



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 1

#### RING-FENCING

##### *Ring-fencing*

VALID FROM 01/01/2019

#### **1 Objectives of Prudential Regulation Authority**

- (1) Section 2B of FSMA 2000 (the PRA's general objective) is amended as follows.
- (2) In subsection (3)—
- (a) at the end of paragraph (a), omit “and”, and
  - (b) after paragraph (b) insert “, and
  - (c) discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to—
    - (i) ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,
    - (ii) ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and
    - (iii) minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group

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could affect the continuity of the provision in the United Kingdom of core services.”

(3) In subsection (4), for “subsection (3)” substitute “ subsection (3)(a) and (b) ”.

(4) After subsection (4) insert—

“(4A) The matters referred to in subsection (3)(c) are—

- (a) Part 9B (ring-fencing);
- (b) ring-fenced bodies (see section 142A);
- (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
- (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.”

(5) In section 2J of FSMA 2000 (interpretation of Chapter 2 of Part 1)—

- (a) in subsection (3), for “a PRA-authorized” substitute “ an authorised ”,
- (b) after that subsection insert—

“(3A) For the purposes of this Chapter, the cases in which a person (“P”) other than an authorised person is to be regarded as failing include any case where P enters insolvency.”, and

- (c) in subsection (4), for “subsection (3)(a)” substitute “ subsections (3)(a) and (3A) ”.

VALID FROM 01/01/2019

## 2 Modification of objectives of Financial Conduct Authority

After section 1I of FSMA 2000 insert—

*“Modifications applying if core activity not regulated by PRA*

### **1IA Modifications applying if core activity not regulated by PRA**

(1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications.

(2) Section 1B is to have effect as if—

- (a) in subsection (3), after paragraph (c) there were inserted—

“(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).”, and

- (b) in subsection (4), for “or the integrity objective,” there were substituted “ , the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective, ”.

(3) After section 1E there is to be taken to be inserted—

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#### **“1EA Continuity objective**

- (1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C).
- (2) Those matters are—
  - (a) Part 9B (ring-fencing);
  - (b) ring-fenced bodies (see section 142A);
  - (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
  - (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.
- (3) The FCA's continuity objective is to be advanced primarily by—
  - (a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,
  - (b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and
  - (c) seeking to minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could adversely affect the continuity of the provision in the United Kingdom of core services.
- (4) In subsection (3)(c), “failure” is to be read in accordance with section 2J(3) to (4).””

#### **Commencement Information**

- II** S. 2 in force at 1.1.2019 by [S.I. 2018/1306](#), **art. 2(b)**

VALID FROM 01/01/2019

### **3 Amendment of PRA power of direction**

In section 3I of FSMA 2000 (power of PRA to require FCA to refrain from specified action), in subsection (4)—

- (a) at the end of paragraph (a), omit “or”, and
- (b) at the end of paragraph (b), insert “, or
- (c) threaten the continuity of core services provided in the United Kingdom.”

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## 4 Ring-fencing of certain activities

(1) After Part 9A of FSMA 2000 insert—

### “PART 9B

#### RING-FENCING

##### *Introductory*

#### 142A “Ring-fenced body”

- (1) In this Act “ring-fenced body” means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.
- (2) But “ring-fenced body” does not include—
  - (a) a building society within the meaning of the Building Societies Act 1986, or
  - (b) a UK institution of a class exempted by order made by the Treasury.
- (3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services.
- (4) Subject to that, in deciding whether and, if so, how to exercise their powers under subsection (2)(b), the Treasury must have regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be expected to have on competition in the market for services provided in the course of carrying on core activities, including any adverse effect on the ease with which new entrants can enter the market.
- (5) In subsection (4) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.
- (6) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.
- (7) In this section “UK institution” means a body corporate incorporated in the United Kingdom.

#### 142B Core activities

- (1) References in this Act to a “core activity” are to be read in accordance with this section.
- (2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order.
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the

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regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances.

- (4) Those purposes are—
  - (a) to secure an appropriate degree of protection for the depositors concerned, or
  - (b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits.
- (5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.
- (6) An order under subsection (5) may be made only if the Treasury are of the opinion—
  - (a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and
  - (b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.

#### 142C Core services

- (1) References in this Act to “core services” are to be read in accordance with this section.
- (2) The following are core services—
  - (a) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;
  - (b) facilities for withdrawing money or making payments from such an account;
  - (c) overdraft facilities in connection with such an account.
- (3) The Treasury may by order provide that any other specified services provided in the course of carrying on the core activity of accepting deposits are also core services.
- (4) If an order under section 142B(5) provides for an activity other than that of accepting deposits to be a core activity, the Treasury must by order provide that specified services provided in the course of carrying on that activity are core services.
- (5) The services specified by order under subsection (4) must be services in relation to which the Treasury are of the opinion mentioned in section 142B(6)
  - (a).

#### 142D Excluded activities

- (1) References in this Act to an “excluded activity” are to be read in accordance with this section.

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- (2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services.
- (4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order.
- (5) An activity to which an order under subsection (4) relates—
  - (a) need not be a regulated activity, and
  - (b) may be an activity carried on in the United Kingdom or elsewhere.
- (6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must—
  - (a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and
  - (b) consider whether the carrying on of that activity by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.
- (7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.

#### **142E Power of Treasury to impose prohibitions**

- (1) The Treasury may by order prohibit ring-fenced bodies from—
  - (a) entering into transactions of a specified kind or with persons falling within a specified class;
  - (b) establishing or maintaining a branch in a specified country or territory;
  - (c) holding in specified circumstances shares or voting power in companies of a specified description.
- (2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—
  - (a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and
  - (b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.
- (3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose

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of protecting the continuity of the provision in the United Kingdom of core services.

- (4) An order under this section may in particular—
- (a) provide for any prohibition to be subject to exemptions specified in the order;
  - (b) provide for any exemption to be subject to conditions specified in the order.

#### **142F Orders under section 142A, 142B, 142D or 142E**

- (1) An order made under section 142A, 142B, 142D or 142E may—
- (a) authorise or require the making of rules by a regulator for the purposes of, or for purposes connected with, any provision of the order;
  - (b) authorise the making of other instruments by a regulator for the purposes of, or for purposes connected with, any provision of the order;
  - (c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.
- (2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also—
- (a) impose conditions on the exercise of any power conferred on the regulator;
  - (b) impose consultation requirements on the regulator;
  - (c) make the exercise of a power by the regulator subject to the consent of the Treasury.

*Ring-fenced bodies not to carry on excluded activities or contravene prohibitions*

#### **142G Ring-fenced bodies not to carry on excluded activities or contravene prohibitions**

- (1) A ring-fenced body which—
- (a) carries on an excluded activity or purports to do so, or
  - (b) contravenes any provision of an order under section 142E,
- is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act.
- (2) The contravention does not—
- (a) make a person guilty of an offence;
  - (b) make a transaction void or unenforceable;
  - (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.
- (3) In such cases as the Treasury may specify by order, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

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- (4) In this section “the appropriate regulator” means—
- (a) in relation to a ring-fenced body which is a PRA-authorised person, the PRA;
  - (b) in relation to any other ring-fenced body, the FCA.

### *Ring-fencing rules*

#### **142H Ring-fencing rules**

- (1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules—
- (a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and
  - (b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body's group.
- (2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c).
- (3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as “ring-fencing rules”.
- (4) The “group ring-fencing purposes” are—
- (a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group;
  - (b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body—
    - (i) is able to take decisions independently of other members of its group, and
    - (ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;
  - (c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group.
- (5) Ring-fencing rules made for the group ring-fencing purposes must include—
- (a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm's length terms;
  - (b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group;



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- (c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;
  - (d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent—
    - (i) members who are treated by the rules as being independent of other members of the ring-fenced body's group,
    - (ii) members who are treated by the rules as being independent of the ring-fenced body itself, and
    - (iii) non-executive members;
  - (e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements;
  - (f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;
  - (g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements;
  - (h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).
- (6) The reference in subsection (5)(e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description.
- (7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.
- (8) In this section—
- “the appropriate regulator” means—
    - (a) in relation to a PRA-authorised person, the PRA;
    - (b) in relation to any other authorised person, the FCA;
  - “shares” has the meaning given in section 422;
  - “specified” means specified in the rules;
  - “voting power” has the meaning given in section 422.

#### **142I Powers of Treasury in relation to ring-fencing rules**

- (1) The Treasury may by order require the appropriate regulator, as defined in section 142H(8), to include (or not to include) in ring-fencing rules specified provision relating to—
  - (a) any of the matters mentioned in section 142H(5)(a) to (g), or
  - (b) any other specified matter.
- (2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so—
  - (a) for any of the group ring-fencing purposes as defined in section 142H(4), or
  - (b) otherwise for securing the independence of ring-fenced bodies from other members of their groups.

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- (3) “Specified” means specified in the order.

#### **142J Review of ring-fencing rules etc**

- (1) The PRA must carry out reviews of its ring-fencing rules and of any rules made by it under section 192JA (rules applying to parent undertakings of ring-fenced bodies).
- (2) The first review must be completed before the end of the period of 5 years beginning with the day on which the first ring-fencing rules come into force.
- (3) Subsequent reviews must be completed before the end of the period of 5 years beginning with the day on which the previous review was completed.
- (4) The PRA must give the Treasury a report of each review.
- (5) The Treasury must lay a copy of the report before Parliament.
- (6) The PRA must publish the report in such manner as it thinks fit.
- (7) If (because any ring-fenced body is not a PRA-authorized person) section 142H has the effect of requiring the FCA to make ring-fencing rules, subsections (1) to (6) apply to the FCA as they apply to the PRA.

#### *Group restructuring powers*

#### **142K Cases in which group restructuring powers become exercisable**

- (1) The appropriate regulator may exercise the group restructuring powers only if it is satisfied that one or more of Conditions A to D is met in relation to a ring-fenced body that is a member of a group.
- (2) Condition A is that the carrying on of core activities by the ring-fenced body is being adversely affected by the acts or omissions of other members of its group.
- (3) Condition B is that in carrying on its business the ring-fenced body—
  - (a) is unable to take decisions independently of other members of its group, or
  - (b) depends on resources which are provided by a member of its group and which would cease to be available in the event of the insolvency of the other member.
- (4) Condition C is that in the event of the insolvency of one or more other members of its group the ring-fenced body would be unable to continue to carry on the core activities carried on by it.
- (5) Condition D is that the ring-fenced body or another member of its group has engaged, or is engaged, in conduct which is having, or would apart from this section be likely to have, an adverse effect on the advancement by the appropriate regulator—
  - (a) in the case of the PRA, of the objective in section 2B(3)(c), or
  - (b) in the case of the FCA, of the continuity objective.

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- (6) The appropriate regulator may not exercise the group restructuring powers in relation to any person if—
- (a) either regulator has previously exercised the group restructuring powers in relation to that person, and
  - (b) the decision notice in relation to the current exercise is given before the second anniversary of the day on which the decision notice in relation to the previous exercise was given.
- (7) In this section and sections 142L to 142Q “the appropriate regulator” means—
- (a) where the ring-fenced body is a PRA-authorized person, the PRA;
  - (b) where it is not, the FCA.

### 142L Group restructuring powers

- (1) In this Part “the group restructuring powers” means one or more of the powers conferred by this section.
- (2) Where the appropriate regulator is the PRA, the powers conferred by this section are as follows—
- (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
  - (b) in relation to any member of the ring-fenced body's group which is a PRA-authorized person, power to impose a requirement on the PRA-authorized person requiring it to take any of the steps mentioned in subsection (6),
  - (c) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorized person, power to direct the FCA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
  - (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).
- (3) Where the appropriate regulator is the FCA, the powers conferred by this section are as follows—
- (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
  - (b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorized person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6),
  - (c) in relation to any member of the ring-fenced body's group which is a PRA-authorized person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
  - (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

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- (4) A parent undertaking of a ring-fenced body by reference to which the group restructuring powers are exercisable is for the purposes of this Part a “qualifying parent undertaking” if—
- (a) it is a body corporate which is incorporated in the United Kingdom and has a place of business in the United Kingdom, and
  - (b) it is not itself an authorised person.
- (5) The steps that the ring-fenced body may be required to take are—
- (a) to dispose of specified property or rights to an outside person;
  - (b) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the ring-fenced body to an outside person;
  - (c) otherwise to make arrangements discharging the ring-fenced body from specified liabilities.
- (6) The steps that another authorised person or a qualifying parent undertaking may be required to take are—
- (a) to dispose of any shares in, or securities of, the ring-fenced body to an outside person;
  - (b) to dispose of any interest in any other body corporate that is a member of the ring-fenced body's group to an outside person;
  - (c) to dispose of other specified property or rights to an outside person;
  - (d) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the authorised person or qualifying parent undertaking to an outside person.
- (7) In subsections (5) and (6) “outside person” means a person who, after the implementation of the disposal or scheme in question, will not be a member of the group of the ring-fenced body by reference to which the powers are exercised (whether or not that body is to remain a ring-fenced body after the implementation of the disposal or scheme in question).
- (8) It is immaterial whether a requirement to be imposed on an authorised person by the appropriate regulator, or by the other regulator at the direction of the appropriate regulator, is one that the regulator imposing it could impose under section 55L or 55M.

#### **142M Procedure: preliminary notices**

- (1) If the appropriate regulator proposes to exercise the group restructuring powers in relation to any authorised person or qualifying parent undertaking (“the person concerned”), the regulator must give each of the relevant persons a notice (a “preliminary notice”).
- (2) The preliminary notice must—
  - (a) state that it is a preliminary notice,
  - (b) state that the regulator proposes to exercise the group restructuring powers,
  - (c) state the action which the regulator proposes to take in the exercise of those powers,

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- (d) be in writing, and
  - (e) give reasons for the proposed action (which must include the regulator's reasons for being satisfied as to the matters mentioned in section 142K(1)).
- (3) The appropriate regulator must give a copy of the preliminary notice to the Treasury.
- (4) The preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator.
- (5) The relevant persons are—
- (a) the person concerned,
  - (b) the ring-fenced body, if not the person concerned, and
  - (c) any other authorised person who will, in the opinion of the appropriate regulator, be significantly affected by the exercise of the group restructuring powers.

#### **142N Procedure: warning notice and decision notice**

- (1) If the appropriate regulator has given a preliminary notice under section 142M, it must either—
- (a) if, having considered any representations made by any of the relevant persons, it still proposes to exercise the group restructuring powers, give each of the relevant persons a warning notice during the warning notice period, or
  - (b) before the end of the warning notice period, give each of them a written notice stating that it has decided not to exercise the powers and give a copy of that notice to the Treasury.
- (2) The “warning notice period” is the period—
- (a) beginning 3 months after the end of the period specified under section 142M(4) as that within which any representations must be made, and
  - (b) ending 6 months after the end of that period.
- (3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must—
- (a) give the Treasury a draft of the notice,
  - (b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and
  - (c) obtain the consent of the Treasury.
- (4) The action specified in the warning notice may be different from that specified in the preliminary notice if—
- (a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the preliminary notice was given, or
  - (b) the person concerned consents to the change.
- (5) The regulator must, in particular, have regard to anything that—

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- (a) has been done by the person concerned since the giving of the preliminary notice, and
  - (b) represents action that would have been required in pursuance of the proposals in that notice.
- (6) If the regulator decides to exercise the group restructuring powers it must give each of the relevant persons a decision notice.
- (7) The decision notice must specify the date or dates by which each of the following must be completed—
- (a) any disposal of shares, securities or other property that is required by the notice;
  - (b) any transfer of liabilities for which the notice requires arrangements to be made.
- (8) The giving of consent for the purpose of subsection (4)(b) does not affect any right to refer to the Tribunal the matter to which any decision notice resulting from the warning notice relates.
- (9) “The relevant persons” has the same meaning as in section 142M.

#### 142O References to Tribunal

- (1) A notified person who is aggrieved by—
- (a) the imposition by either regulator of a requirement as a result of section 142L(2)(a) or (b) or (3)(a) or (b),
  - (b) a requirement to be imposed as a result of the giving by one regulator to the other of a direction under section 142L(2)(c) or (3)(c), or
  - (c) the giving by either regulator of a direction under section 142L(2)(d) or (3)(d),
- may refer the matter to the Tribunal.
- (2) “Notified person” means a person to whom a decision notice under section 142N(6) was given or ought to have been given.

#### 142P Subsequent variation of requirement or direction

- (1) A regulator may at any time with the consent of the person concerned vary—
- (a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).
- (2) The person concerned may at any time apply to the appropriate regulator for the variation of—
- (a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or
  - (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).
- (3) Sections 55U, 55V, 55X and 55Z3 apply to an application under subsection (2) as they apply to an application for the variation of a requirement imposed by the appropriate regulator under section 55L or 55M.

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#### **142Q Consultation etc. between regulators**

- (1) Where a notice under section 142M or a warning notice or decision notice under section 142N relates to a requirement to be imposed in pursuance of a direction to be given as a result of section 142L(2)(c) or (3)(c), the appropriate regulator must—
  - (a) consult the other regulator before giving the notice, and
  - (b) give a copy of the notice to the other regulator.
- (2) The appropriate regulator must consult the other regulator before varying under section 142P a direction given as a result of section 142L(2)(c) or (3)(c).
- (3) Directions given by the FCA as a result of section 142L(3)(c) are subject to any directions given to the FCA under section 3L.

#### **142R Relationship with regulators' powers under Parts 4A and 12A**

- (1) Subsection (2) applies in relation to—
  - (a) a ring-fenced body which is a member of a mixed group, and
  - (b) a parent undertaking of such a ring-fenced body.
- (2) A regulator may not exercise its general powers in relation to the ring-fenced body or parent undertaking so as to achieve either of the results in subsection (3).
- (3) Those results are—
  - (a) that no existing group member is a parent undertaking of the ring-fenced body;
  - (b) that the ring-fenced body is not a member of a mixed group.
- (4) In subsection (3)(a) “existing group member” means a person who is a member of the ring-fenced body's group at the time when the requirement is imposed or the direction given.
- (5) Except as provided by subsections (1) to (4), the provisions of sections 142K to 142Q do not limit the general powers of either regulator.
- (6) For the purposes of this section, a regulator's “general powers” are its powers under the following provisions—
  - (a) section 55L or 55M (imposition of requirements in connection with Part 4A permission);
  - (b) section 192C (power to direct qualifying parent undertaking).
- (7) For the purposes of this section, a ring-fenced body is a member of a mixed group if a member of the ring-fenced body's group carries on an excluded activity.

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### *Failure of parent undertaking to comply with direction*

#### **142S Power to impose penalty or issue censure**

- (1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking (“P”) has contravened a requirement of a direction given to P by that regulator as a result of section 142L(2)(d) or (3)(d).
- (2) The regulator may impose a penalty of such amount as it considers appropriate on—
  - (a) P, or
  - (b) any person who was knowingly concerned in the contravention.
- (3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 142T.
- (5) “The limitation period” means the period of 3 years beginning with the first day on which the regulator knew of the contravention.
- (6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.
- (7) The requirements that a regulator may be required to impose as a result of a direction under section 142L(2)(c) or (3)(c) include requirements that the regulator would not but for the direction have power to impose.

#### **142T Procedure and right to refer to Tribunal**

- (1) If a regulator proposes to take action against a person under section 142S, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the regulator decides to take action against a person under section 142S, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the regulator decides to take action against a person under section 142S, the person may refer the matter to the Tribunal.



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#### **142U Duty on publication of statement**

After a statement under section 142S(3) is published, the regulator must send a copy of the statement to—

- (a) the person in respect of whom it is made, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

#### **142V Imposition of penalties under section 142S: statement of policy**

- (1) Each regulator must prepare and issue a statement of policy with respect to—
  - (a) the imposition of penalties under section 142S, and
  - (b) the amount of penalties under that section.
- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention,
  - (b) the extent to which the contravention was deliberate or reckless, and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A regulator may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, a power under section 142S(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
- (6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.
- (8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.

#### *Pension liabilities*

#### **142W Pension liabilities**

- (1) The Treasury may by regulations require a ring-fenced body to make arrangements for any one or more of the following purposes—

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- (a) ensuring that, except in prescribed cases, the ring-fenced body cannot become liable to meet, or contribute to the meeting of, pension liabilities which arise in connection with persons' service on or after a date specified in the regulations (“the specified date”) in any employment, other than service in an employment in respect of which the employer is a ring-fenced body;
  - (b) ensuring that, except in prescribed cases, the default of a person other than another ring-fenced body would not result in the ring-fenced body becoming liable to meet, or contribute to the meeting of, pension liabilities arising in connection with persons' service in any employment before the specified date;
  - (c) to the extent that it is not possible to ensure the result mentioned in paragraph (a) or (b), minimising any potential liability falling within paragraph (a) or (b).
- (2) The regulations may make provision enabling the trustees or managers of a relevant pension scheme in respect of which the employer or one of the employers is a ring-fenced body—
- (a) to transfer to another relevant pension scheme all or part of the pension liabilities arising in connection with persons' service before the specified date together with all or part of the assets of the scheme, or
  - (b) to divide the scheme into two or more sections in relation to which prescribed conditions are met.
- (3) The regulations may make provision—
- (a) enabling a ring-fenced body to apply to the court in a case where the ring-fenced body has been unable to reach agreement with another person (“P”) about the making of arrangements with P on commercial terms for one or more of the purposes in subsection (1), and
  - (b) enabling the court on such an application to order P to enter into arrangements with the ring-fenced body for those purposes on such terms as the court considers fair and reasonable in the circumstances.
- (4) The regulations must provide that any terms specified by the court by virtue of provision made under subsection (3)—
- (a) must be terms which, in the court's opinion, represent terms on which the arrangements might be entered into if they were being entered into for commercial reasons between willing parties dealing at arm's length, and
  - (b) may involve the payment of any sum by instalments.
- (5) The regulations may make other provision—
- (a) about the making by a ring-fenced body of arrangements for one or more of the purposes in subsection (1);
  - (b) about any transfer or division falling within subsection (2).
- (6) The regulations may in particular—
- (a) require a ring-fenced body to cease to participate in a relevant pension scheme unless the scheme is divided into two or more sections in relation to which prescribed conditions are met;

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- (b) provide that assets or liabilities of a relevant pension scheme may not be transferred under the arrangements to another occupational pension scheme unless the other scheme meets prescribed conditions;
  - (c) require ring-fenced bodies to establish new occupational pension schemes in prescribed circumstances;
  - (d) provide that any provision of a relevant pension scheme that might prevent the making of the arrangements, other than a provision requiring the consent of the trustees or managers of the scheme, is not to have effect in prescribed circumstances;
  - (e) make provision enabling the trustees or managers of a relevant pension scheme, with the consent of the employers in relation to the scheme, to modify the scheme by resolution for the purpose of enabling the arrangements to be made;
  - (f) require the trustees or managers of a relevant pension scheme or any employer in relation to a relevant pension scheme to give notice of prescribed matters to prescribed persons;
  - (g) make provision enabling the court, on an application made in accordance with the regulations by a ring-fenced body, if it appears to the court that the trustees or managers of a relevant pension scheme, or an employer in relation to such a scheme, have unreasonably refused their consent to any step that would enable the arrangements to be made, to order that the step may be taken without that consent;
  - (h) confer exemption from any provision of the regulations in prescribed cases;
  - (i) confer functions on the PRA;
  - (j) provide that a ring-fenced body which contravenes a prescribed requirement of the regulations is to be taken to have contravened a requirement imposed by the PRA under this Act;
  - (k) modify, exclude or apply (with or without modification) any primary or subordinate legislation.
- (7) The Treasury may by regulations require an authorised person who will or may be a ring-fenced body or an authorised person who will or may be a member of a ring-fenced body's group to do all it can to obtain from the Pensions Regulator a clearance statement in relation to any arrangements to be made for the purpose of complying with—
- (a) regulations under this section, or
  - (b) any provision made by or under this Part (other than this section) when the provision comes into force.
- (8) A “clearance statement” is a statement issued by the Pensions Regulator under any of the following provisions—
- (a) section 42 of the Pensions Act 2004 (clearance statements relating to contribution notice under section 38);
  - (b) section 46 of that Act (clearance statements relating to financial support directions);
  - (c) Article 38 of the Pensions (Northern Ireland) Order 2005 (clearance statements relating to contribution notices under article 34);
  - (d) Article 42 of that Order (clearance statements relating to financial support directions).

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- (9) In relation to a ring-fenced body that is not a PRA-authorised person, references in subsection (6) to the PRA are to be read as references to the FCA.
- (10) Regulations under this section may not require ring-fenced bodies to achieve the results mentioned in subsection (1) before 1 January 2026, but this does not prevent the regulations requiring steps to be taken at any time after the regulations come into force.

#### **142X Further interpretative provisions for section 142W**

- (1) The following provisions have effect for the interpretation of section 142W and this section.
- (2) “Relevant pension scheme” means an occupational pension scheme that is not a money purchase scheme.
- (3) “Occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, “member” and “trustees or managers” have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995.
- (4) “Money purchase scheme” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.
- (5) “Employer”, in relation to a relevant pension scheme, means—
  - (a) a person who is for the purposes of Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995 an employer in relation to the scheme, and
  - (b) any other person who has or may have any liability under the scheme.
- (6) “Employment” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.
- (7) “Pension liabilities” means liabilities attributable to or associated with the provision under a relevant pension scheme of pensions or other benefits.
- (8) “The court” means—
  - (a) in relation to England and Wales or Northern Ireland, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

#### *Loss-absorbency requirements*

#### **142Y Power of Treasury in relation to loss-absorbency requirements**

- (1) The Treasury may by order make provision about the exercise by either regulator of its functions under this Act, so far as they are (apart from the order) capable of being exercised in relation to a relevant body so as to require the relevant body—
  - (a) to issue any debt instrument, or

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- (b) to ensure that any part of the relevant body's debt consists of debt owed by it in respect of debt instruments, or debt instruments of a particular kind.
- (2) A “relevant body” is—
- (a) a ring-fenced body,
  - (b) any other body corporate that has a Part 4A permission relating to the regulated activity of accepting deposits, or
  - (c) a body corporate that is a member of the group of a body falling within paragraph (a) or (b).
- (3) “Debt instrument” means—
- (a) a bond,
  - (b) any other instrument creating or acknowledging a debt, or
  - (c) an instrument giving rights to acquire a debt instrument.
- (4) An order under this section may in particular—
- (a) require the regulator to exercise its functions so as to require relevant bodies to do either or both of the things mentioned in subsection (1);
  - (b) limit the extent to which the regulator may require a relevant body's debt to consist of debt owed in respect of debt instruments or of debt instruments of a kind specified in the order;
  - (c) require the regulator—
    - (i) to make, or not to make, provision by reference to specified matters, or
    - (ii) to have regard, or not to have regard, to specified matters;
  - (d) require the regulator to consult, or obtain the consent of, the Treasury before making rules of a specified description or exercising any other specified function;
  - (e) impose on the regulator in connection with the exercise of a specified function procedural requirements which would not otherwise apply to the exercise of the function;
  - (f) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.
- (5) “Specified” means specified in the order.

### *General*

#### **142Z Affirmative procedure in relation to certain orders under Part 9B**

- (1) This section applies to an order containing provision made under any of the following provisions of this Part—
- (a) section 142A(2)(b);
  - (b) section 142B(2) or (5);
  - (c) section 142C;
  - (d) section 142D(2) or (4);
  - (e) section 142E;
  - (f) section 142I;

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- (g) section 142Y.
- (2) No order to which this section applies may be made unless—
  - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (4) applies.
- (3) Subsection (4) applies if an order under 142D(4) or 142E contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (4) Where this subsection applies the order—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (5) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

#### **142Z1 Interpretation of Part 9B**

- (1) This section has effect for the interpretation of this Part.
- (2) Any reference to—
  - (a) the regulated activity of accepting deposits, or
  - (b) the regulated activity of dealing in investments as principal,
 is to be read in accordance with Schedule 2, taken with any order under section 22.
- (3) Any reference to the group restructuring powers is to be read in accordance with section 142L(1).
- (4) Any reference to a qualifying parent undertaking is to be read in accordance with section 142L(4).”
- (2) In section 133 of FSMA 2000 (proceedings before Tribunal), in subsection (7A), after paragraph (i) insert—
  - “(ia) a decision to take action under section 142S;”.
- (3) In section 391 of FSMA 2000 (publication), in subsection (1ZB), after paragraph (i) insert—
  - “(ia) section 142N;”.
- (4) In section 392 of FSMA 2000 (application of sections 393 and 394)—
  - (a) in paragraph (a), after “131H(1),” insert “ 142T(1), ”, and
  - (b) in paragraph (b), after “131H(4),” insert “ 142T(4), ”.
- (5) In section 417 of FSMA 2000 (definitions), in subsection (1)—

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- (a) after the definition of “control of information rules” insert—
    - ““core activities” has the meaning given in section 142B;
    - “core services” has the meaning given in section 142C;”
  - (b) after the definition of “ESMA” insert—
    - ““excluded activities” has the meaning given in section 142D;”
  - (c) after the definition of “regulator” insert—
    - ““ring-fenced body” has the meaning given in section 142A;
    - “ring-fencing rules” has the meaning given in section 142H;”
- (6) In Schedule 1ZA to FSMA 2000 (the Financial Conduct Authority), in paragraph 8(3)(c)(i), after “138N,” insert “ 142V, ”.
- (7) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), in paragraph 16(3)(c)(i), after “69,” insert “ 142V, ”.

#### Commencement Information

**I2** S. 4 in force at 1.3.2014 for specified purposes by [S.I. 2014/377](#), [art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)

**I3** S. 4 in force at 21.4.2016 for specified purposes by [S.I. 2016/512](#), [art. 2\(a\)](#)

VALID FROM 01/01/2019

## 5 PRA annual report

- (1) In Schedule 1ZB to FSMA 2000 (the Prudential Regulation Authority), paragraph 19 (annual report) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) In the report the PRA must also report in general terms on—
- (a) the extent to which, in its opinion, ring-fenced bodies have complied with the ring-fencing provisions,
  - (b) steps taken by ring-fenced bodies in order to comply with the ring-fencing provisions,
  - (c) steps taken by it to enforce the ring-fencing provisions,
  - (d) the extent to which ring-fenced bodies are carrying on the regulated activity of dealing in investments as principal (whether in the United Kingdom or elsewhere) in circumstances where as a result of an order under section 142D(2) that activity is not an excluded activity,
  - (e) the extent to which ring-fenced bodies are carrying on activities that would be excluded activities by virtue of an order under section 142D(4) but for an exemption or exclusion made by such an order,
  - (f) the extent to which ring-fenced bodies are doing things that they would be prohibited from doing by an order under section 142E but for an exemption made by such an order, and

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- (g) the extent to which ring-fenced bodies appear to it to have acted in accordance with any guidance which it has given to ring-fenced bodies and which relates to the operation of the ring-fencing provisions.
- (1B) In sub-paragraph (1A)—
  - (a) references to “ring-fenced bodies” relate only to ring-fenced bodies that are PRA-authorised persons, and
  - (b) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.”
- (3) In sub-paragraph (2), for “Sub-paragraph (1) does not” substitute “ Sub-paragraphs (1) and (1A) do not ”.

## 6 Ring-fencing transfer schemes

Schedule 1 (which contains amendments of Part 7 of FSMA 2000 relating to ring-fencing transfer schemes) has effect.

### Commencement Information

**I4** S. 6 in force at 1.3.2014 by [S.I. 2014/377](#), art. 2(1)(a), [Sch. Pt. 1](#)

VALID FROM 01/01/2019

## 7 Building societies: power to make provision about ring-fencing

- (1) The Treasury may by regulations—
  - (a) make provision in relation to building societies for purposes corresponding to those of any provision made, in relation to authorised persons other than building societies, by or under any provision of Part 9B of FSMA 2000 (ring-fencing) apart from sections 142W to 142Y, and
  - (b) provide for the application of the relevant continuity provision in relation to the exercise by the FCA or the PRA of any function conferred on it by or under provision made pursuant to paragraph (a).
- (2) The regulations may, in particular—
  - (a) amend the Building Societies Act 1986;
  - (b) apply any of the provisions contained in, or made under, Part 9B of FSMA 2000, with such modifications as the Treasury consider appropriate;
  - (c) authorise the making of rules or other instruments by the FCA or the PRA for the purposes of, or for purposes connected with, any provision made by the regulations;
  - (d) confer functions on the FCA or the PRA;
  - (e) make such consequential provision including amendments of any enactment as the Treasury consider appropriate.
- (3) This section does not affect the application of section 142Y of FSMA 2000 (power of Treasury in relation to loss-absorbency requirements) to building societies that are relevant bodies for the purposes of that section.



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(4) In this section—

“building society” has the same meaning as in the Building Societies Act 1986;

“the relevant continuity provision” means—

- (a) in the case of functions exercisable by the FCA, the continuity objective set out in section 1EA of FSMA 2000, or
- (b) in the case of functions exercisable by the PRA, section 2B(3)(c) and (4A) of that Act.

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