

EXPLANATORY MEMORANDUM TO
THE BANK OF ENGLAND AND FINANCIAL SERVICES (CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Bank of England and Financial Services Act 2016 (“the 2016 Act”) ends the status of the Prudential Regulation Authority (“the PRA”) as a subsidiary of the Bank of England (“the Bank”) by making the Bank the PRA. The 2016 Act also creates the Prudential Regulation Committee, through which the Bank must exercise its functions as the PRA. References to the PRA in the 2016 Act or any other enactment are now treated as references to the Bank acting as the PRA through its Prudential Regulation Committee.
- 2.2 This instrument makes consequential amendments to references to the Bank and the PRA in various enactments to account for the change in status of the PRA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The 2016 Act received Royal Assent on 4 May 2016. This instrument makes the consequential amendments required to coincide with the change in status of the PRA as provided for under the 2016 Act.
- 4.2 This instrument makes consequential amendments to the following legislation: the Companies Act 1985; the Building Societies Act 1986; the Companies Act 1989; the Water Act 1989; the Water Industry Act 1991; the Water Resources Act 1991; the Social Security Administration (Northern Ireland) Act 1992; the Pension Schemes Act 1993; the Pension Schemes (Northern Ireland) Act 1993; the Freedom of Information Act 2000; the Terrorism Act 2000; the Utilities Act 2000; the Proceeds of Crime Act 2002; the Companies (Audit, Investigations and Community Enterprise) Act 2004; the Pensions Act 2004; the Pensions (Northern Ireland) Order 2005; the Serious Organised Crime and Police Act 2005; the Companies Act 2006; the Equality Act 2010; the Charities Act 2011; the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; the Race Relations (Prescribed Public Bodies) (No. 2) Regulations 1994; the Financial Markets and Insolvency (Settlement Finality) Regulations 1999; the

Land Registration Rules 2003; the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003; the Credit Institutions (Reorganisation and Winding up) Regulations 2004; the Financial Assistance Scheme (Appeals) Regulations 2005; the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008; the Proceeds of Crime Act 2002 (Disclosure of Information) Order 2008; the Bank Administration (England and Wales) Rules 2009; the Bank Administration Rules (Northern Ireland) 2009; the Bank Administration (Scotland) Rules 2009; the Building Society Special Administration (Scotland) Rules 2009; the Companies (Disclosure of Address) Regulations 2009; the Overseas Companies Regulations 2009; the Building Society Special Administration (England and Wales) Rules 2010; the Equality Act 2010 (Specific Duties) Regulations 2011; the Postal Services Act 2011 (Disclosure of Information) Order 2012; the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013; the Bank Recovery and Resolution (No. 2) Order 2014; the Building Society Special Administration Rules (Northern Ireland) 2014; the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014; the Companies (Disclosure of Date of Birth Information) Regulations 2015; the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015; the Small and Medium Sized Business (Credit Information) Regulations 2015 and the Register of People with Significant Control Regulations 2016.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury, Simon Kirby MP, has made the following statement regarding Human Rights:

 “In my view the provisions of the Bank of England and Financial Services (Consequential Amendments) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This instrument makes amendments to primary and subordinate legislation in consequence of the changes the 2016 Act makes to the status of the PRA. This instrument also makes minor amendments in consequence of the Financial Services Act 2012 (“the 2012 Act”).
- 7.2 The 2016 Act provides for references to the PRA in other enactments to be treated as references to the Bank acting as the PRA through its Prudential Regulation Committee. This instrument makes consequential amendments to references to both the Bank and the PRA in various enactments to account for this change.
- 7.3 In some cases, references to the Bank are clarified so that they are interpreted to exclude the Bank when it is acting as the PRA to reflect an existing difference in the way the enactment is intended to apply to the Bank and the PRA. For example, Schedule 3A to the Terrorism Act 2000 excludes from that Act’s definition of the

“regulated sector” (which imposes special responsibilities) business conducted by the Bank. It does not exclude business conducted by the PRA. This instrument therefore maintains this state of affairs by specifying that the reference to the Bank in Schedule 3A to the Terrorism Act 2000 does not include the Bank acting as the PRA.

- 7.4 In other cases, references to the PRA are removed and references to the Bank are expressly confirmed to include the Bank when it is acting as the PRA to reflect that the enactment should now apply to the Bank including its new functions as the PRA as a whole. For example, in the Equality Act 2010, the Bank and the PRA are both included in a list (Schedule 19) of public bodies to which the public sector Equality Duty applies. This instrument removes the PRA from that list and confirms that the reference to the Bank includes the Bank acting as the PRA.
- 7.5 Other amendments are included to remove ambiguity over how a reference to the Bank should be interpreted.
- 7.6 Ending the subsidiary status of the PRA and creating a Prudential Regulation Committee places micro-prudential regulation on the same footing as the Bank’s roles setting monetary policy (through the Monetary Policy Committee) and setting macro-prudential policy (through the Financial Policy Committee). The government set out during the passage of the 2016 Act that this change will reinforce, to Bank staff and to the public to whom the Bank must be transparent and accountable, that the Bank is not simply an organisation dedicated to setting interest rates, but one with equally important macro- and micro-prudential responsibilities.
- 7.7 Paragraphs 7, 9 and 14 of Part 1 of the Schedule to this instrument make amendments in consequence of the 2012 Act, or in consequence of both the 2012 Act and the 2016 Act. The 2012 Act replaced the Financial Services Authority with the Financial Conduct Authority and the PRA and introduced new enforcement functions for the Bank, it also made amendments to the Financial Services and Markets Act 2000. The amendments made by this instrument in consequence of the 2012 Act replace out-of-date references to the Financial Services Authority and update references to certain provisions of the Financial Services and Markets Act 2000 which the 2012 Act amended.

Consolidation

- 7.8 There are no plans to consolidate the legislation amended by this instrument as a result of these amendments. The departments responsible for the legislation amended by this instrument will keep the legislation under review in the usual manner.

8. Consultation outcome

- 8.1 The government consulted on ending the PRA’s subsidiary status from 21 July to 11 September 2015.
- 8.2 Respondents broadly welcomed this change and the clear accountability and increased potential for cooperation across the Bank’s functions it would bring. One respondent supported the end of the PRA’s status as a subsidiary but cautioned that silos and barriers to information flows could remain even after de-subsidiarisation. Only one respondent was opposed to ending the subsidiary status of the PRA, arguing that the current structures are working well.
- 8.3 Many respondents emphasised the importance of protecting the operational independence of the PRA under the new arrangements. The government agreed with

the importance of preserving the PRA's operational independence and in the consultation response set out a series of protections for the PRA's operational independence that were included in the 2016 Act.

- 8.4 The consultation document and a full summary of responses are available at:
www.gov.uk/government/consultations/bank-of-england-bill-technical-consultation

9. Guidance

- 9.1 There are no plans to produce guidance.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is limited to transitional legal and administrative costs from de-subsidiarising the PRA and moving the functions of the PRA board to the new Prudential Regulation Committee. These costs will be shared by the PRA and the Bank. However, because the PRA will retain its operational independence, and where appropriate the Bank and PRA already share systems (e.g. IT support), these transitional costs are expected to be minimal.
- 10.3 The Impact Assessment for the 2016 Act, which includes a section on this change, is available at:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/493716/BoE_Bill_Impact_Assessment_13_Jan_2016.pdf

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The 2016 Act will be subject to post-legislative scrutiny in line with normal processes.

13. Contact

- 13.1 Tom Etheridge at HM Treasury Telephone: 02072704522 or email:
Tom.Etheridge@HMTreasury.gsi.gov.uk can answer any queries regarding the instrument.