These notes refer to the Finance Act 2012 (c.14) which received Royal Assent on 17 July 2012

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 221: Tax Consequences of Financial Sector Regulation

Summary

1. Section 221 introduces a new power allowing HM Treasury to make Regulations to deal with the tax and stamp duty consequences arising from new types of regulatory capital securities.

Details of the Section

2. Subsection (1) introduces the power and explains that it can be applied to deal with the tax consequences in relation to securities in consequence of any regulatory requirements imposed by EU legislation or other enactments that affect persons who are authorised under the Financial Services Management Act 2000 (FSMA) or their parent undertakings.

3. Subsection (2) provides examples of the way in which the power might be exercised.

4. Subsection (3) ensures that references to enactments, EU legislation or documents in regulations made under the power may automatically be updated to reflect any subsequent amendments to enactments, EU legislation, documents or provisions referred to in the regulations.

5. Subsection (4) sets out the type of changes that may be made to the taxation of securities by regulations made under this power.

6. Subsections (5) and (6) provide that regulations made under the power will be made by Statutory Instrument and must be approved in draft by a resolution of the House of Commons (known as the draft affirmative procedure).

7. Subsection (7) provides definitions of various terms used within this provision.

Background Note

8. Basel III is a comprehensive set of reform measures developed by the Basel Committee on Banking Supervision, designed to strengthen the regulation, supervision and risk management of the banking sector in response to the financial sector crisis.

9. The Basel III proposals will be implemented into EU law through changes to the existing Capital Requirements Directive, referred to as CRD 4. These will include an EU Regulation (CRR) and an EU Directive (CRD) which will be implemented through national law. These changes are due to commence from 1 January 2013.

10. In response to these changes financial institutions will have to issue new forms of capital that meet the conditions required for regulatory capital. This new power allows HM Treasury to make Regulations that set out the tax and stamp duty treatment of such securities, providing financial institutions with certainty and clarity of tax treatment.

11. The new power is not limited to Basel III securities it will also allow HM Treasury to make Regulations in respect of the tax consequences in relation to securities issued by authorised persons under FSMA 2000 under other regulatory regimes imposed by UK or EU legislation.