

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### *Background*

3. The Government committed to putting in place a new system for financial regulation in the Government's publication "*The Coalition: our programme for government*":  
  
"We will reform the regulatory system to avoid a repeat of the financial crisis. We will bring forward proposals to give the Bank of England control of macro-prudential regulation and oversight of micro-prudential regulation.
4. The Government's proposals were first set out and consulted on in Cm 7874 "*A new approach to financial regulation: judgement, focus and stability*". The Government developed its proposals further and set them out for a further period of consultation in Cm 8012 "*A new approach to financial regulation: building a stronger system*". In July 2011, the Government published a White Paper "*A new approach to financial regulation: the blueprint for reform*" setting out further policy detail and some further areas for consultation. The White Paper included a draft Bill. Copies of relevant documents, including these consultation documents are available on the Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).
5. A draft Bill was published in July 2011 and was the subject of pre-legislative scrutiny by a Joint Committee of both Houses under the chairmanship of Peter Lilley MP. The Joint Committee published its report on the draft Bill on 19 December 2011. The report is available on the Parliament website (<http://www.parliament.uk>). The Treasury Committee also published a number of reports on the draft Bill, which are also available from the Parliament website. The Government published its response to the Joint Committee and to the Treasury Committee's recommendations in Cm 8268, "*A new approach to financial regulation: securing stability, protecting consumers*".

#### *Summary*

6. The Act provides a new framework for financial regulation in the United Kingdom. The Act makes the Bank of England ("**the Bank**") responsible for ensuring and protecting the stability of financial systems in the UK and provides for an independent conduct of business regulator.
7. The Act introduces four institutional changes:
  - Establishing the Financial Policy Committee ("**FPC**") as a committee of the Court of the Bank. The FPC will have responsibility for macro-prudential regulation; that is, regulation of the stability and resilience of the system as a whole.
  - Making provision for the Prudential Regulation Authority ("**PRA**") as an operationally independent subsidiary of the Bank with responsibility for micro-prudential regulation. The PRA will regulate institutions that manage significant risks on their balance sheets; institutions that require a sophisticated level of prudential regulation.

*These notes refer to the Financial Services Act 2012  
(c.21) which received Royal Assent on 19 December 2012*

- Making provision for the Financial Conduct Authority (“FCA”) as an independent conduct of business regulator with a strategic objective of ensuring that the relevant markets function well and operational objectives focused on market integrity, consumer protection and effective competition. The FCA will among other things, perform the functions of the FSA as UK Listing Authority.
  - Making the Bank responsible for the regulation of recognised clearing houses. This, taken with the Bank’s responsibilities under other legislation, will ensure that the Bank is responsible for the regulation of systemically important clearing, payment and settlement infrastructure.
8. The Act provides the objectives and principles by reference to which the FPC, the Bank, the PRA and the FCA will exercise the functions conferred on them by the Act and equips them with a range of powers to do so. The existing powers of the Financial Services Authority will be transferred to one or more successor bodies and certain new powers are provided for in the Act.
  9. The Act sets out how the authorities will be held accountable for fulfilling their roles and how they will be governed, including the constitution of their governing bodies. It also sets out the role of HM Treasury in relation to the authorities.
  10. The Act requires the FCA and PRA to coordinate their functions effectively, placing a statutory duty on them to coordinate with each other and to cooperate with the Bank, and to produce a memorandum setting out how this duty will be complied with. The Act empowers the PRA to veto an action to be taken by the FCA if it is likely to threaten the stability of the UK financial system or, if the action relates to with profits policies, if it is desirable in order to advance the PRA’s general objective or its insurance objective. The Act details how some specific processes will be coordinated between the regulators.
  11. Recognising the international nature of financial regulation, the Act provides for mechanisms (including the maintenance of a memorandum and the establishment of a coordination committee) to ensure that the authorities coordinate effectively their functions which relate to the membership of, or relations with, international bodies such as the new European Supervisory Authorities.
  12. The Act provides for mechanisms that will define the relationships between HM Treasury, the Bank, the PRA and the FCA in the event of crisis in the financial system.
  13. The Act also provides powers to regulate activities related to the setting of benchmarks such as the London Interbank Offered Rate (“LIBOR”) and provides a tailored criminal offence in relation to benchmark setting activities.
  14. In order to address situations where all or part of the business of a UK clearing house has encountered, or is likely to encounter, financial difficulties the Act provides for the application of the special resolution regime provided for in Part 1 of the Banking Act 2009 to UK clearing houses with modifications. The Act also makes provision ensuring that the Bank is informed of insolvency proceedings relating to a UK clearing house and allows the Bank to participate in such proceedings. The Act additionally makes provision allowing the Bank to give directions to UK clearing houses where it considers it necessary to do so.
  15. The Act also extends the special resolution regime provided for in Part 1 of the Banking Act 2009 to investment firms and to certain undertakings which are in the same group as a bank, investment firm or UK clearing house.
  16. The Act also provides powers to effect a transfer of consumer credit regulation from the Office of Fair Trading to the FCA.