



EXPLANATORY NOTES

Bank of England and Financial Services Act 2016

Chapter 14

£10.00

BANK OF ENGLAND AND FINANCIAL SERVICES ACT 2016

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Bank of England and Financial Services Act 2016 (c. 14) which received Royal Assent on 4 May 2016.

- These Explanatory Notes have been prepared by the Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	4
Policy background	5
Legal background	9
Territorial extent and application	10
Commentary on provisions of Act	11
Part 1: The Bank of England	11
Section 1: Membership of court of directors	11
Section 2: Term of office of non-executive directors	11
Section 3: Abolition of Oversight Committee	11
Section 4: Functions of non-executive directors	11
Section 5: Financial stability strategy	11
Section 6: Financial Policy Committee: status and membership	12
Section 7: Monetary Policy Committee: membership	12
Section 8: Monetary Policy Committee: procedure	12
Section 9: Audit	12
Section 10: Activities indemnified by Treasury	13
Section 11: Examinations and reviews	13
Section 12: Bank to act as Prudential Regulation Authority	14
Section 13: Prudential Regulation Committee	14
Section 14: Accounts relating to Bank's functions as Prudential Regulation Authority	15
Section 15: Transfer of property etc to Bank	15
Section 16: Amendments relating to Part 1	15
Section 17: Saving and transitional provision relating to Part 1	19
Part 2: Financial Services	20
Section 18: Appointment of Financial Conduct Authority chief executive	20
Section 19: Treasury recommendations to Financial Conduct Authority	20
Section 20: Regulatory principles: diversity	20
Section 21: Extension of relevant authorised persons regime to all authorised persons	20
Section 22: Rules about controlled functions: power to make transitional provision	21
Section 23: Administration of senior managers regime	21
Section 24: Rules of conduct	21
Section 25: Misconduct	21
Section 26: Decisions causing a financial institution to fail: meaning of insolvency	22
Section 27: Enforceability of agreements relating to credit	22
Section 28: Enforceability of agreements made through unauthorised persons	22
Section 29: Illegal money lending	22
Section 30: Money laundering	23
Section 31: Transformer vehicles	23
Section 32: Pensions guidance	24
Section 33: Advice about transferring or otherwise dealing with annuity payments	24
Section 34: Independent advice on conversions and transfers of pension benefits: appointed representatives	24

Section 35: Early exit pension charges	25
Section 36: Duty of Bank to provide information to Treasury	25
Section 37: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001	25
Part 3: Miscellaneous and General	26
Section 38: Banks authorised to issue banknotes in Scotland and Northern Ireland	26
Section 39: Consequential provision	26
Section 40: Extent	26
Section 41: Commencement	26
Section 42: Short title	26
Commencement	27
Related documents	27
Annex A - Territorial extent and application	29
Annex B - Hansard References	30
Annex C - Progress of Bill Table	31

Overview of the Act

- 1 The Bank of England and Financial Services Act 2016 amends governance and accountability arrangements at the Bank of England ("the Bank"), makes provision in relation to the Prudential Regulation Authority ("PRA") and the Financial Conduct Authority ("FCA"), expands the scope of and make changes to the Senior Managers and Certification Regime, makes provision for the enforceability of credit agreements, makes provision in relation to funding the teams that take action against illegal money lending, makes provision concerning the transposition of Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("the Directive"), and for the FCA to issue guidance in relation to the definition of 'politically exposed persons', requires the FCA to make rules preventing specified charges being imposed on members of pension schemes who wish to take their benefits before their retirement date, gives the Treasury power to make regulations in relation to transformer vehicles, permits the extension of the Government's Pension Wise service, makes provision about the Bank sharing information with the Treasury about resolution planning, and allows for some flexibility to change which legal entities are authorised to issue commercial banknotes in Scotland and Northern Ireland.
- 2 Part 1 of the Act makes provision in relation to the governance of the Bank. It makes the Deputy Governor for markets and banking a member of the court of directors, the Monetary Policy Committee ("MPC"), the Financial Policy Committee ("FPC"), and the new Prudential Regulation Committee ("PRC"), and gives the Government power to make further changes to the membership of the court of directors by secondary legislation. It gives the Bank's oversight functions to the court of directors and makes the FPC a committee of the Bank, rather than a sub-committee of the court. It reduces the required number of annual MPC meetings and provides for faster publication of minutes relating to those meetings.
- 3 Part 1 also gives the Comptroller and Auditor General power to carry out examinations of the economy, efficiency and effectiveness with which the Bank uses its resources ("value for money" examinations). This includes Bank companies and subsidiaries of the Bank. Part 1 also gives the Treasury power to carry out value for money reviews of the prudential regulation functions of the Bank.
- 4 Part 1 ends the status of the PRA as a subsidiary of the Bank, instead providing that the PRA is the Bank of England and creating a new Bank committee to be known as the Prudential Regulation Committee, with responsibility for the Bank's functions as the PRA.
- 5 Part 2 amends the Financial Services and Markets Act 2000 ("FSMA") by requiring that the term of office of the person appointed by the Treasury as the chief executive of the FCA may not start until the person has appeared before the Treasury Select Committee. Part 2 also gives the Treasury power to make recommendations to the FCA, and amends the regulatory principles which apply to the FCA and the PRA. In addition, Part 2 also extends the Senior Managers and Certification Regime to all firms which are authorised to provide financial services under FSMA, and amends the definition of "misconduct" applicable to senior managers so that, where there has been a regulatory contravention in an area for which they are responsible, senior managers no longer have to prove that they have taken reasonable steps to prevent that contravention to avoid being found guilty of misconduct. It will be necessary for the regulators to prove that a senior manager has not taken such steps before they can bring disciplinary proceedings against a senior manager on this ground.
- 6 Part 2 also clarifies the circumstances in which agreements relating to credit are enforceable and amends the circumstances in which credit agreements made through unauthorised persons are unenforceable. Part 2 amends FSMA by giving the Treasury the power to provide

financial assistance for the purpose of taking action against illegal money lending and requires the FCA to make rules imposing a levy on authorised persons to recover the cost of financial assistance. It also requires the Secretary of State to ensure that appropriate attention is given to specified provisions in the Directive when it is transposed. It also introduces an obligation for the FCA to issue guidance in relation to the definition of politically exposed persons, and gives the Secretary of State power to make regulations both in relation to that guidance, and providing for the handling of complaints in relation to the way in which regulated entities have implemented provisions about politically exposed persons. Part 2 gives the Treasury power to make regulations relating to transformer vehicles, which are used in transactions related to insurance linked securities.

- 7 Part 2 also extends the remit of the Government's Pension Wise service to holders of annuities specified by the Treasury so that it can deliver guidance to pensioners who will be eligible to sell their annuity income stream in 2017, and requires the FCA to make rules ensuring that those wishing to transfer a right to payments under an annuity have received appropriate advice before doing so where the annuity in question falls within a class specified in regulations made by the Treasury. In addition, the Act ensures that appointed representatives of authorised persons may give advice satisfying the requirements of the Pension Schemes Act 2015 as to the advice which people must have received before they can convert and transfer safeguarded benefits. Currently only firms which are authorised persons under FSMA in their own right may give such advice. The Act also requires the FCA to make rules preventing specified charges being imposed on members of FCA-regulated pension schemes who take their pension benefits at age 55 or after, but before their expected retirement age.
- 8 Part 2 imposes a duty on the Bank to provide information to the Treasury when firms' resolution strategies are developed or updated. It also gives the Treasury a power to request specified information supporting the Bank's assessment of public funds risks associated with the failure of a firm.
- 9 Part 3 gives the Treasury power to make regulations (with the consent of the Bank) which authorise a bank in the same group as an existing issuer to issue commercial banknotes in Scotland or Northern Ireland instead of the existing issuer.

Policy background

- 10 The Financial Services Act 2012 ("the 2012 Act") replaced the 'tripartite' system of financial regulation with a new system that put the Bank at the centre of the system, giving it a number of new responsibilities and powers. The 2012 Act gave the Bank responsibility for macro-prudential regulation through the establishment of the FPC. It also gave the FPC a key role in safeguarding the UK's financial stability by identifying, monitoring, and taking action to address systemic risks to the UK financial system. The 2012 Act also established the PRA as a subsidiary of the Bank. The PRA has specific responsibility for ensuring effective micro-prudential regulation of all deposit takers, insurers, and large investment firms.
- 11 The Act seeks to simplify further and strengthen the governance of the Bank and the PRA, and to increase the transparency and accountability of the Bank.
- 12 The Bank's governance model is determined by statute. The governing body, the court of directors ("the court"), is responsible for managing the affairs of the Bank, other than the formulation of monetary policy, and is accountable for the Bank's performance in relation to its objectives. The Government and the Bank have made continuous improvements to the court's structures and processes since 2012, most recently requiring minutes of its meetings to be published. A review commissioned by the Governor of the Bank into the Bank's practices

on transparency, particularly in relation to the work of the MPC, was carried out by Kevin Warsh. The report of that review, "Transparency and the Bank of England's Monetary Policy Committee" ("the Warsh Review"), was published on 11 December 2014. At the same time the Bank announced a number of other measures it wished to take to improve its transparency and accountability. This Act amends the Bank of England Act 1998 ("the 1998 Act") to enable the Bank to implement these measures, building on action the Bank has already taken.

- 13 The Act changes the membership of the court, adding an additional Deputy Governor, and assigns the oversight functions to the full court to enable the court to operate more like a unitary board. The 2012 Act established the FPC as a sub-committee of the court responsible for identifying, monitoring and taking action to address emerging risks and vulnerabilities across the UK financial system as a whole. By making the FPC a committee of the Bank, the Act simplifies the governance structure within the Bank, with all the policy committees established as committees of the Bank. The Act makes changes to the operation of the MPC, to implement the recommendations made by the Warsh Review.
- 14 The Act aims to strengthen the Bank's accountability to the public and to Parliament, by giving the Comptroller and Auditor General the power to initiate value for money studies in relation to the whole of the Bank, following consultation with the court.
- 15 The Act is also intended to clarify the responsibilities of the Bank for prudential regulation by transferring the PRA's functions to the Bank. The PRA's brand and objectives will remain unchanged and the Act contains safeguards to ensure that the Bank's functions as PRA must be operated independently from the Bank's resolution functions, to comply with EU legislation and the Basel Core Principles on Supervision. It also provides that any newly appointed chief executive of the FCA must have appeared before the Treasury Select Committee before taking up his or her appointment in recognition of the importance of the role of that Committee in scrutinizing appointments to this position at the FCA. It also amends the regulatory principles which apply to the FCA and the PRA.
- 16 The Bank has primary operational responsibility for resolving banks and other financial institutions when they fail. However, the Chancellor of the Exchequer and the Treasury have responsibility for any decision involving public funds. The Act seeks to enhance the powers of the Treasury to ensure that public funds are applied appropriately in a financial crisis by imposing new obligations on the Bank to provide the Treasury with information on proposed resolution options being considered by the Bank, and by enhancing the Treasury's powers to obtain additional information from the Bank in relation to the implications for public funds of the failure of a bank or other financial institution.

- 17 At present, the Approved Persons Regime (“APR”) in Part 5 of FSMA is the main way in which individuals in the financial services industry are regulated. In its final report, “Changing Banking for Good”[1], the Parliamentary Commission on Banking Standards (“PCBS”) raised concerns about the existing APR and made a number of recommendations for change including the introduction of a new regime for regulating senior persons in the banking industry, new arrangements for ensuring that more junior staff are fit and proper, and provisions enabling the regulators to make rules of conduct applying to staff other than approved persons. The Government broadly accepted these recommendations[2] and used the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”) to put in place the Senior Managers and Certification Regime (“SM&CR”).
- 18 The PCBS considered that the deficiencies they had identified in the APR would not be confined to banking. However, they were concerned that attempting to change the APR for the whole financial services industry would risk delaying the introduction of reforms. The Government shared those concerns and limited the substantive reforms in the 2013 Act to banks, other deposit takers and those investment firms that are regulated by the PRA. The SM&CR came into operation for those financial services firms on 7 March 2016. From 9 November 2015, the SM&CR also applied to UK branches of corresponding foreign institutions[3].
- 19 The experience and feedback gained from developing the detailed measures needed for implementation of the SM&CR, mainly rules made by the regulators, indicates that the SM&CR should deliver the improvements in conduct and performance of key bank staff that the PCBS and the Government were seeking. The Government therefore considers that it is appropriate to legislate to extend the SM&CR to all types of financial services firms. The Government has taken this opportunity to make amendments to the SM&CR. The regulators will remain responsible for developing the detailed measures in their rules.
- 20 On 1 April 2014, the Government reformed consumer credit regulation, transferring responsibility from the Office of Fair Trading to the FCA and bringing the regulation of consumer credit activities into the framework established by FSMA. The intention was to create a more robust regulatory regime which strikes the right balance between protecting consumers and ensuring regulatory burdens placed on firms are proportionate.
- 21 Following the reforms to consumer credit regulation in 2014 the funding of the Illegal Money Lending Teams and Scottish Illegal Money Lending Unit that lead in taking action against loan sharks remained with the Department for Business, Innovation and Skills. This amendment puts that funding on a new, clear and stable basis, with a levy raised from the consumer credit industry to pay for the cost of policing the regulatory boundary.
- 22 The money laundering provisions in the Act intend to ensure that the UK’s anti-money laundering and counter-terrorist financing regime is robust, proportionate and sensible so that it is effective. Resources are to be focused on higher-risk areas and individuals, in line with international and European commitments.

1 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/>

2 See the Government’s response to the Parliamentary Commission on Banking Standards, <https://www.gov.uk/government/publications/the-governments-response-to-the-parliamentary-commission-on-banking-standards>

3 See the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 (S.I. 2015/1865).

- 23 The Act also gives the Treasury power to make regulations providing for transformer vehicles, which are companies and other undertakings used, particularly by insurers and reinsurers, to mitigate risk by assuming risk from another undertaking and funding the vehicle's exposure to that risk by issuing investments. In the March 2015 Budget, the Chancellor of the Exchequer committed to implementing a new and competitive framework for Insurance Linked Securities business. This provision is part of the Treasury's project to fulfil that commitment.
- 24 In April 2015, the Government introduced greater flexibility for pensions products, removing tax penalties which applied to the use of pension funds other than for the purchase of an annuity. A new Government service, Pension Wise, was introduced with the aim of providing guidance to people approaching retirement and helping them understand the options available for using their pension funds. As part of the pension flexibilities, the Government provided for an 'advice safeguard' which provides that trustees and managers must ensure that members of pensions schemes have received appropriate independent advice before they transfer or convert safeguarded benefits - which are certain valuable categories of pension benefit such as defined benefit pensions, and pensions with Guaranteed Annuity Rates - into flexible benefits.
- 25 From 2017, the options available for the use of pension funds will be extended further by allowing people who have already bought an annuity to sell their annuity income to a third party. Since the current remit of Pension Wise is tightly defined, primary legislation is required to allow Pension Wise to deliver guidance for the secondary annuity market. This Act intends to enable the Government to extend the Pension Wise service to cover holders of annuities specified by the Treasury. The Act also imposes a requirement on the FCA to make rules requiring specified authorised persons to check that individuals with annuities of a certain type or value have received appropriate financial advice before selling their annuity income on the secondary market.
- 26 Following the Government's consultation Pension Transfers and Early Exit Charges⁴ in the summer of 2015, and evidence gathering exercises undertaken by the FCA and the Pensions Regulator, the Government concluded that it was necessary to act to limit the early exit charges that some people face when accessing their pension savings early under the pension freedoms. Consequently, the Act provides for a new duty on the FCA to make rules to prevent the imposition of specified early exit charges on members of FCA-regulated pension schemes.
- 27 The Act provides the flexibility to change which legal entities are authorised to issue commercial banknotes in Scotland or Northern Ireland. The Banking Act 2009 ("the 2009 Act") restricts the permission for banks to issue banknotes only to those banks who had that permission immediately before that Act came into force. Part 6 of that Act was intended to deliver the Government policy of supporting the continuation of the long-standing tradition of certain Scottish and Northern Ireland banks being able to issue their own banknotes, whilst not allowing for new issuers to emerge. However, the Government believes that inflexibility in the current legislation can cause problems when a bank wants to restructure its operations. In these circumstances, the permission to issue banknotes cannot be moved to a different legal entity, except by legislation, even if they are within the same group structure. The Act provides a power for the Treasury to make regulations authorising a bank in the same group as an existing issuer to issue banknotes instead of that issuer.

4 <https://www.gov.uk/government/consultations/pension-transfers-and-early-exit-charges-consultation>

Legal background

- 28 The existing governance arrangements for the Bank of England are primarily set out in the 1998 Act. Part 1 of that Act makes provision about the constitution, regulation and financial arrangements for the Bank, with Schedule 1 to the 1998 Act making additional provision in relation to the court of directors. Part 1A of and Schedule 2A to the 1998 Act make provision for the FPC, as a sub-committee of the court with responsibility for the Bank's financial stability objective, and set out the FPC's powers. Part 2 of and Schedule 3 to the 1998 Act make provision in relation to the MPC.
- 29 The legislative framework for financial regulation is set out in FSMA. Part 1A of that Act establishes the FCA and the PRA (which is the financial regulator responsible for prudential regulation), and sets out their functions and objectives. Section 3B sets out the regulatory principles which must be applied by both regulators. Schedule 1ZB to FSMA provides for the constitution of the PRA. Part 2 of FSMA sets out the general prohibition on carrying on a regulated activity in the UK without being an authorised person or an exempt person, and makes provision (in sections 26 to 30 of FSMA) on the enforceability of agreements made in breach of the prohibition, or otherwise in breach of requirements under FSMA. Section 39 of FSMA provides for an exemption for "appointed representatives": a class of persons who are not directly regulated by the FCA or PRA as they act on behalf of a "principal" who is responsible for their conduct and is itself regulated for the activities the appointed representative carries on. The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) prescribes the types of business that an appointed representative can carry on and provides for conditions that must be present in the contract between the principal and its appointed representative.
- 30 Part 5 of FSMA makes provision for regulation of the conduct of people working in the financial services industry. It was amended by the 2013 Act, which introduced a special regime for people working in banks, building societies, credit unions and PRA-regulated investment firms. Part 9A of FSMA sets out the rule-making powers of the FCA and the PRA. Part 20A of FSMA makes provision for the giving of pensions guidance.
- 31 Chapter 2 of Part 4 of the Pension Schemes Act 2015 imposes a requirement on the trustees or managers of a pension scheme to ensure members of the scheme have taken appropriate independent advice before converting or transferring safeguarded benefits to flexible benefits.
- 32 Parts 1 to 3 of the 2009 Act give the Bank various powers to take action when a bank or another financial institution is failing to "resolve" that institution by, for example, transferring the business or part of the business of the institution to another entity. The consent of the Treasury is required by section 78 of the 2009 Act in relation to the exercise of any power in Part 1 of the Act which has implications for public funds. The Bank is required by the Bank Recovery and Resolution (No 2) Order 2014 (S.I. 2014/3348) to prepare resolution plans setting out what action the Bank will take to resolve a bank or other financial institution if that institution fails. Part 4 of the 2012 Act imposes a duty on the Bank to notify the Treasury whenever it considers that there is a material risk that public funds might be required in connection with the exercise by the Bank of its powers under Parts 1 to 3 of the 2009 Act.
- 33 Part 6 of the 2009 Act authorises commercial banks to continue to issue Scottish or Northern Ireland banknotes if they had permission to do so before Part 6 came into force, but prohibits all other banks (apart from the Bank) from issuing banknotes, provides for the circumstances in which a bank's permission to issue these banknotes will terminate, and gives the Treasury

power to make regulations about the issue of banknotes. If a bank ceases to issue banknotes its permission to do so will terminate, and Part 6 of the 2009 Act makes no provision for the permission to be transferred to another entity.

Territorial extent and application

- 34 The Act's provisions extend to the whole of the United Kingdom, with the exception of section 34(2), which extends to England and Wales and Scotland, and section 34(3), which extends to Northern Ireland. In the Government's view, the matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Commentary on provisions of Act

Part 1: The Bank of England

Section 1: Membership of court of directors

- 35 This section makes the person in the position of Deputy Governor for markets and banking a member of the court of directors of the Bank.
- 36 It gives the Treasury power by order to alter the title of a Deputy Governor or to add or remove a Deputy Governor from the membership of the court. If a Deputy Governor has been made a member of the court, that Deputy Governor may also be made a member of the FPC, MPC or PRC. Similarly, if a Deputy Governor has been removed from membership of the court, that Deputy Governor may also be removed from membership of the FPC, the MPC or the PRC. If it is necessary to accommodate the addition or removal of a Deputy Governor, the order may also change the number of members who may be appointed to the relevant committee by the Chancellor of the Exchequer (in the case of the FPC or PRC) or the Governor (in the case of the MPC). These changes affect the position of the specified Deputy Governor – and not the person holding that position at the time the change is made. No change may be made to the title of a Deputy Governor so as to affect the current holder of that post. Equally, the removal of a Deputy Governor from the list of Deputy Governors who are members of the court will not affect the person in that post at the time.
- 37 The section also provides (in new section 1A(7) to be inserted into the 1998 Act) that an order changing the membership of the court of directors or the title of one of the Deputy Governors of the court may make any consequential amendments required to the 1998 Act or other Acts of Parliament or statutory instruments.

Section 2: Term of office of non-executive directors

- 38 This section enables the term of office of a non-executive director of the court to be extended once for up to 6 months. If re-appointed, the individual's subsequent term of office is reduced by the length of the extension (but may itself be extended by up to six months).

Section 3: Abolition of Oversight Committee

- 39 This section gives the oversight functions previously delegated to the Oversight Committee (a sub-committee of the court) to the court itself. The oversight functions are listed in section 3A of the 1998 Act, which this Act amends. The section also removes the requirement for there to be an Oversight Committee. However, the non-executive directors retain the right to arrange for reviews (including performance reviews) if they consider that this would assist the court in the exercise of its oversight functions. Where necessary, the non-executive directors can act by majority to arrange such a review.

Section 4: Functions of non-executive directors

- 40 This section requires the remuneration of the Governor and Deputy Governors to be determined by a sub-committee of the court consisting of three or more non-executive directors.

Section 5: Financial stability strategy

- 41 This section amends paragraph 11 of Schedule 1 to the 1998 Act to give the court of directors power to delegate the powers and duties conferred on it in relation to the financial stability

strategy of the Bank (provided for in section 9A of the 1998 Act). It also clarifies that the court remains responsible for any power and duty delegated under paragraph 11.

Section 6: Financial Policy Committee: status and membership

- 42 This section makes the FPC a committee of the Bank instead of a sub-committee of the court, makes clear which Deputy Governors are members of the FPC and increases the number of members of the Committee appointed by the Chancellor of the Exchequer from four to five in order to maintain the balance between external members of the FPC and officers of the Bank following the addition of the Deputy Governor for markets and banking as a member of the FPC.

Section 7: Monetary Policy Committee: membership

- 43 This section makes the Deputy Governor for markets and banking an ex officio member of the MPC. Previously the only ex officio members of the committee were the Governor, the Deputy Governor for monetary policy and the Deputy Governor for financial stability. The Deputy Governor for markets and banking was previously one of the two MPC members appointed by the Governor of the Bank after consultation with the Chancellor of the Exchequer.
- 44 The section also reduces the number of members of the Committee who may be appointed by the Governor of the Bank from two to one; provides that the person appointed as a member of the Committee by the Governor must carry out monetary policy analysis within the Bank, rather than have executive responsibility for such analysis (the previous requirement under the 1998 Act), and gives that member the title "Chief Economist of the Bank". In addition, it clarifies the requirements for members of the MPC appointed by the Chancellor of the Exchequer.

Section 8: Monetary Policy Committee: procedure

- 45 This section amends the requirement on the timing of publication of minutes of MPC meetings so that they must be published "as soon as reasonably practicable" following the meeting, or, where the proceedings in the meeting related to a decision to intervene in the financial markets, after publication of that decision. This contrasts with the current requirement, which is for publication within six weeks after the meeting or publication of a decision to intervene.
- 46 Subsection (4) reduces the number of times the MPC has to meet each year, changing the requirement to meet "at least once a month" to a requirement to meet at least eight times a year, and at least once in any 10 week period.
- 47 Subsection (5) changes the rules on the quorum for the MPC. A meeting will not be quorate unless either the Governor of the Bank, or the Deputy Governor for monetary policy are present. In addition, unless both the Governor and the Deputy Governor for monetary policy are at the meeting, the meeting will not be quorate unless either the Deputy Governor for financial stability or the Deputy Governor for markets and banking is present.
- 48 Subsection (6) sets out the procedure to be followed where a member of the Committee has an interest in anything being considered by the Committee, and requires the Bank to have a code of practice on the way in which the Committee and its members are to deal with conflicts of interest.

Section 9: Audit

- 49 This section inserts new section 7ZA into the 1998 Act. This describes the extent to which the Comptroller and Auditor General is to be involved with the audit of the Bank. The

Comptroller and Auditor General will be consulted by the Bank about the appointment of the Bank's external auditors. The auditor or auditors appointed by the Bank will then consult the Comptroller and Auditor General on the way in which the audit is planned. If an audit plan is produced, the Comptroller and Auditor General must be consulted not only on the audit plan itself, but also on any material revision of the plan.

- 50 The Comptroller and Auditor General will have the right to see information reasonably required relating to the audit of the Bank's accounts which is held by the Bank, and to attend any meetings of the Audit and Risk Committee of the Bank which deal with any aspect of the audit of the Bank's accounts.

Section 10: Activities indemnified by Treasury

- 51 This section inserts new sections 7B and 7C into the 1998 Act.
- 52 Section 7B gives the Treasury power to require the Bank to prepare a financial report for any activity of the Bank which has been the subject of an indemnity or guarantee given by the Treasury, and which therefore represents a risk to public funds. This report may be sent to the Comptroller and Auditor General for review. The section also gives the Comptroller and Auditor General the power to obtain access to any document which the Bank or its auditors hold if the document is reasonably required for the purposes of this review.
- 53 Section 7C applies when the Treasury has given an indemnity or guarantee to a company which is a subsidiary of the Bank, or in which the Bank has a minority interest. The Treasury may direct the company to send its own accounts to the Comptroller and Auditor General to be audited. The Comptroller and Auditor General must report on any accounts sent for examination, and both the accounts and the report will be sent to the Treasury and laid before Parliament.

Section 11: Examinations and reviews

- 54 This section inserts new sections 7D, 7E, 7F, 7G and 7H into the 1998 Act. These give the Comptroller and Auditor General and the Treasury power to initiate value for money studies of the Bank (the Comptroller and Auditor General of the whole Bank, including its subsidiaries and in certain circumstances other Bank companies, and the Treasury of the Bank's PRA functions). Under new section 7D the Comptroller and Auditor General has power to carry out value for money studies of any functions of the Bank (after consulting the court of directors of the Bank) and report to Parliament on the results. This does not give the Comptroller and Auditor General power to question the Bank's policy objectives or to consider the merits of policy decisions taken by the FPC, the MPC or the PRC. In addition, the Comptroller and Auditor General may not examine the merits of policy decisions on the supervision of financial market infrastructure (such as payment or settlement systems or clearing houses) taken by the body within the Bank responsible for the Bank's supervision of financial market infrastructure. Nor may the Comptroller and Auditor General consider the merits of policy decisions relating to resolution taken by the body responsible for the exercise of the Bank's resolution functions. However, where the Bank has used its powers under the 2009 Act, or Part 6 of the 2013 Act (which provides for special administration for infrastructure companies) to resolve a bank or other financial institution the Comptroller and Auditor General may consider any policy decision on resolution which is relevant to the resolution of that institution. New section 7E makes provision for a Memorandum of Understanding between the Bank and the Comptroller and Auditor General, to set out the procedure for resolving disputes between them, and to identify functions which the Comptroller and Auditor General would not usually wish to examine.

- 55 Under new section 7F the Treasury is given power to commission an independent value for money study of the way in which the Bank carries out its functions as PRA. This provision replaces section 2O of FSMA (which contained a similar provision for the Treasury to commission reviews of the PRA when it was a subsidiary of the Bank) which is being repealed by the Act.
- 56 New section 7G ensures that the Comptroller and Auditor General, and any person asked by the Treasury to carry out a value for money study, has access to the documents and information they reasonably need to see to enable them to do the study.
- 57 New section 7H ensures that any information which the Comptroller and Auditor General or the National Audit Office receives from the Bank during the course of such an examination (or otherwise) which relates to monetary policy, the Bank's financial support operations or the provision of private banking services, must be treated as specially protected information and may not be disclosed.

Section 12: Bank to act as Prudential Regulation Authority

- 58 This section ends the subsidiary status of the PRA by making the Bank the PRA. The Bank must exercise its functions as PRA (which are identified in new section 2AB of FSMA) through the new PRC, and it is prohibited from exercising them in any other way.

Section 13: Prudential Regulation Committee

- 59 This section inserts new sections 30A, 30B and 30C into the 1998 Act.
- 60 New section 30A creates the Prudential Regulation Committee, sets out its membership and makes it responsible for the Bank's prudential regulation functions: that is, the Bank's functions as PRA, and the functions conferred on the PRC by the 1998 Act.
- 61 New section 30B requires the Treasury to make recommendations to the PRC (at least once every Parliament) about the matters of Government economic policy which it wants the PRC to take into account. These recommendations will not relate to individual firms or cases, and any recommendation made will be published, and laid before Parliament.
- 62 New section 30C requires the Bank to make arrangements to comply with provisions in the specified European Union directives, which require that where a single institution is responsible both for supervising financial institutions and for resolving financial institutions when they fail, the supervision functions of the institution are operationally independent from its resolution functions. If it appears to the Treasury that any action the Bank proposes to take would be incompatible with the UK's obligations under those directives, the Treasury may direct the Bank not to take that action, or to take any action that is needed to ensure compliance with those obligations.
- 63 Subsection (3) of this section inserts a new Schedule 6A (found in Schedule 1 to the Act) into the 1998 Act. The Schedule makes provision about the PRC.
- 64 Paragraphs 2 to 9 of Schedule 6A set out the rules to be followed by the Chancellor of the Exchequer in appointing any member of the PRC (including terms of office, factors intended to ensure their independence and provisions on disqualification), and the terms on which they may be removed.
- 65 Paragraphs 10 to 16 of Schedule 6A set out what procedure must be followed by the Committee in meetings, how the Committee is to deal with potential conflicts of interest and the procedure for taking decisions in writing. Subject to these provisions, the Committee may determine its own procedure.

- 66 Paragraph 17 of Schedule 6A allows the Committee to delegate some of its functions and states to whom they may be delegated. It requires certain functions to be delegated to the chief executive for prudential regulation (while making it clear that the chief executive is not prevented from delegating those functions to another person), and sets out which of the Committee's functions may not be delegated to anyone else.
- 67 Paragraph 18 requires a budget for the Bank's PRA functions to be adopted by the PRC.
- 68 Paragraph 19 requires the PRC to make an annual report to the Chancellor of the Exchequer on the resources the Bank is giving to its functions as PRA and whether those functions are being carried out within the Bank independently of its other functions.

Section 14: Accounts relating to Bank's functions as Prudential Regulation Authority

- 69 This section amends section 7 of the 1998 Act to require the Bank to prepare a statement of accounts on its income and expenditure (and related assets and liabilities) as PRA. This will include details of the levy determined by the PRC and imposed on financial institutions to meet the Bank's costs as PRA. The Treasury is given power to issue directions on the information in the statement of accounts and the methods and principles that must be used in its preparation. The Bank's external auditor is required to report on whether the Bank has properly complied with the requirements applying to its power, in its capacity as the PRA, to impose penalties and raise the levy from industry.

Section 15: Transfer of property etc to Bank

- 70 This section transfers the property, rights and liabilities of the company currently known as the Prudential Regulation Authority to the Bank.

Section 16: Amendments relating to Part 1

- 71 This section introduces Schedule 2.
- 72 Schedule 2 makes consequential amendments to the 1998 Act, FSMA, the 2009 Act and other legislation arising as a result of the amendments to the governance framework of the Bank made by Part 1 of this Act.
- 73 Paragraphs 1 to 22 amend the 1998 Act.
- 74 Paragraph 2 excludes determining the objectives and strategy of the PRA from the functions which the court is responsible for managing under section 2.
- 75 Paragraph 3 removes the requirement for the Bank to work with the PRA in pursuing its Financial Stability Objective. It is no longer necessary to make express provision for this, as the Bank exercises the functions of the PRA itself.
- 76 Paragraph 4 changes the description of the Bank's objectives and strategy for the purposes of the court's oversight functions to include the PRA's objectives and strategy, so that the court is required to review the Bank's performance in relation to them. It also removes some items from the list of oversight functions, as a consequence of the transfer of the oversight functions from the Oversight Committee to the court (for example, because the items relate to matters which are determined by the court in any event, such as the terms and conditions of certain members of the Bank's statutory committees), or because it would not be appropriate for the court to have oversight of them (for example the remuneration of the Governor and Deputy Governors).
- 77 Paragraphs 5 to 8, 11, 16, 20, and 21 replace references in the 1998 Act to the Oversight Committee with references to the court of directors. Paragraph 5 also removes the

requirement for the Governor to consent to the appointment of a Bank officer or employee to conduct a performance review. Paragraph 8 also ensures that those carrying out the court's oversight functions will have access to meetings of the PRC and documents considered by the PRC as well as to the meetings and documents of the other committees of the Bank. However, no member of the court who has an interest in a matter to be considered by the PRC will have access to information or meetings relating to that matter.

- 78 Paragraph 9 requires the court to report on the performance of their oversight functions as part of the annual report of the Bank made under section 4.
- 79 Paragraphs 10, 13, 14, and 22 remove some references to the PRA from the 1998 Act.
- 80 Paragraph 12 amends section 9O to ensure that recommendations by the FPC to the Bank in its capacity as PRA continue to be made under section 9Q (which provides for recommendations by the FPC to the PRA and the FCA) and not under section 9O.
- 81 Paragraph 15 amends the requirement in section 14 for the Bank to publish statements about its decisions whether to take action to meet its monetary policy objectives, and what action the Bank has decided to take, as soon as practicable after the meeting (or, if the MPC decided that the Bank should intervene in the financial markets, after the MPC has decided that the Bank's intervention would not be adversely affected by publication of the decision) so that they need only be published as soon as reasonably practicable. Paragraph 17 makes an equivalent amendment to section 18, so that the Bank needs only publish its quarterly inflation report as soon as reasonably practicable after the period to which it relates.
- 82 Paragraph 18 amends section 40 to provide for the parliamentary procedure applicable to orders made under section 1A(1).
- 83 Paragraph 19 ensures that the court may delegate its functions to any committee of the Bank (including the statutory committees, but not only to those committees). It also amends the title of the chief executive of the PRA to reflect his new title.
- 84 Paragraph 20 amends Schedule 2A to the 1998 Act, which deals with the FPC. Apart from changing references in that Schedule to the oversight committee to references to the court of directors, it also ensures that members of the PRC may not be appointed as members of the FPC as well, requires the Bank to have, and to publish, a code of practice on the way in which conflicts of interest are dealt with by the FPC and gives the Committee power to take decisions outside a meeting by writing.
- 85 Paragraph 21 amends Schedule 3 to the 1998 Act, which deals with the MPC. In addition to changing references in that Schedule to the oversight committee to references to the court of directors, it provides that members of the PRC may not also be appointed as members of the MPC, and amends the ground on which the member of the MPC appointed by the Governor may be removed to reflect the revised qualification for that member (set out in section 7(3) of the Act which substitutes new section 13(3) in the 1998 Act).
- 86 Paragraph 22 ensures that the Bank is able to disclose information to discharge its functions as PRA.
- 87 Paragraph 23 amends the Bank of England Act 1946 to ensure that the Treasury's power to direct the Bank does not apply when the Bank is acting in its capacity as PRA.

- 88 Paragraphs 24 and 25 amend the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 so that members of the PRC are not qualified for election either to the House of Commons or to the Northern Ireland Assembly. This disqualification takes the place of the previous disqualification which applied to members of the PRA Board.
- 89 Paragraphs 26 to 51 make consequential amendments to FSMA. In particular, provisions requiring the PRA to consult or to co-operate with the Bank are removed. Once the Bank itself is responsible for exercising the functions of the PRA, the way in which the sections of the Bank which are responsible for its different functions interact with each other will be determined internally by the Bank.
- 90 Paragraphs 27 and 28 remove sections 2O and 2P (these provisions are now made in new sections 7F and 7G of the 1998 Act, inserted by section 11 of the Act).
- 91 Paragraph 29 ensures that the duty to follow principles of good corporate governance only applies in relation to the FCA.
- 92 Paragraph 30 amends requirements in section 3Q for the regulators (the PRA and the FCA) to co-operate with the Bank in relation to its financial stability objective and duties in relation to public funds, so that they only apply to the FCA.
- 93 Paragraph 31 amends section 3R so that the permission for either regulator to enter into arrangements with the Bank for service provision only applies to the FCA.
- 94 Paragraph 32 inserts section 3T into FSMA, defining what is meant by enactment.
- 95 Paragraphs 33 and 34 amend requirements for the regulators to consult with the Bank in relation to rules regarding recovery plans and resolution plans so that the requirements only fall on the FCA.
- 96 Paragraph 35 amends the requirement for the regulators to give the Bank notice when they make, alter or revoke any rule so that it only applies to the FCA.
- 97 Paragraphs 36 and 37 extend the PRA's power to obtain information under sections 165 and 165A of FSMA so that the Bank, acting in its capacity as PRA, is also able to obtain information which the Bank requires for the purposes of its financial stability objective.
- 98 Paragraphs 38, 39 and 40 amend provisions in FSMA dealing with the regulators' consideration of applications for approval of a change of control over a bank, investment firm or banking group company. Paragraph 38 amends section 187A so that the requirement for the FCA to act as soon as reasonably practicable if it wishes to make representations about, object to or seek more information in relation to such an application, is triggered by notification from the PRA that it is itself required to act in a timely manner. Paragraph 39 inserts new subsection (1ZB) into section 189, imposing this requirement to act in a timely manner on the PRA where the Bank is exercising resolution powers in relation to the bank, investment firm or banking group company concerned. Paragraph 40 makes a consequential amendment.
- 99 Paragraphs 41 and 42 amend requirements for both regulators to consult the Bank on the directions they propose (or have decided) to give to qualifying parent undertakings, and in relation to their proposed statement of policy in relation to such directions, so that they only apply to the FCA.

- 100 Paragraph 43 amends the description of the memorandum of understanding (MOU) required by Part 1 of Schedule 17A to FSMA, to reflect that the MOU between the Bank, the PRA and the FCA on their functions in relation to recognised investment exchange and clearing houses will become an MOU between the PRA and the FCA. There will therefore be two MOUs - one between the Bank and the FCA, and one between the FCA and the Bank in its capacity as PRA.
- 101 Paragraph 44 removes the obligation on the PRA to notify the Bank that it has disqualified a person from acting as auditor of a PRA-authorised person.
- 102 Paragraph 45 amends section 348 (restrictions on disclosure of confidential information by FCA, PRA etc.) so that it applies to the Bank, both in its capacity as PRA and otherwise.
- 103 Paragraph 46 amends section 353A (restrictions on disclosing information received from the Bank - including in its capacity as PRA) so that it only applies to information received from the Bank by the FCA.
- 104 Paragraph 47 amends section 354B (PRA's duty to co-operate with others) to remove a reference to the Bank.
- 105 Paragraph 48 repeals section 354C (PRA's duty to provide information to Bank of England), which places an obligation on the PRA to provide information relating to the Bank's financial stability objective to the Bank.
- 106 Paragraph 49 inserts a definition of the Bank into section 417.
- 107 Paragraph 50 amends Schedule 1ZB (the Prudential Regulation Authority). Paragraphs 2 to 16, 18, and 22 to 26 of that Schedule are removed. Paragraph 19, which requires the PRA to make an annual report to the Treasury, is amended to require the report to be made to the Chancellor of the Exchequer instead. Consequential amendments are made to paragraphs 1 and 31.
- 108 Paragraph 51 amends Schedule 17A (provision in relation to the exercise of Part 18 functions by the Bank). The requirement for an MOU between the FCA, the Bank and the PRA on the exercise of their respective functions in relation to PRA-authorised persons who are also recognised bodies becomes a requirement for an MOU between the FCA and the PRA. A requirement for consultation between the Bank and the PRA and FCA in relation to statements of policy on directions to qualifying parent undertakings is limited to consultation between the Bank and the FCA, and requirements on the Bank to consult the PRA in relation to notices of such directions, and on proposed directions to insolvency practitioners, are removed.
- 109 Paragraphs 52 to 63 amend the 2009 Act.
- 110 Paragraph 53 removes a requirement for the Bank to co-operate with the PRA in imposing regulatory sanctions in relation to the Bank's resolution powers.
- 111 Paragraph 54 removes the PRA from the list of persons to whom the Bank may delegate its enforcement functions.
- 112 Paragraph 55 removes a modification of section 348 (restrictions on disclosure of confidential information) which made the Bank a primary recipient under that section. This modification is no longer necessary because of the amendment to section 348 made by paragraph 45.
- 113 Paragraph 56 amends section 96 (grounds for applying) so that the requirements for an application by the Bank for a bank insolvency order are satisfied as soon as the PRA is

satisfied of the relevant condition, without the need for formal notification from the PRA to the Bank. Similarly, the requirements for such an application by the PRA are satisfied once the Bank is satisfied of the relevant condition without such notification.

114 Paragraph 57 removes the requirements for the Bank and the PRA to consult each other before making an application for the removal of a bank liquidator.

115 Paragraph 58 removes the requirement for the consent of the Bank to an application by the PRA for a bank insolvency order.

116 Paragraph 59 amends the modifications made by section 129A to sections 96 (grounds for applying for a bank insolvency order), 108 (removal by court) and 117 (bank insolvency as alternate order) in relation to FCA regulated banks. The amendments to the modifications to section 96 ensure that the Bank is not required to consult the PRA where there is a PRA-authorized person in the bank's immediate group, but that the Bank and the FCA must have informed each other that the conditions for an application for a bank insolvency order for which they are responsible are satisfied before either may make such an order. The amendments to the modifications made to sections 108 and 117 ensure that the FCA is required to consult the Bank before making an application to remove a bank liquidator (section 108), and to obtain the consent of the Bank before applying for a bank insolvency order (section 117).

117 Paragraphs 60 and 61 remove provisions permitting the Bank to disclose to the PRA information it has either obtained from a third party under section 204 or that it thinks relevant to financial stability under section 246.

118 Paragraph 62 inserts definitions of the PRA and the Bank into the 2009 Act, to distinguish between the two different capacities in which the Bank may act, and paragraph 63 adds these terms to the index of defined provisions in section 261 of that Act.

119 Paragraphs 64 to 66 amend the 2012 Act, making a consequential amendment to section 85(8) to refer to the section where the definition of the functions of the PRA is now found (paragraph 65), to amend the definition of the PRA and to add a definition of the Bank (paragraph 66) to distinguish between the two different capacities in which the Bank may act.

120 Paragraph 67 amends the 2013 Act by amending the definition of "relevant functions" in relation to the PRA in section 98 of that Act to refer to the section of FSMA where those functions are now defined.

121 Paragraph 68 makes some consequential repeals.

Section 17: Saving and transitional provision relating to Part 1

122 This section introduces Schedule 3.

123 Schedule 3 makes saving and transitional provision relating to Part 1 of this Act.

124 Paragraphs 2 to 12 make provision in relation to prudential regulation. Paragraph 2 preserves the effect of orders made under section 2A(6)(d) of FSMA specifying certain EU provisions as conferring functions on the PRA.

125 Paragraph 3 provides for the prudential regulation strategy last determined by the PRA under section 2E of FSMA to continue to have effect.

126 Paragraph 4 provides for the prudential regulation budget last adopted by the PRA under paragraph 18 of Schedule 1ZB to FSMA to continue to have effect.

- 127 Paragraph 5 makes provision for the time when the Bank, acting in its capacity as the PRA, has to make its first annual report under paragraph 19 of Schedule 1ZB to FSMA.
- 128 Paragraph 6 allows the subsidiary company originally incorporated as Prudential Regulation Authority Ltd ("PRA Ltd") to disclose confidential information to the Bank in order to prepare for the transfer of its functions to the Bank.
- 129 Paragraph 7 ensures that the company known as the Prudential Regulation Authority will not incur liabilities to corporation tax because of the transfer of its intangible assets to the Bank.
- 130 Paragraph 8 limits the application of the new definition of the PRA so that it does not apply to any enactment to the extent that the enactment only applies to a time before the new definition came into force.
- 131 Paragraph 9 ensures that references to the PRA in documents which relate to functions or property of the PRA which are transferred to the Bank will be read as referring to the Bank acting in its capacity as the PRA after the transfer of the PRA's functions to the Bank takes effect.
- 132 Paragraphs 10 to 12 make general provision to ensure that the transfer of functions and the transfer of property, rights and liabilities from the PRA Ltd to the Bank, acting in its capacity as the PRA, does not affect anything the PRA Ltd did, or which was done in relation to it, before the transfers took effect.

Part 2: Financial Services

Section 18: Appointment of Financial Conduct Authority chief executive

- 133 This section amends Schedule 1ZA to FSMA. Paragraph 2A(1) provides that the term of office of the person who is appointed by the Treasury as the chief executive of the Financial Conduct Authority may not start until that person has appeared before the Treasury Select Committee in connection with the appointment or, if earlier, three months has passed since the appointment was made. Subparagraph (2) ensures that this requirement will not apply where an appointment is made on a temporary basis (where for example it is necessary to appoint an acting chief executive). Subparagraphs (3) and (4) provide for the possibility that the name of the Treasury Committee may in future be changed, or its functions pass to another Committee of the House of Commons.

Section 19: Treasury recommendations to Financial Conduct Authority

- 134 New section 1JA of FSMA requires the Treasury to make recommendations to the FCA (at least once every Parliament) about the matters of Government economic policy which it wants the FCA to take into account. These recommendations will not relate to individual firms or cases, and any recommendation made will be published, and laid before Parliament.

Section 20: Regulatory principles: diversity

- 135 This section amends section 3B of FSMA (regulatory principles to be applied by both regulators) to clarify that the regulators must have regard to the differences between different kinds of business organization adopted by financial services firms (such as mutual societies) in exercising their general functions.

Section 21: Extension of relevant authorised persons regime to all authorised persons

- 136 This section introduces Schedule 4, which makes provision to extend the regime which regulates the conduct of people working in banks and certain investment firms (described in

FSMA as "relevant authorised persons") to cover those working in any institution which is authorised to carry out regulated activities under FSMA.

137 Paragraphs 2 and 4 to 20 remove references to "relevant authorised persons" and replace them with references to all authorised persons.

138 Paragraph 3 inserts the definition of "designated senior management functions" into a new section.

139 Paragraph 21 makes a consequential amendment to section 429 of FSMA.

140 Paragraph 22 makes consequential amendments to the 2013 Act.

Section 22: Rules about controlled functions: power to make transitional provision

141 This section extends the regulators' existing powers to make transitional provisions in their rules, to deal with changes to the rules on controlled functions. It gives examples of the sort of transitional provisions which can be included. It also gives the Treasury power to make transitional or consequential provisions in relation to rules made by the regulators under section 59, which may, for example, give the regulators an extended power to make rules for the purpose of making transitional arrangements when they are modifying the controlled functions regime.

Section 23: Administration of senior managers regime

142 This section makes a number of amendments to the senior managers regime. Subsection (2) amends section 62A of FSMA, which places an obligation on an authorised person to inform the FCA or the PRA about any significant change in the responsibilities of an approved person. The effect of the amendment is to require the authorised person to provide that information to both the PRA and the FCA where the application to approve that person was granted by both those regulators. Subsection (3) allows someone who has been granted approval to be a senior manager for a limited period to apply to the regulators for the period to be extended, or for the limitation on their approval to be removed altogether. Subsection (4) permits each of the regulators to vary an approval already given to a senior manager, either by varying or removing the limitation on the period for which the approval was given, or by imposing a limited period on an approval which was previously unlimited.

143 Subsection (5) amends section 204A of FSMA to ensure that both the PRA and the FCA are able to bring disciplinary proceedings for failure to comply with the requirement for information to be provided on any change in the responsibilities of senior managers under section 62A of FSMA.

Section 24: Rules of conduct

144 This section amends section 64A of FSMA to extend the power of the PRA and the FCA to make rules of conduct, so that that they can make rules of conduct in relation to directors of authorised persons, as well as their employees and approved persons. It also amends section 64B of FSMA to ensure that the duty of the authorised person to ensure that anyone subject to conduct rules is aware of the rules that apply to them also applies in relation to their directors, and, by omitting subsection (5) to remove the statutory duty for firms to report to the regulator when they know or suspect that someone in the firm has failed to comply with conduct rules.

Section 25: Misconduct

145 This section amends sections 66A and 66B of FSMA to ensure that the FCA and the PRA respectively are able to bring disciplinary proceedings against directors of authorised persons who have breached rules of conduct applying to them.

146 It also amends the definition of misconduct applying to senior managers, both in relation to action by the PRA and action by the FCA. Under the existing provisions as currently drafted senior managers of a bank or other relevant authorised person would be guilty of misconduct if there had been a breach of any regulatory requirement in an area for which they were responsible unless they could prove that they had taken reasonable steps to avoid the breach happening. This is amended so that no senior manager will be guilty of misconduct unless the regulators can prove that the senior manager did not take reasonable steps to avoid the breach happening. As amended, this ground of misconduct will also apply to senior managers of all authorised persons, and not just those in banks or other relevant authorised persons.

Section 26: Decisions causing a financial institution to fail: meaning of insolvency

147 This section extends the circumstances when a financial institution can be said to be failing for the purpose of the criminal offence created by section 36 of the 2013 Act (offence relating to a decision causing a financial institution to fail), so that it includes cases where a building society goes into the building society insolvency or administration procedure, or an investment bank is put into one of the insolvency procedures provided for in the Investment Bank Special Administration Regulations 2011.

Section 27: Enforceability of agreements relating to credit

148 This section amends section 26A of FSMA which concerns the enforceability of agreements relating to credit. The amendments make it clear that where a person can lawfully undertake the relevant credit-related regulated activity in relation to the agreement (whether administering the agreement in relation to subsection (4) of section 26A, or taking steps to procure the payment of debts under it in relation to subsection (5) of section 26A) they are also able to enforce the agreement. This applies to those who are appointed representatives who are not authorised persons in their own right, and people who are exempt from the general prohibition (such as members of a designated professional body).

Section 28: Enforceability of agreements made through unauthorised persons

149 This section amends section 27 of FSMA which concerns the enforceability of agreements where they are made through unauthorised persons. The amendments narrow the circumstances in which a credit agreement or consumer hire agreement is unenforceable under this section and ensures that this will only be the case where the provider of credit knows, before the agreement is made, that a third party had some involvement in the making of the agreement or in matters preparatory to it being made.

Section 29: Illegal money lending

150 This section amends FSMA to insert new sections 333S (financial assistance for action against illegal money lending) and 333T (funding of action against illegal money lending).

151 New section 333S gives the Treasury power to make grants or loans, and to provide other forms of financial assistance for the purpose of taking action against illegal money lending. Under subsection (3), such financial assistance can be given on terms set by the Treasury. Subsection (2) gives a number of examples of the sort of action which might be financed by the Treasury in this way and subsection (4) defines "illegal money lending" for these purposes.

152 New section 333T requires the FCA to make rules imposing a levy on authorised persons (or a specified class of authorised person) to recover any costs notified to the FCA by the Treasury as having been incurred by the Treasury in providing the financial assistance referred to in new section 333S, or in doing (or commissioning) research into illegal money lending.

Section 30: Money laundering

153 Subsection (1) of this section requires the Secretary of State to ensure that appropriate attention is given to specified provisions in Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing when that Directive is transposed. Subsections (2) and (3) amend FSMA by inserting new section 333U which introduces an obligation for the FCA to issue guidance in relation to the definition of "politically exposed persons", and gives the Secretary of State power to make regulations both in relation to that guidance, and providing for the handling of complaints in relation to the way in which regulated entities have implemented provisions about politically exposed persons.

Section 31: Transformer vehicles

154 Subsections (1) and (2) of this section insert new section 284A into FSMA. The new section is concerned with "transformer vehicles" which are used as a risk mitigation technique by companies and financial institutions, and particularly by insurers and reinsurers. It enables the Treasury to make regulations facilitating and regulating transformer vehicles, and the activities carried out and the trading of investments issued by transformer vehicles.

155 Subsections (1) and (2) of new section 284A define "transformer vehicle". Subsection (1) provides that a transformer vehicle is an undertaking which is established to carry out the activities mentioned in subsection (2) or which carries out those activities. The activities mentioned in subsection (2) are assuming risk from another undertaking ("B") and fully funding the vehicle's exposure to that risk by issuing investments where the repayment rights of the investors are subordinated to the vehicle's obligations to B in respect of the risk. Subsection (10) defines "investment", "primary legislation" and "subordinate legislation" for the purposes of section 284A.

156 Subsection (3) of new section 284A confers a broad regulation making power on the Treasury, as described above.

157 Subsections (4) to (6) set out non-exhaustive lists of the type of matters about which regulations may be made under subsection (3). Subsection (4) is mainly concerned with the creation and functioning of corporate bodies. Subsection (5) provides that the list in subsection (4) applies equally to the constituent parts of a body as it does to the body as a whole. Subsection (6) specifies a range of matters, including the creation of criminal offences, the conferral of functions on the financial regulators and the modification and amendment of primary and secondary legislation which may be dealt with in the regulations. Subsections (7) to (9) and (11) make further provision about the regulations which may be made under subsection (3), including a requirement for any regulations which permit the regulators to require the Council of Lloyd's to exercise any functions on their behalf to be made only with the consent of the Council.

158 Subsection (3) of this section amends section 429(2) of FSMA, so that regulations under the new section 284A must be approved by both Houses of Parliament before they are made.

Section 32: Pensions guidance

159 This section expands the scope of the Government's pensions guidance service, "Pension Wise", so that it can offer guidance to those with a relevant interest in an annuity such as annuity holders considering selling the income from their annuities to a third party on the secondary market. The Secretary of State is given power to specify in secondary legislation what annuities come within the scope of this provision, and what interest a person must have in an annuity to have access to the guidance service.

Section 33: Advice about transferring or otherwise dealing with annuity payments

160 Subsection (2) of this section inserts new section 137FBA (FCA general rules: advice about transferring or otherwise dealing with annuity payments) into FSMA. This new section places a requirement on the FCA to make rules to require certain authorised persons (to be specified in rules made by the FCA) to check that an individual with an annuity of a specified type or value, who is considering transferring or dealing with the income stream from that annuity on the secondary market, has taken appropriate financial advice. The section includes powers for the Treasury to make secondary legislation:

- a. exempting some people from the requirement to take advice;
- b. specifying which types of annuities are caught by the advice requirement (by reference to their type, value or otherwise, including by reference to a person's financial circumstances), and
- c. specifying what is meant by appropriate advice.

161 Subsection (3) amends section 138F(2) of FSMA (notification of rules) so that the requirement in section 138F(1) for either regulator to give written notice to the Treasury and the Bank when it makes, alters or revokes any rules does not apply to rules made by the FCA under the new section 137FBA.

162 Subsection (4) amends section 138I (consultation by the FCA) so that the requirement for the FCA to carry out a cost benefit analysis before making rules does not apply to rules made under new section 137FBA. The amendments to section 138I also disapply the requirement on the FCA in section 138I(1)(a) to consult the PRA before making rules under new section 137FBA.

163 Subsection (5) amends section 429(2B) of FSMA (parliamentary control of statutory instruments) so that any regulations made by the Treasury under section 137FBA(3), to exempt persons from the requirement to take advice must be approved by both Houses of Parliament before they are made.

Section 34: Independent advice on conversions and transfers of pension benefits: appointed representatives

164 This section makes a technical amendment to the Pension Schemes Act 2015 ("the 2015 Act") to allow 'appointed representatives' of authorised financial advisers (a class of persons exempt from direct regulation by the FCA or PRA pursuant to section 39 of FSMA) to advise on the conversion and transfer of safeguarded benefits – features of certain pensions, such as defined benefit pensions, and pensions with Guaranteed Annuity Rates – to flexible benefits for the purposes of the 'advice safeguard' established in sections 48 and 51 of the 2015 Act. The section also amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) to the same end.

Section 35: Early exit pension charges

165 This section amends FSMA to insert new section 137FBB (FCA general rules: early exit pension charges). This requires the FCA to make rules preventing specified charges being imposed on members of pension schemes who take, convert or transfer pension benefits after they have reached normal pension age but before their expected retirement date. Subsection (1) of new section 137FBB imposes this requirement on the FCA, and subsection (2) sets out the purpose which must be served by the FCA rules: to prevent early exit charges being a deterrent against members dealing with their pension benefits in this way. Subsection (3) sets out how FCA rules may identify the early exit charges to be banned, and subsection (4) ensures that it will not be possible to impose any of the specified early exit charges after the rules come into force, even if the pension scheme to which they relate was established before that date. Subsection (5) provides examples of the provision which may be made in FCA banning early exit pension charges. Subsections (6) and (7) define early exit charges for the purpose of these provisions, and subsection (8) gives the Treasury power to identify matters which may not be treated as early exit charges under these provisions.

Section 36: Duty of Bank to provide information to Treasury

166 This section makes amendments to the 2012 Act, inserting two new sections: 57A (duty of bank to provide information required by Treasury) and 57B (duty of bank to inform Treasury about resolution plans).

167 New section 57A provides the Treasury with a power to require the Bank to provide the Treasury with specific information identified by the Treasury, and held by the Bank - which the Treasury considers material to understanding the implications for public funds as assessed by the Bank of a bank or other financial institution failing.

168 New section 57B imposes a duty on the Bank to give the Treasury information about certain resolution plans it prepares in relation to certain banks and other financial institutions. The "resolution plan" sets out what action the Bank may take if a particular bank fails, and in particular which of the Bank's powers under Parts 1 to 3 of the 2009 Act it may exercise in relation to that bank. The information the Bank must give the Treasury includes the resolution plan itself; and an assessment of what impact the failure of the relevant bank or institution would have on the financial system, and what costs the Bank's proposals for resolving it would impose on public funds. The Bank must also give the Treasury any analysis the Bank considers to be material to its assessments of the implications for public funds, and provide the Treasury with updated information of any significant changes to the resolution plan or any other information given to the Treasury. Subsection (5) of new section 57B gives the Treasury power to direct the Bank not to provide it with information under this provision in relation to any institution or entity specified in the notice. This enables the Treasury to ensure that it does not receive inside information in relation to any financial institution in which the Treasury holds an interest that it wishes to sell.

Section 37: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001

169 This section reverses the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 by the National Savings Regulations 2015 with retrospective effect, so that the Order will be treated as never having been revoked.

Part 3: Miscellaneous and General

Section 38: Banks authorised to issue banknotes in Scotland and Northern Ireland

- 170 This section introduces a new section 214A into the 2009 Act and makes other amendments to that Act.
- 171 Subsection (1) of that section gives the Treasury a power to make regulations authorising a bank to issue commercial banknotes in Scotland and Northern Ireland in place of an existing issuer.
- 172 Subsection (2) provides that a bank may only be authorised if it is in the same group as a bank which already has the right to issue banknotes. It may also only be authorised to issue banknotes in the same part of the United Kingdom as the existing issuer - and the authorisation of the existing issuer must end on the authorisation of the newly authorised bank to issue banknotes. Subsection (2) also gives the Treasury power to say what is to happen to relation to banknotes which are in the possession of the existing issuer or in circulation, when the right to issue notes passes to the newly authorised bank.
- 173 Subsection (3) ensures that, in the unlikely event that two banks in the same group are authorised in a short period of time to issue banknotes in place of the original issuer, the regulations authorising the second bank to issue banknotes may also make provision in relation any notes issued by the original issuer.
- 174 Subsection (4) allows the Treasury to set the date on which the right to issue banknotes is transferred from one bank to another either in the regulations themselves or by later announcement, published as provided for in the regulations. Where the date is not set in the regulations, it will have to be published in Gazettes (defined in subsection (5) as the London Gazette and either the Edinburgh Gazette (if Scottish banknotes are concerned) or the Belfast Gazette (if Northern Irish banknotes are concerned)).
- 175 Subsection (6) makes the consent of the Bank necessary before the Treasury is able to make regulations under this power. By subsection (7) the Bank is required to publish a statement of the matters it will take into account when deciding whether to give consent.

Section 39: Consequential provision

- 176 This section allows the Treasury and the Secretary of State to make consequential provisions by regulations.

Section 40: Extent

- 177 This section provides that the Act extends to the whole of the United Kingdom, except for those provisions which are amending or repealing legislation which only applies to part of the United Kingdom.

Section 41: Commencement

- 178 This section specifies that sections 31, 37 and 39 to 42 will come into force on the day the Act receives Royal Assent. All other provisions come into force on such day as the Treasury or (in the case of section 32) the Secretary of State may appoint by regulations.

Section 42: Short title

- 179 This section gives the Act its short title.

Commencement

180 Sections 31, 37 and 39 to 42 (Transformer vehicles, Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, Consequential provision, Extent, Commencement and Short title) commence on Royal Assent. All other provisions of the Act will come into force on the day or days that the Treasury (or, in the case of section 32, the Secretary of State) may by regulations appoint.

Related documents

181 The following documents are relevant to the Act and can be read at the stated locations:

- Bank of England Bill: technical Consultation
<https://www.gov.uk/government/consultations/bank-of-england-bill-technical-consultation>
- Bank of England Bill: response to Consultation
<https://www.gov.uk/government/consultations/bank-of-england-bill-technical-consultation>
- Impact Assessment
<https://www.gov.uk/government/consultations/bank-of-england-bill-technical-consultation>
- Transparency and the Bank of England's Monetary Policy Committee - Review by Kevin Warsh.
<http://www.bankofengland.co.uk/publications/Documents/news/2014/warsh.pdf>
- Fair and Effective Markets Review
<http://www.bankofengland.co.uk/markets/Pages/fmreview.aspx>
- Parliamentary Commission on Banking Standards Changing banking for good
<http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/>
- The Government's response to the Parliamentary Commission on Banking Standards
<https://www.gov.uk/government/publications/the-governments-response-to-the-parliamentary-commission-on-banking-standards>
- Creating a secondary annuity market: call for evidence
<https://www.gov.uk/government/consultations/creating-a-secondary-annuity-market-call-for-evidence>

- Creating a secondary annuity market: response to the call for evidence
<https://www.gov.uk/government/consultations/creating-a-secondary-annuity-market-call-for-evidence>
- Pension transfers and early exit charges: consultation
<https://www.gov.uk/government/consultations/pension-transfers-and-early-exit-charges-consultation>
- Pension transfers and early exit charges: response to consultation
<https://www.gov.uk/government/consultations/pension-transfers-and-early-exit-charges-consultation>

Annex A - Territorial extent and application

Provision	England	Wales	Scotland	Northern Ireland
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends to Scotland?	Extends to Northern Ireland?
Part 1 Sections 1 to 17	Yes	Yes	Yes	Yes
Part 2 Sections 18 to 33	Yes	Yes	Yes	Yes
Sections 34(1), (4) to (7)	Yes	Yes	Yes	Yes
Sections 34(2)	Yes	Yes	Yes	No
Sections 34(3)	No	No	No	Yes
Sections 35 to 37	Yes	Yes	Yes	Yes
Part 3 Sections 38 to 42	Yes	Yes	Yes	Yes
Schedules 1 to 4	Yes	Yes	Yes	Yes

Annex B - Hansard References

182 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
Introduction	14 October 2015	Vol. 765 Col. 235
Second Reading	26 October 2015	Vol. 765 Col. 1042
Committee	9 November 2015	Vol. 765 Col. 1851
	11 November 2015	Vol. 765 Col. 1997
Report	15 December 2015	Vol. 767 Col. 1988
Third Reading	19 January 2016	Vol. 768 Col. 648
<i>House of Commons</i>		
Introduction	19 January 2016	No debate
Second Reading	1 February 2016	Vol. 605 Col. 653
Public Bill Committee	9 February 2016 (1st sitting)	1st sitting
	9 February 2016 (2nd sitting)	2nd sitting
	11 February 2016 (3rd sitting)	3rd sitting
	11 February 2016 (4th sitting)	4th sitting
	23 February 2016 (5th sitting)	5th sitting
	23 February 2016 (6th sitting)	6th sitting
Report and Third Reading	19 April 2016	Vol. 608 Col. 805
Lords Consideration of Commons Amendments	3 May 2016	Vol. 771 Col. 1317
Royal Assent	4 May 2016	House of Commons Vol. 609 Col. 185
		House of Lords Vol. 771 Col. 1417

These Explanatory Notes refer to the Bank of England and Financial Services Act 2016 (c. 14) which received Royal Assent on 4 May 2016

Annex C - Progress of Bill Table

183 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17	Clause 17	Clause 17	Clause 17
Section 18						Clause 18
Section 19			Clause 18	Clause 18	Clause 18	Clause 19
Section 20			Clause 19	Clause 19	Clause 19	Clause 20
Section 21	Clause 18	Clause 18	Clause 20	Clause 20	Clause 20	Clause 21
Section 22	Clause 19	Clause 19	Clause 21	Clause 21	Clause 21	Clause 22
Section 23	Clause 20	Clause 20	Clause 22	Clause 22	Clause 22	Clause 23
Section 24	Clause 21	Clause 21	Clause 23	Clause 23	Clause 23	Clause 24
Section 25	Clause 22	Clause 22	Clause 24	Clause 24	Clause 24	Clause 25
Section 26	Clause 23	Clause 23	Clause 25	Clause 25	Clause 25	Clause 26
Section 27		Clause 24	Clause 26	Clause 26	Clause 26	Clause 27
Section 28		Clause 25	Clause 27	Clause 27	Clause 27	Clause 28
Section 29					Clause 28	Clause 29
Section 30						Clause 30

These Explanatory Notes refer to the Bank of England and Financial Services Act 2016 (c. 14) which received Royal Assent on 4 May 2016

Section of the Act	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as amended on Report in the Commons
Section 31		Clause 26	Clause 28	Clause 28	Clause 29	Clause 31
Section 32	Clause 24	Clause 27	Clause 29	Clause 29	Clause 30	Clause 32
Section 33			Clause 30	Clause 30	Clause 31	Clause 33
Section 34			Clause 31	Clause 31	Clause 32	Clause 34
Section 35					Clause 33	Clause 35
Section 36	Clause 25	Clause 28	Clause 32	Clause 32	Clause 34	Clause 36
Section 37			Clause 33	Clause 33	Clause 35	Clause 37
Section 38	Clause 26	Clause 29	Clause 34	Clause 34	Clause 36	Clause 38
Section 39	Clause 29	Clause 30	Clause 35	Clause 35	Clause 37	Clause 39
Section 40	Clause 28	Clause 31	Clause 36	Clause 36	Clause 38	Clause 40
Section 41	Clause 29	Clause 32	Clause 37	Clause 37	Clause 39	Clause 41
Section 42	Clause 30	Clause 33	Clause 38	Clause 38	Clause 40	Clause 42
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4

? Crown copyright 2016

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

5/2016 55841 19585

These Explanatory Notes refer to the Bank of England and Financial Services Act 2016 (c. 14) which received Royal Assent on 4 May 2016

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

The Houses of Parliament Shop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: shop@parliament.uk

Internet: <http://www.shop.parliament.uk>

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-560040-4



9 780105 600404