

DRAFT STATUTORY INSTRUMENTS

2024 No.

BANKS AND BANKING

The Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2024

Made - - - - *******

Coming into force *******

The Treasury make this Order in exercise of the powers conferred by sections 142A(2)(b) and (6), 142B(2), 142D(2), 142E(1) and (4), 142F and 428(3) of the Financial Services and Markets Act 2000(a), being of the opinion—

(a) in connection with the exercise of the power in section 142A(2)(b), that the exemption conferred by this Order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services(b);

(b) in connection with the exercise of the power conferred by section 142B(2), that it is not necessary for the purposes set out in section 142B(4) that the regulated activity of accepting deposits should be a core activity(c) when carried on in the circumstances specified in this Order;

(c) in connection with the exercise of the power conferred by section 142D(2), that allowing ring-fenced bodies(d) to deal in investments as principal in the circumstances specified in this Order would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services;

(d) in connection with the exercise of the power conferred by section 142E(1), that the making of this Order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services; and

having had regard to the desirability of minimising any adverse effect that the ring-fencing provisions(e) might be expected to have on competition in the market for services provided in the

(a) 2000 c. 8. Sections 142A to 142Z1 of the Financial Services and Markets Act 2000 (“the 2000 Act”) were inserted by section 4 of the Financial Services (Banking Reform) Act 2013 (c. 33). Section 428(3) was amended by section 66 of the Financial Services and Markets Act 2023 (c. 29).

(b) “Core services” is defined in section 142C of the 2000 Act.

(c) “Core activity” is defined in section 142B of the 2000 Act.

(d) “Ring-fenced body” is defined in section 142A of the 2000 Act.

(e) “Ring-fencing provisions” is defined in section 142A(5) of the 2000 Act.

course of carrying on core activities, and to the risks to which a ring-fenced body would be exposed if it did the things to which the prohibitions in this Order relate and considered whether the doing of the things to which the prohibition relates would make it more likely that the failure of the ring-fenced body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.

A draft of this Order has been laid before Parliament and approved by resolution of each House of Parliament in accordance with section 142Z(2) of the Financial Services and Markets Act 2000.

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2024.

(2) This Order comes into force on the twenty-second day after the day on which it is made.

Amendments to the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014

2. The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014(a) is amended in accordance with articles 3 to 6.

Amendments to Part 1: general

3. In article 1(3) (interpretation)—

(a) omit the definition of “EEA account” and “EEA account holder”;

(b) after the definition of “Northern Ireland industrial and provident society”, insert—

““the prudential requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms(b);”;

(c) after the definition of “securities”, insert—

““SME” has the meaning given in article 1(4) of the excluded activities and prohibitions order(c);”;

(d) at the end of the definition of “UK deposit-taker”, insert—

“;

“undertaking” includes a company, body corporate, partnership or unincorporated association”.

Amendments to Part 2: circumstances in which accepting a deposit is not a core activity

4.—(1) In article 2 (circumstances in which accepting a deposit is not a core activity)—

(a) in paragraph (2)—

(i) in the opening words, omit “or an EEA account”;

(ii) after sub-paragraph (a), insert—

“(aa) an SME which is—

(i) an investment firm,

(ii) a UCITS or an alternative investment fund,

(a) S.I. 2014/1960, amended by S.I. 2016/1032, 2017/701, 2018/897 and 2019/632.

(b) EUR 2013/575, amended by the Financial Services Act 2021 (c. 22), the Financial Services and Markets Act 2023 (c. 29) sections 1, 7 and Schedules 1 and 4, S.I. 2018/1401, 2019/710, 876, 1232, 2033, 2020/1301, 1385, 2021/1078, 1376, 2022/838, 2023/999, 1409, 1410, and 2024/102.

(c) The definition of “SME” is inserted into the excluded activities and prohibitions order by article 8(1)(c).

- (iii) a management company or an alternative investment fund manager, or
- (iv) a financial holding company or a mixed financial holding company,
and for these purposes, “UCITS”, “alternative investment fund”, “management company”, “alternative investment fund manager”, “financial holding company” and “mixed financial holding company” have the meanings given in article 1(4) of the excluded activities and prohibitions order;”;
- (iii) at the end of sub-paragraph (d), omit “or”;
- (iv) after sub-paragraph (e), insert—
 - “(f) the central bank of a state or territory other than the United Kingdom;
 - (g) the European Central Bank;
 - (h) the European Union;
 - (i) the European Atomic Energy Community;
 - (j) the Bank for International Settlements;
 - (k) the Bank of England Asset Purchase Facility Fund Limited;
 - (l) the Covid Corporate Financing Facility Limited; or
 - (m) the UK Infrastructure Bank Limited.”;
- (b) in paragraph (3), omit sub-paragraph (b);
- (c) after paragraph (3), insert—
 - “(4) A UK deposit-taker may continue to treat an account holder of that UK deposit-taker as a relevant financial institution for the purposes of this article—
 - (a) for a period of twelve months beginning with the day after the day on which the account holder ceases to satisfy the definition of a relevant financial institution (“the twelve-month period”), or
 - (b) until the date on which the account holder ceases to be an account holder of that UK deposit-taker, where this happens before the end of the twelve-month period.”.
- (2) In article 3 (meaning of qualifying organisation), omit paragraph (3).
- (3) In article 8 (meaning of qualifying group member), omit paragraphs (2) and (3).

Amendments to Part 3: circumstances in which UK deposit takers are not ring-fenced bodies

- 5.—(1)** In article 11 (circumstances in which UK deposit-takers are not ring-fenced bodies)—
- (a) in paragraph (1)—
 - (i) at the end of sub-paragraph (c), omit “or”;
 - (ii) at the end of sub-paragraph (d), insert—
 - “; or
 - (e) it complies with the condition set out in article 13A (the “trading assets condition”)(a)”;
 - (b) after paragraph (1), insert—
 - “(1A) Subject to paragraph (1B), paragraph (1)(e) does not apply to a UK deposit-taker which is included, or is a member of a group which is included, on the list of global systemically important banks published by the Financial Stability Board on 21st November 2022, as that list is updated by the Financial Stability Board from time to time(b) (“the GSIB list”).

(a) Article 13A is inserted by article 5(3) of this Order.

(b) The list of global systemically important banks can be found at <https://www.fsb.org/2022/11/2022-list-of-global-systemically-important-banks-g-sibs/>, or obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(1B) When a UK deposit-taker, or the group of which it is a member, is included on the GSIB list by the Financial Stability Board after paragraph (1)(e) has come into force, paragraph (1)(e) continues to apply to that UK deposit-taker for a period of four years starting with the date on which it is first added to the GSIB list.”;

(c) in paragraph (3), after sub-paragraph (b), insert—

“(c) a ring-fenced body or a member of its group acquires securities issued by—

- (i) the UK deposit-taker, or
- (ii) the parent undertaking of the UK deposit-taker;

(d) as a result of one of the following transactions, the UK deposit-taker no longer satisfies the trading assets condition in article 13A—

- (i) the UK deposit-taker or a member of its group acquires the whole or part of the business of another undertaking,
- (ii) the UK deposit-taker or a member of its group acquires securities issued by another undertaking, making the undertaking a member of the same group as the UK deposit-taker, or
- (iii) an undertaking acquires securities issued by the UK deposit-taker or another member of its group, making the UK deposit-taker a member of the same group as that undertaking.”.

(2) In article 12(1)(a) and (b) (core deposit level condition), for “£25 billion” both times it occurs, substitute “£35 billion”.

(3) In Part 3, after article 13 (deposits excluded from determination of core deposit level), insert—

“Trading assets condition

13A.—(1) The trading assets condition is that at any particular time (“T”)—

- (a) in the case of a UK deposit-taker which is not a member of a group, the average value of the trading assets held by the UK deposit-taker in the calculation period does not exceed 10% of the average tier 1 capital of the UK deposit-taker in the calculation period, in each case as calculated in accordance with paragraph (2);
- (b) in the case of a UK deposit-taker which is a member of a group, the average sum of the value of the trading assets held by—
 - (i) the UK deposit-taker,
 - (ii) each CRR firm in the same group as the UK deposit-taker,
 - (iii) each FCA investment firm in the same group as the UK deposit-taker, and
 - (iv) a UK branch in the same group as the UK deposit-taker,

in the calculation period does not exceed 10% of the average sum of the tier 1 capital of the UK deposit-taker, and each CRR firm and FCA investment firm in the group, in each case as calculated in accordance with paragraphs (3) and (4).

(2) For the purpose of paragraph (1)(a), the average value of the trading assets or tier 1 capital of an entity is to be calculated as follows—

- (a) calculate the value of the trading assets or tier 1 capital at the end of each quarter in the calculation period to give quarterly totals, and
- (b) in each case, add those quarterly totals together and divide by the number of quarters in the calculation period to give the average value.

(3) For the purpose of paragraph (1)(b), at the end of each quarter in the calculation period—

- (a) add together the total value of the trading assets held by—
 - (i) the UK deposit-taker,

- (ii) any other CRR firm in the same group as the UK deposit-taker, so far as those assets are not included in the total in paragraph (i),
 - (iii) any FCA investment firm in the same group as the UK deposit-taker, so far as those assets are not included in the total in paragraph (i) or (ii), and
 - (iv) any UK branch in the same group as the UK deposit-taker, so far as those assets are not included in the total in paragraph (i), (ii) or (iii),
- (b) add together the total value of the tier 1 capital of—
- (i) the UK deposit-taker,
 - (ii) any other CRR firm in the same group as the UK deposit-taker, so far as that capital is not included in the total in paragraph (i), and
 - (iii) any FCA investment firm in the same group as the UK deposit-taker, so far as that capital is not included in the total in paragraph (i) or (ii), and
- (c) in each case, add the quarterly totals calculated under sub-paragraphs (a) and (b) together and divide by the number of quarters in the calculation period to give the average value.
- (4) Each calculation required by paragraph (3) is to be made—
- (a) on a consolidated basis in accordance with the prudential requirements regulation in the case of a UK deposit-taker or other CRR firm, where the CRR firm or any UK parent institution of the CRR firm is required to calculate tier 1 capital on a consolidated basis under the prudential requirements regulation;
 - (b) on a consolidated basis in accordance with MIFIDPRU in the case of an FCA investment firm not included in any calculations made under sub-paragraph (a), where the FCA investment firm or any UK parent entity (as defined in the glossary to the FCA Handbook) of the FCA investment firm—
 - (i) is required to calculate the tier 1 capital of the FCA investment firm on a consolidated basis under MIFIDPRU, or
 - (ii) is permitted to use the group capital test provided for in MIFIDPRU 2.6;
 - (c) on an individual basis in any other case.
- (5) For the purposes of this article—
- (a) trading assets are held by a branch if they are treated by the credit institution to which the branch belongs as being held by the branch;
 - (b) the value of trading assets is their fair value, assessed in accordance with International Financial Reporting Standard 13 (fair value measurement) issued by the International Accounting Standards Board in May 2011, as amended from time to time^(a);
 - (c) tier 1 capital has the same meaning as in—
 - (i) the prudential requirements regulation in relation to a CRR firm, and the value of the tier 1 capital is to be calculated in accordance with the prudential requirements regulation;
 - (ii) MIFIDPRU in relation to an FCA investment firm, and the value of the tier 1 capital is to be calculated in accordance with MIFIDPRU;
 - (d) the calculation period is—
 - (i) in the case of a UK deposit-taker that has existed for three financial years or more, the period of three consecutive financial years of that UK deposit-taker which ends immediately before the start of the financial year in which T falls;

(a) A copy of International Financial Reporting Standard 13 can be found at <https://www.ifrs.org/issued-standards/list-of-standards/ifrs-13-fair-value-measurement/#standard>, or obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(ii) in the case of any other UK deposit-taker, the period for which that UK deposit-taker has existed at T.

(6) If a UK deposit-taker, CRR firm, FCA investment firm or UK branch holds trading assets or tier 1 capital in a currency other than sterling, the quarterly totals referred to in paragraphs (2) and (3) must be calculated by converting financial amounts representing such trading assets or tier 1 capital into sterling.

(7) The conversion required by paragraph (6) must be made by reference to an appropriate spot rate of exchange as at the last day of the quarter to which a quarterly total relates.

(8) In this article, a reference to a quarter is a reference to any complete quarter falling within a calculation period for the entity concerned.

(9) In this article—

“CRR firm” has the meaning given in article 4(1)(2A) of the prudential requirements regulation;

“FCA Handbook” means the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the 2000 Act;

“FCA investment firm” has the meaning given in section 143A of the 2000 Act;

“MIFIDPRU” means the Prudential Sourcebook for MIFID Investment firms in the FCA Handbook, as that Sourcebook has effect from time to time;

“overseas deposit-taker” means a credit institution, as defined by article 4(1)(1) of the prudential requirements regulation, which is not a CRR firm;

“trading assets” means financial assets which are held for trading, other than any hedging assets, and for these purposes—

(a) “financial assets” has the meaning given in paragraph 11 of International Accounting Standard 32 (financial instruments: presentation) as amended from time to time**(a)**,

(b) “held for trading” has the meaning given in Appendix A to International Financial Reporting Standard 9 (financial instruments), issued by the International Accounting Standards Board in November 2009 as amended from time to time**(b)**,

(c) “hedging assets” means assets where the sole or main purpose for the entity acquiring the asset is to limit the extent to which—

(i) that entity, or

(ii) any other entity, whose trading assets are included in the calculation required by paragraph (3)(a)(i), (ii) or (iii),

will be adversely affected by any of the factors specified in article 6(2) of the excluded activities and prohibitions order;

“UK branch” means a place of business located in the United Kingdom that forms a legally dependant part of an overseas deposit-taker and conducts directly all or some of the operations inherent in its business, where the overseas deposit-taker is a member of the same group as the UK deposit-taker;

“UK parent institution” has the meaning given in article 4(1)(28) of the prudential requirements regulation.”.

(a) A copy of International Accounting Standard 32 can be found at <https://www.icaew.com/technical/corporate-reporting/ifrs/ifrs-standards/ias-32-financial-instruments-presentation#:~:text=IAS%2032%20classifies%20financial%20instruments,a%20liability%20and%20equity%20element,> or may be obtained from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

(b) A copy of International Financial Reporting Standard 9 can be found at <https://www.ifrs.org/issued-standards/list-of-standards/ifrs-9-financial-instruments/#standard> or obtained from HM Treasury at the above address.

Amendments to Part 4: requirements for non ring-fenced bodies

6. In article 14(1) (rules about information to be provided by a non-ring-fenced body to individual account holders)—

- (a) in sub-paragraph (a), omit “or an EEA account”;
- (b) in sub-paragraph (b), omit “or EEA account-holders”.

Amendments to the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

7. The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(a) is amended in accordance with articles 8 to 10.

Amendments to Part 1: general

8.—(1) In article 1 (interpretation)—

(a) in paragraph (4)—

(i) for the definition of “correspondent banking” substitute—

““correspondent banking” means an arrangement between two or more payment service providers pursuant to which one payment service provider provides payment services to the clients of one or more other payment service providers on behalf of those other payment service providers;”;

(ii) after the definition of “financial institution exposure” insert—

““financial year” has the meaning given in article 1(3) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014;”;

(iii) omit the definition of “global systemically important insurer”;

(iv) after the definition of “liquidity risk”, insert—

““longevity risk” means that risk that a person to whom an undertaking has loaned money dies later than anticipated by the undertaking at the time when the loan was agreed;”;

(v) after the definition of “mixed financial holding company”, insert—

““mortality risk” means the risk that a person to whom an undertaking has loaned money dies earlier than anticipated by the undertaking at the time when the loan was agreed;”;

(vi) after the definition of “own funds” insert—

““participating interest” has the meaning given in section 421A of the Act(b);”;

(vii) after the definition of “payment exposures”, insert—

““payment service provider” means—

(a) a payment service provider as defined by regulation 2(1) of the Payment Services Regulations 2017(c), or

(b) an undertaking which—

(i) performs similar functions to an undertaking listed in paragraphs (a) to (g) of that definition,

(ii) carries out payment services, and

(iii) has a registered office or head office outside the United Kingdom;”;

(viii) for the definition of “related undertaking” substitute—

(a) S.I. 2014/2080, amended by S.I. 2016/1032; 2017/752, 1064, 1167; 2019/632; 2021/1376.

(b) Section 421A was inserted by S.I. 2008/948.

(c) S.I. 2017/752. The definition of “payment service provider” was amended by S.I. 2018/1201.

“related undertaking means—

- (a) any subsidiary undertaking of a parent undertaking, other than a subsidiary undertaking that is a ring-fenced body, or
- (b) any undertaking in which a parent undertaking or a subsidiary undertaking of a parent undertaking has a participating interest, other than an undertaking which is a ring-fenced body,

where the parent undertaking is subject to rules made by the appropriate regulator pursuant to section 192JA of the Act^(a)”;

(ix) after the definition of “shares”, insert—

““SME” means an undertaking which satisfies the condition in paragraph (6);”;

(b) in paragraph (5), for “on 1 January 2022” substitute “from time to time”;

(c) after paragraph (5), insert—

“(6) Subject to paragraphs (7), (8) and (9), an undertaking is an SME for the purposes of this Order—

(a) where the undertaking is not a member of a group, if the turnover for the undertaking in the relevant financial year was less than or equal to £50 million,

(b) where—

- (i) the undertaking is a member of a group, and
- (ii) the undertaking is included in the consolidated group accounts of that group for the relevant financial year,

if the turnover included in the consolidated group accounts for that financial year is less than or equal to £50 million, or

(c) where the undertaking is a member of a group and either—

- (i) the group did not produce consolidated group accounts for the relevant financial year, or
- (ii) the undertaking is not included in the consolidated group accounts of that group for that financial year,

if the sum of the turnover of each undertaking in the group for the relevant financial year of the undertaking concerned is less than or equal to £50 million.

(7) Where an undertaking has existed for less than one financial year, the maximum figure for turnover in paragraph (6)(a) is to be proportionately reduced.

(8) Where no undertaking in a group has existed for more than one financial year, the maximum figure for turnover in paragraph (6)(c) is to be reduced in proportion to the period for which the oldest undertaking in that group has existed.

(9) An undertaking does not cease to be an SME unless it exceeds one of the thresholds in paragraph (6) for two consecutive financial years, and for these purposes the threshold exceeded need not be the same in both financial years.

(10) For the purposes of paragraph (6)—

“included in the consolidated group accounts” is to be construed in accordance with section 474(1) of the Companies Act 2006^(b);

“relevant financial year”—

(a) in relation to an undertaking, means—

- (i) the last completed financial year for which accounts are available, or
- (ii) where the undertaking has existed for less than one financial year, the period for which the undertaking has existed, and

(a) Section 192JA was inserted by s. 133(1) of the Financial Services (Banking Reform) Act 2013 (c. 33).

(b) 2006 c. 46. There are amendments to section 474(1) which are not relevant to this instrument.

- (b) in relation to a group, means—
 - (i) the last completed financial year of the parent undertaking of the group for which accounts are available, or
 - (ii) where the parent undertaking of the group has existed for less than one financial year—
 - (aa) if a majority of undertakings in the group have the same financial year, the last completed financial year of that majority for which accounts are available, or
 - (bb) in any other case, the most recently completed financial year of any undertaking in the group for which accounts are available, or
 - (iii) where no undertaking in the group has existed for at least a full financial year, the period for which the oldest undertaking in the group has existed;
- “turnover”, in relation to an undertaking, means the amounts derived from the provision of goods and services (“the gross receipts”), after deduction of—
- (a) trade discounts,
 - (b) value added tax, and
 - (c) any other taxes based on the gross receipts.”.

(2) In article 2 (relevant financial institution)—

- (a) in paragraph (2), omit sub-paragraph (d);
- (b) in paragraph (3)—
 - (i) in sub-paragraph (c)—
 - (aa) at the end of paragraph (i), omit “and”;
 - (bb) omit paragraph (ii);
 - (ii) in sub-paragraph (g)(ii), for “to 20” substitute “to 19C”;
 - (iii) after sub-paragraph (g), insert—
 - “(ga) an institution referred to in paragraph (2)(b), (e), (f) or (g) which is an SME;”.

(3) In article 3(2)(a) (securitisation companies and structured finance vehicles: definitions), for the words from “or a” to the end, substitute “, another ring-fenced body which is a member of the group of companies to which the first ring-fenced body belongs (a “group ring-fenced body”), or a subsidiary of either ring-fenced body”.

(4) In article 3(2)(b)—

- (a) in the opening words, after “created by,” insert “acquired by,”;
- (b) in paragraph (i), after “body” insert “or a group ring-fenced body”;
- (c) in paragraph (ii)—
 - (i) after “created by” insert “or acquired by”;
 - (ii) for “or any of its” substitute “, a group ring-fenced body or any of their”;
 - (iii) for “the ring-fenced body itself” substitute “a ring-fenced body”;
- (d) in paragraph (iii)—
 - (i) after “ring-fenced body”, the first time it appears, insert “or of a group ring-fenced body”;
 - (ii) for “the ring-fenced body itself” substitute “a ring-fenced body”;
- (e) in paragraph (iv)—
 - (i) in the opening words, after “(“A”)” insert “or a group ring-fenced body (“B”)”;
 - (ii) in sub-paragraph (aa), after “created” insert “or acquired”;
 - (iii) in each of sub-paragraphs (aa) and (bb), after “A” insert “or B”;
 - (iv) in sub-paragraph (cc), for “A itself” substitute “a ring-fenced body”.

Amendments to Part 2: excluded activities and exceptions

- 9.—(1) In article 6 (excluded activities: general exceptions)—
- (a) in paragraph (1), after sub-paragraph (bb), insert—
 - “(bc) any undertaking in which the ring-fenced body has a participating interest.”;
 - (b) in paragraph (2), after sub-paragraph (e), insert—
 - “(f) longevity risk;
 - (g) mortality risk.”;
 - (c) in paragraph (4), after sub-paragraph (a), insert—
 - “(aa) acquiring shares, debentures or instruments giving an entitlement to shares or debentures from an issuer where—
 - (i) the shares, debentures or instruments concerned are issued by the issuer,
 - (ii) the acquisition of the shares, debentures or instruments concerned is undertaken as part of a restructuring of debt owed by the issuer or another undertaking (“the debtor”) to the ring-fenced body or a subsidiary undertaking of the ring-fenced body,
 - (iii) the restructuring is undertaken when the debtor has encountered, or is likely to encounter, financial difficulties which may affect their ability to carry on business as a going concern, and
 - (iv) the purpose of the restructuring is to prevent or mitigate the effect of those financial difficulties;
 - (ab) acquiring shares or debentures from an issuer through the exercise of rights granted in an instrument giving an entitlement to such shares or debentures where the acquisition of that instrument is permitted under sub-paragraph (a) or (aa);
 - (ac) acquiring further shares issued by an issuer whose shares they have acquired pursuant to sub-paragraph (a), (aa) or (ab) provided that the ring-fenced body does not acquire more shares in the new issue than are required to maintain the percentage of its shareholding in the issuer.”;
 - (d) in paragraph (5)—
 - (i) renumber the words from “selling shares” to the end as sub-paragraph (a);
 - (ii) in sub-paragraph (a), as so renumbered, after “(4)(a)” insert “, (aa), (ab), (ac),”;
 - (iii) after sub-paragraph (a), as so renumbered, insert—
 - “(b) selling debentures acquired or held by the ring-fenced body in accordance with paragraph (4)(c), provided that the debenture is sold together with the loan, credit, guarantee or other similar financial accommodation referred to in paragraph (4)(c)(ii) to which the debenture relates.”;
 - (e) in paragraph (7), after “trustee” insert “or in Scotland, as a nominee,”;
 - (f) after paragraph (7), insert—
 - “(8) A ring-fenced body does not carry on an excluded activity by dealing in investments as principal—
 - (a) to remedy or prevent the failure of a transaction which it has or would have entered into as agent for a customer where the failure is or would have been due to a systems or operating error, provided that the investment concerned can be allocated to the customer and is so allocated as soon as practicable after the transaction, or
 - (b) to remedy a trade made by the ring-fenced body—
 - (i) as agent for a customer, and
 - (ii) as a result of an error of the ring-fenced body.

(9) A ring-fenced body does not carry on an excluded activity by dealing in investments as principal where—

- (a) the ring-fenced body proposes to—
 - (i) launch a new product or service, or
 - (ii) make changes to an existing product or service,
- (b) the ring-fenced body enters into a transaction to buy or sell a relevant security as principal,
- (c) the only purpose of the transaction is to test the new or changed product or service, and
- (d) the transaction concerns—
 - (i) a single relevant security, or
 - (ii) if it is not possible to buy or sell a single unit of the relevant security in question, the minimum amount of the relevant security which it is possible to buy or sell.

(10) In paragraph (9), “relevant security” means a security or contractually based investment, other than investments specified by article 87 or 89 of the Regulated Activities Order 2001^(a), and for these purposes, “contractually based investment” has the meaning given in article 3(1) of the Regulated Activities Order 2001.”.

(2) In article 7(2) (excluded activities: securitisation and covered bonds), at the end, insert “or its conduit vehicles”.

(3) After article 7, insert—

“Excluded activities: SME exception

7A.—(1) A ring-fenced body does not carry on an excluded activity by entering into a transaction to—

- (a) acquire or dispose of shares in a UK SME, provided that the ring-fenced body only has a minority interest in the UK SME concerned,
- (b) invest in an SME investment undertaking by acquiring an interest in the SME investment undertaking, or disposing of that interest, provided that—
 - (i) the interest is not a debt instrument issued by the SME investment undertaking, and
 - (ii) where the SME investment undertaking is an investment company, the ring-fenced body only has a minority interest in the SME investment undertaking concerned, or
- (c) acquire, dispose of or exercise rights under instruments giving an entitlement to shares issued by a UK SME in consideration or part consideration for a loan made by the ring-fenced body to the UK SME.

(2) Paragraph (1) does not apply unless the sum of the value of relevant investments held by the ring-fenced body does not exceed ten per cent of the value of the tier 1 capital of the ring-fenced body on a sub-consolidated basis where this is required under the prudential requirements regulation, and otherwise on an individual basis, for a continuous period of twelve months, and for these purposes—

- (a) “relevant investments” means—
 - (i) shares, instruments giving an entitlement to shares or other interests acquired by the ring-fenced body under paragraph (1), and
 - (ii) shares in a UK SME acquired by the ring-fenced body under article 6(4)(d),

^(a) S.I. 2001/544, amended by S.I. 2010/86, 2011/133, 2687, 2014/1815, 2019/632. There are other amendments to S.I. 2001/544 not relevant to this Order.

but does not include any shares in a UK SME during any time in which the UK SME is a subsidiary undertaking of the ring-fenced body, or in which the ring-fenced body has a participating interest in the UK SME;

- (b) the value of relevant investments is their fair value, assessed in accordance with International Financial Reporting Standard 13 (fair value measurement) issued by the International Accounting Standards Board in May 2011, as amended from time to time;
- (c) tier 1 capital has the meaning given in Article 25 of the prudential requirements regulation, and the value of the tier 1 capital of the ring-fenced body on an individual basis or a sub-consolidated basis, as applicable, is to be calculated in accordance with the prudential requirements regulation;
- (d) references to holding capital on a sub-consolidated basis are to be interpreted in accordance with Article 4(1)(49) of the prudential requirements regulation.

(3) For the purposes of paragraph (1)(b), investing in an SME investment undertaking includes—

- (a) the acquisition of shares or other interests issued by a parent undertaking of an SME investment undertaking, provided that the ring-fenced body only has a minority interest in that parent undertaking;
- (b) the acquisition of an interest in a feeder scheme of an SME investment undertaking, provided that any master scheme in which the feeder scheme invests complies with all the conditions set out in paragraph (4).

(4) For the purposes of paragraph (3)(b), a “feeder scheme” means a collective investment scheme, which—

- (a) invests at least 85% of the total property which is subject to the collective investment scheme in units or shares of—
 - (i) a single collective investment scheme (a “master scheme”), or
 - (ii) two or more master schemes which each have identical investment strategies, or
- (b) has an exposure of at least 85% of its assets to such a master scheme.

(5) In this article, an “SME investment undertaking” means an eligible undertaking which satisfies all the following conditions—

- (a) it has an investment strategy of investing at least 50% of its investment capital in UK SMEs;
- (b) it does not at any time invest more than 50% of its investment capital in enterprises which are not UK SMEs;
- (c) it does not have an investment strategy of investing in other eligible undertakings.

(6) For the purposes of this article—

- (a) the “investment capital” of an eligible undertaking which is a collective investment scheme, or the sub-fund of a collective investment scheme, is the sum of—
 - (i) the capital which investors have provided for investment by the collective investment scheme, and
 - (ii) the capital which investors may be required to provide for such investment under the terms of their investment in the collective investment scheme, after the deduction of all fees, charges and expenses which are directly or indirectly borne by investors and which are agreed between the manager of the collective investment scheme and the investors;
- (b) the “investment capital” of an eligible undertaking which is an investment company is the sum of the assets of the investment company after the deduction of all fees, charges and expenses which are directly or indirectly borne by investors

and which are agreed between the manager of the investment company and the investors;

- (c) a ring-fenced body has a “minority interest” in an undertaking if—
 - (i) it does not hold a majority of the voting rights in that undertaking,
 - (ii) it is a member of the undertaking, but does not control alone, pursuant to an agreement with other members of the undertaking, a majority of the voting rights in that undertaking,
 - (iii) it is a member of the undertaking, but does not have the right to appoint or remove a majority of the board of directors, or equivalent management body, of that undertaking, and
 - (iv) it does not have the right to exercise, nor actually exercises, dominant influence or control over that undertaking.

(7) Schedule 7 to the Companies Act 2006 (parent and subsidiary undertakings: supplementary provisions^(a)) applies for the interpretation of paragraph (6)(c).

(8) In this article—

“debt instrument” is—

- (a) a bond,
- (b) any other instrument creating or acknowledging a debt, or
- (c) an instrument giving rights to acquire a debt instrument;

“eligible undertaking” means—

- (a) a collective investment scheme^(b),
- (b) the sub-fund of a collective investment scheme which is structured with a number of separate sub-funds, provided that the property subject to that sub-fund cannot be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund, and for the purposes of this sub-paragraph, “sub-fund” has the meaning given in section 90ZA(2) of the Act^(c), or
- (c) an investment company, as defined by section 833(1) of the Companies Act 2006^(d);

“UK SME” is an undertaking which—

- (a) is an SME at the time the ring-fenced body or SME investment undertaking first enters into a transaction to acquire shares, or instruments giving an entitlement to shares, in the undertaking, and
- (b) is registered in, and has its principal place of business in, the United Kingdom.”.

(4) In article 9(a) (excluded activities: derivatives), for “(2), or (3)” substitute “(2), (3) or (4)”.

(5) In article 10 (derivatives: forward contracts and swaps)—

(a) in paragraph (1)—

- (i) at the end of sub-paragraph (b), omit “or”;
- (ii) at the end of sub-paragraph (c), insert—

“or

(d) an inflation swap.”;

(b) in paragraph (2), after sub-paragraph (b), insert—

“(ba) “inflation swap” means a transaction under which one person (“A”) agrees with another person (“B”) that A is liable to pay B an amount calculated by reference to

(a) 2006 c. 46.

(b) “Collective investment scheme” is defined in section 235 of the Financial Services and Markets Act 2000.

(c) Section 90ZA was inserted by S.I. 2011/1613.

(d) 2006 c. 46. Section 833 has been amended by S.I. 2012/952.

a fixed or variable rate on a specified notional sum over a specified period which does not exceed thirty years, and B is liable to pay A an amount calculated by reference to a variable rate, linked to a specified price index on that notional sum and over the same specified period, and for these purposes, “price index” means an index of prices which is used for the purposes of measuring inflation;”.

(6) In article 11 (derivatives: options and swaptions), after paragraph (3), insert—

“(4) The requirements listed in this paragraph are that—

- (a) the transaction consists of a cap and a floor, related to two specified currencies under which—
 - (i) if, on the specified exercise date, the prevailing rate of exchange (“the spot FX rate”) between the two specified currencies is above the cap rate, the customer and the ring-fenced body will exchange the specified currencies at the cap rate,
 - (ii) if, on the specified exercise date, the spot FX rate between the two specified currencies is below the floor rate, the customer and the ring-fenced body will exchange the specified currencies at the floor rate, and
 - (iii) if, on the specified exercise date, the spot FX rate between the two specified currencies is neither above the cap rate nor below the floor rate, the customer and the ring-fenced body will not exchange the specified currencies;
- (b) the agreement relating to the cap specifies—
 - (i) the two currencies to which the cap relates;
 - (ii) the applicable cap rate;
 - (iii) the exercise date;
 - (iv) the identity of the party purchasing the cap, which must be the ring-fenced body or a customer of the ring-fenced body;
- (c) the agreement relating to the floor specifies—
 - (i) the two currencies to which the floor relates;
 - (ii) the applicable floor rate;
 - (iii) the exercise date;
 - (iv) the identity of the party purchasing the floor, which must be the ring-fenced body or a customer of the ring-fenced body.

(5) The requirements in paragraph (4)(b) and (c) may be satisfied by a single agreement specifying the provisions required for both the cap and the floor.”.

Amendments to Part 3: prohibitions and exceptions

10.—(1) In article 13(11) (prohibitions: inter-bank payment systems), in the definition of “inter-bank payment system”, in paragraph (b), for “credit institution” substitute “payment service provider”.

(2) In article 14 (prohibitions: financial institution exposures)—

- (a) in paragraph (1), for “19B” substitute “19C”;
- (b) in paragraph (2), after sub-paragraph (bb), insert—

“(bc) any undertaking in which the ring-fenced body has a participating interest,”;
- (c) in paragraph (3), after sub-paragraph (d), insert—
 - “(e) longevity risk;
 - (f) mortality risk.”;

- (d) in paragraph (3A)(a), for the words from “Article 412” to the end, substitute “Article 412 of the Liquidity (CRR) Part of the PRA Rulebook, and other applicable requirements in relation to liquid assets set out in that Part of the PRA Rulebook published by the PRA containing rules made by that Authority under the Act, as it applies to CRR firms, and as amended from time to time”;
- (e) after paragraph (6), insert—
- “(7) A ring-fenced body may incur a financial institution exposure where—
- (a) the relevant financial institution is an SME investment undertaking within the meaning of article 7A, and
- (b) the transaction giving rise to the financial institution exposure satisfies the conditions in article 7A.
- (8) A ring-fenced body may incur a financial institution exposure where the exposure arises as a result of the ring-fenced body dealing in investments as principal as permitted under article 6(8) or (9).”.
- (3) In article 15 (financial institutions exposures: trade finance)—
- (a) in paragraph (1)(b)—
- (i) in the opening words, for the words from “an agreement” to the end, substitute “a relevant agreement, which specifies, or together with other connected agreements specifies”;
- (ii) in paragraph (ii), for “the agreement” substitute “the relevant agreement and any connected agreements”;
- (b) after paragraph (1), insert—
- “(1A) For the purpose of paragraph (1)(b)—
- (a) an agreement is a “relevant agreement” if—
- (i) it gives effect to the transaction described in paragraph (1)(a) (“the finance transaction”),
- (ii) it is made under a master agreement which gives effect to the finance transaction, or
- (iii) it is one of a number of connected agreements entered into in relation to the finance transaction;
- (b) an agreement is a “connected agreement” if it is one of a number of agreements which—
- (i) are entered into by a party to the finance transaction, or to the supply of goods or services to which the finance transaction relates, with one or more other such parties; and
- (ii) collectively give effect to the finance transaction.”.
- (4) In article 19 (financial institution exposures: ancillary exposures)—
- (a) omit paragraph (6);
- (b) in paragraph (7)—
- (i) after “trustee” insert “, or in Scotland as a nominee,”;
- (ii) for “individual or charity” substitute “individual, minor, charity or CIO”.
- (5) In article 19A(2)(b) (financial institution exposures: financing of infrastructure projects), omit “within the United Kingdom or the EEA”.
- (6) In article 19B (financial institution exposures: changes in status of counterparties)—
- (a) in paragraph (1), after “incurs a” insert “prohibited”;

(a) Paragraph (3A) was inserted by S.I. 2016/1032.

(b) in paragraph (2), after “incur the” insert “prohibited”;

(c) after paragraph (2), insert—

“(3) In this article, “prohibited financial institution exposure” means a financial institution exposure which would be prohibited under article 14(1) if it was not permitted under this article.”.

(7) After article 19B, insert—

“Financial institution exposures: small exposures

19C.—(1) A ring-fenced body may incur a financial institution exposure where the total exposures of the ring-fenced body to the relevant financial institution are equal to or less than £100,000.

(2) The amount of a ring-fenced body’s exposure to a relevant financial institution must be determined in accordance with the fair value of the assets giving rise to that exposure, assessed in accordance with International Financial Reporting Standard 13 (fair value measurement) issued by the International Accounting Standards Board, as amended from time to time.”.

(8) Omit article 20 (prohibitions: non-UK and non-EEA branches and subsidiaries).

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (S.I. 2014/1960) (the “Core Activities Order”) and the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (S.I. 2014/2080) (the “Excluded Activities Order”) to adjust the regulatory regime applying to ring-fenced bodies.

The Core Activities Order is amended—

- (a) to allow a grace period of 12 months during which an account holder which has ceased to satisfy the definition of “relevant financial institution” can continue to bank with a non-ring-fenced body (article 4(1)(c));
- (b) to introduce a four year transition period for UK deposit-takers which are acquired by a ring-fenced body (article 5(1)(c));
- (c) to increase the amount of core deposits which may be held by a non-ring-fenced body from £25 billion to £35 billion (article 5(2));
- (d) to permit UK deposit-takers to hold trading assets without becoming a ring-fenced body, provided that the value of its trading assets is always less than 10% of the value of its tier 1 capital (article 5(1) and (3)).

The Excluded Activities Order is amended—

- (a) to allow a ring-fenced body to have correspondent banking relationships with more than one bank or other payment service provider (articles 8(1)(a)(i), (vii) and 10(1));
- (b) to allow a ring-fenced body to have exposures to certain types of financial institutions which are SMEs (article 8(2)(b)(iii));
- (c) to allow a ring-fenced body to hedge against longevity risk and mortality risk (articles 8(1)(a)(iv), (v), 9(1)(b) and 10(2)(c));

- (d) to extend the range of assets which may be held by a sponsored structured finance vehicle of a ring-fenced body (article 8(3) and (4));
- (e) to allow a ring-fenced body to acquire certain instruments issued by an issuer as part of arrangements for restructuring the debt of the issuer or a group undertaking of the issuer, to mitigate the actual or potential financial difficulties of the issuer or one or more of its group undertakings, whether or not a release of all or part of that debt forms part of the arrangements (article 9(1)(c) and (d));
- (f) to allow a ring-fenced body to deal in investments to remedy or prevent the failure of a transaction due to error, or to test a new or changed product or service of the ring-fenced body (articles 9(1)(f) and 10(2)(e));
- (g) to allow a ring-fenced body to invest in small businesses based in the United Kingdom directly or through certain funds or investment companies, subject to certain conditions (articles 9(3) and 10(2)(e)).

The Order also amends the Excluded Activities Order—

- (a) to permit a ring-fenced body to offer inflation swaps (article 9(5)),
- (b) to permit a ring-fenced body to sell foreign exchange collars to its customers (article 9(6)),
- (c) to extend the range of transactions a ring-fenced body may enter into in the course of providing trade finance for its customers (article 10(3)),
- (d) to allow a ring-fenced body to incur exposures to a relevant financial institution of £100,000 or less (article 10(7)), and
- (e) to remove the prohibition on a ring-fenced body establishing a branch or holding an interest in undertakings incorporated outside the United Kingdom and the European Economic Area (article 10(8)).

The Order also makes other minor amendments to both the Core Activities Order and the Excluded Activities Order, including amendments to remove EU-related expressions which are no longer relevant to the UK.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available on legislation.gov.uk or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

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