application of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013^(b) or the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014^(c).

Applications to court

6.—(1) The court may, on the application of the ring-fenced body under regulation 2(7), by order require any other party to a shared liability arrangement to enter into an arrangement releasing the ring-fenced body from liability under the shared liability arrangement (“release arrangement”) on the terms offered by the ring-fenced body, provided that the court is satisfied that those terms—

- (a) are commercial terms; and
- (b) are fair and reasonable in all the circumstances.

(2) “Commercial terms” are terms which, in the court’s opinion, represent terms on which a release arrangement might be entered into if it was being entered into for commercial reasons between willing parties dealing at arms’ length.

(3) The court may vary the terms proposed by the ring-fenced body for a release arrangement where the court considers that this is necessary to satisfy the conditions set out in sub-paragraphs (a) and (b) of paragraph (1), and may in particular require the payment of any sum by instalments.

(a) Part 9B was inserted into the Financial Services and Markets Act 2000 (c.8) by the Financial Services (Banking Reform) Act 2013 (c.33), section 4.
(b) S.I. 2013/2734.
(c) S.R. 2014 No. 79.

(4) The court may, on the application of the ring-fenced body under regulation 3(6), provide that the resolution of one or more of the trustees or managers of an existing pension scheme or the consent of one or more of the employers in relation to that scheme is not required to give effect to the modification which is the subject of the application.

(5) The court may only make an order under paragraph (4) where it is satisfied that the refusal of the trustee or manager in question to resolve, or the employer in question to give its consent, is unreasonable.

Breach of the Regulations

7.—(1) A ring-fenced body which contravenes any of the requirements set out in these Regulations is to be taken to have contravened a requirement imposed on the body by the appropriate regulator.

(2) The contravention does not—

- (a) make a person guilty of an offence;
- (b) make a transaction void or unenforceable; or
- (c) give rise to any right of action for breach of statutory duty.

(3) For the purpose of this regulation “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.

Functions of the PRA

8. The PRA must—

- (a) monitor the compliance of ring-fenced bodies with the requirements set out in these Regulations, and
- (b) take any measures it considers appropriate to ensure that ring-fenced bodies comply with these Regulations.

Discretion of the Pensions Regulator

9.—(1) Nothing in these Regulations, or under Part 9B of the Act, shall restrict the discretion of the Pensions Regulator in deciding whether to—

- (a) grant an application for a clearance statement;
- (b) exercise its powers under section 38, 43 or 47 of the 2004 Act^(a) or Article 34, 39 or 43 of the 2005 Northern Ireland Order^(b).

(2) Regulation 2(5) does not apply in relation to any liability or obligation imposed by the Pensions Regulator in the exercise of the powers listed in paragraph (1)(b).

[Name]

[Name]

[Date]

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2000 c.35. Section 38 was amended by the Pensions Act 2008 (c.30), sections 126 and 148 and the Pensions Act 2011 (c.19), section 26. Section 43 was amended by the Pensions Act 2011, section 26.

(b) S.I. 2005/255 (N.I. 1). Article 34 was amended by the Pensions (No. 2) Act (Northern Ireland) 2008 (2008 c. 13 (N.I.)), paragraphs 2(1), 7 and 8(1) of Schedule 8 and Schedule 10 and the Pensions Act (Northern Ireland) 2012 (2012 c. 3 (N.I.)), section 24(1) to (3). Article 39 was amended by the Pensions Act (Northern Ireland) 2012, section 24(4) to (6).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 9B of the Financial Services and Markets Act 2000 (c.8) (“the Act”) which provides for the ring-fencing of core banking activities. Certain banks carrying on core banking activities will be required to be ring-fenced. These ring-fenced bodies will be subject to requirements intended to ensure that they are capable of carrying on the business of providing the core services related to the acceptance of deposits independently of other members in their group. These Regulations impose requirements in relation to the pension liabilities of ring-fenced bodies.

Regulation 2 restricts the form of multi-employer pension scheme a ring-fenced body may enter or remain in. Regulation 2 also provides that a ring-fenced body is subject to restrictions on arrangements concerning pension liabilities which are shared with other parties. A ring-fenced body may seek a court order releasing it from a shared liability arrangement on commercial terms where that cannot be reached through negotiations between the parties.

Regulation 3 empowers the trustees or managers of a multi-employer pension scheme in relation to which a ring-fenced body is an employer to resolve to modify the scheme, with the consent of the employers of that scheme, in order for the ring-fenced body to meet its requirements under these Regulations. Where the trustees or managers of a scheme unreasonably refuse to modify it, or any employers unreasonably refuse to give their consent to the modifications, the ring-fenced body may apply to the court for an order removing those obstacles to the modification of that scheme.

Regulation 4 requires that where a ring-fenced body is party to a proposed corporate restructuring or other arrangement for the purposes of meeting its obligations as a ring-fenced body under the Act, or it proposes to make any arrangements in order to comply with the requirements in regulation 2(2), it must apply to the Pensions Regulator for a clearance statement in relation to its pension arrangements.

Regulation 5 requires the trustees or managers of a pension scheme for which a modification is being proposed to provide information on the proposal to scheme members and to persons entitled to benefits as survivors to members of the scheme.

Regulation 6 provides for the applications which a ring-fenced body may make to the court in accordance with regulation 2(7) (release from a shared liability arrangement) and regulation 3(6) (modification of an existing pension scheme).

Regulation 7 provides that a breach of these Regulations is to be treated as a breach of a requirement imposed on the ring-fenced body by its regulator under the Act.

Regulation 8 provides for compliance with these Regulations to be enforced by the Prudential Regulation Authority.

Regulation 9 clarifies that nothing in these Regulations affects the powers of the Pensions Regulator to grant clearance statements, issue contribution notices, or issue financial support directions.

An Impact Assessment of the effect of these Regulations on the costs of business and the voluntary sector has been prepared and is available on HM Treasury’s website (www.gov.uk/treasury) or from the HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for these Regulations.