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

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 1 – Bank of England

Section 1: Deputy Governors

20. *Subsection (1)* amends section 1 of the Bank of England Act 1998 (the "BoE Act") to provide for the creation of a new post of Deputy Governor for prudential regulation. The Deputy Governor for prudential regulation, like the Deputy Governors for monetary policy and financial stability, is to be a member of the Bank's court of directors. Subsection (1) also provides that the members of the court of directors who are not Bank executives are, for the first time, to be known as "non-executive directors" (they were previously "directors"). The Governor and the Deputy Governor will be "directors".

21. Subsection *(2)* amends section 13 of the BoE Act to provide that the new Deputy Governor for prudential regulation is not a member of the Monetary Policy Committee.

Section 2: The Bank's financial stability objective

22. Under section 2A of the BoE Act, an objective of the Bank is to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom. In pursuing that objective, the Bank is required to work with other relevant bodies including the Treasury and the FSA.

23. *Subsection (2)* amends the Bank's financial stability objective in section 2A: the new objective is to protect and enhance the stability of the financial system of the United Kingdom. This change reflects the enhanced role that the Bank has in relation to the protection of financial stability. The amendments to section 2A also align the terminology in the BoE Act with the terminology used in FSMA. *Subsection (3)* makes a consequential amendment, replacing the reference to the Bank aiming to work with the FSA with a reference to working with the new regulators. *Subsection (4)* removes the existing requirement for the Bank's financial stability strategy, which is replaced by new section 9A of the BoE Act inserted by section 4.

Section 3: Oversight Committee

24. Section 3 replaces section 3 of the BoE Act (which provided for there to be a sub-committee of the court of directors comprising of those members of court who are not Bank executives) with sections 3A to 3F. These provisions provide for the creation and functions of a new sub-committee of the court of directors to be known as the "Oversight Committee".

25. *New section 3A* creates the Oversight Committee and provides that it is to consist of the non-executive directors of the Bank. *Subsection (2)* specifies that the functions of the Committee are to keep under review the Bank's performance in relation to its objectives (including the duties of the FPC under section 9C) and the Bank's strategy (including its financial stability strategy). The Committee is also to monitor the extent to which the

objectives of the Bank in relation to its financial management have been met, keep under review the internal financial controls of the Bank and to carry out the specific functions specified in *subsection (4)* (which include keeping the procedures followed by the FPC and Monetary Policy Committee under review). *Subsection (3)* provides that the court of directors may arrange for the Oversight Committee to discharge additional functions.

26. *New section 3B* makes procedural provision for the Oversight Committee. It is to be chaired by the chair of court. The Committee may invite other persons to attend and speak at meetings of the Committee. The Committee may delegate any of its functions to two or more of its members. This might be used, for example, to ensure that members of the Oversight Committee who sit on the FPC as well as the court of directors are not involved in the assessment of the FPC's performance. *Subsection (5)* makes specific provision for the handling of potential conflicts of interests of its members. Otherwise, *subsection (2)* provides that the Committee is to determine its own procedure.

27. *New section 3C* provides that the Oversight Committee may arrange for a review to be conducted in relation to any matter and for the review to result in a report. *Subsection (2)* makes it clear that the person appointed to conduct a review may be an officer or employee of the Bank, although in such cases *subsection (4)* provides that the consent of the Governor is required to the appointment. This is designed primarily to avoid a situation where the person appointed by the Oversight Committee is unable to undertake the review for any reason. *Subsection (3)* defines "performance review" as a review relating to past events and arranged in the discharge of the Committee's functions of keeping under review the Bank's performance in relation to its objectives (including the FPC's duty under section 9C) or the Bank's strategy, or monitoring the extent to which the objectives of the court of directors in relation to the Bank's financial management have been met. *Subsection (5)* provides that in relation to a performance review, the Committee must have regard to the desirability of ensuring that sufficient time has elapsed for the review to be effective and to avoid the review adversely affecting in a material way the exercise by the Bank of its functions.

28. *New section 3D* deals with the reports of performance reviews. *Subsection (1)* provides that the Bank must give the Treasury a copy of any such report. *Subsection (2)* requires the Bank to publish the report unless the court of directors considers that publication would be against the public interest. Where publication is delayed, the court of directors must keep under consideration whether publication of the information would still be against the public interest and publish the report when the court of directors is satisfied that non-publication is no longer appropriate. *Subjection (6)* provides that the Treasury must lay before Parliament a copy of any report that the Bank has published under this section. This applies whether the report is published immediately, or later once the risk to the public interest has passed.

29. *New section 3E* provides that the Oversight Committee is to monitor the Bank's response to a report of a review arranged under section 3C and, where the Bank accepts the recommendations of such a report, monitor the implementation by the Bank of the recommendations.

30. *New section 3F* provides that the Oversight Committee is to have access to the papers of the FPC and Monetary Policy Committee. *Subsection (2)* provides that up to two members of the Oversight Committee may attend any meeting of the FPC or Monetary Policy Committee although such persons may only speak at the meeting if invited to do so by the chair.

31. *Subsections (3) and (4)* of section 3 make amendments to the BoE Act consequential on the abolition of the committee provided for by section 3 of the BoE Act and the creation of the Oversight Committee.

Section 4 and Schedule 1: Financial stability strategy and Financial Policy Committee, and other amendments of Bank of England Act 1998

32. *Subsection (1)* inserts a new Part 1A into the BoE Act.

33. *New section 9A* supersedes section 2A(3) of the BoE Act and requires the court of directors of the Bank to determine the Bank's strategy in relation to the Bank's financial stability objective. The court of directors must consult the FPC and the Treasury on a draft of the strategy. In addition, *subsection (3)* gives the FPC an express power to make recommendations to the court of directors as to the provisions of the strategy. The strategy must be reviewed at least every 3 years. The strategy, and any revised strategies, must be published.

34. *New section 9B* provides for the creation of a sub-committee of the court of directors to be known as the "Financial Policy Committee", the membership of which is set out in *subsection (1)*.

35. *New section 9B(5)* introduces *new Schedule 2A to the BoE Act*, set out in *Part 1 of Schedule 1* to the Act, which makes further provision about the FPC.

36. *Paragraph 1* of that Schedule specifies that the term of appointment of FPC members appointed by the Governor or by the Chancellor ("appointed members") is to be 3 years. *Paragraph 2* provides that a member may not be appointed by the Chancellor more than twice. Additional provision is made for initial appointments to the FPC to be shorter than 3 years; this is so that the terms of members may be staggered appropriately. Where initial appointments are shorter than 3 years, members may serve a further two terms. *Paragraph 3* allows the Chancellor to extend the term of appointment of a member appointed by him for up to 6 months. This might be appropriate to avoid a vacancy in cases where the person identified as a new member is unable to take up his post and a new recruitment exercise is required or where a member's term is due to expire at a time when a recruitment process to replace that member would not be possible or would be inappropriate. Any period of extension under this provision is to be counted towards the person's subsequent term if that person is reappointed to the FPC. *Paragraph 4*provides that appointed members may resign by written notice to the Bank (copied to the Treasury).

37. *Paragraph 6*provides that a Minister of the Crown or a person employed by a government department may not be an appointed member. A person who has been appointed by the Chancellor as a member of the Monetary Policy Committee may not be appointed to the FPC by the Chancellor.

38. *Paragraphs 7 to 9* deal with the removal of appointed members. An appointed member ceases to hold office if they become a person who could not (under paragraph 6) be appointed to the FPC. A member appointed by the Governor ceases to hold office if they cease to have relevant executive responsibilities within the Bank. In addition, the Oversight Committee may, with the consent of the Chancellor, remove an appointed member on the ground that the member has been absent from meetings (*paragraph 9(1)(a)*); entered a relevant insolvency process (*paragraph 9(1)(b)*); or is unable or unfit to discharge their duties (*paragraph 9(1)(c)*). In the case of a member appointed by the Chancellor, the Oversight Committee may also remove the member on grounds of conflict of interest (*paragraph 9(2)*).

39. *Paragraph 10* requires the FPC to meet at least 4 times a year. The Governor (or in the Governor's absence, the Deputy Governor for financial stability) may call a meeting at any time on reasonable notice.

40. *Paragraphs 11 to 14* deal with the proceedings of the FPC. The quorum is to be 6 (not counting the Treasury representative) and must include either the Governor or the Deputy Governor for financial stability (who is to chair the meeting) and one member appointed by the Chancellor of the Exchequer. The effect of paragraph 11(2)(b) is that for a meeting to be quorate either the Governor and the Deputy Governor for financial

stability must both be present, or one of them and another Deputy Governor. The chair is required to seek to secure that decisions are reached by consensus where possible. Where this is not possible, decisions are to be taken by a vote of members present at the meeting with the chair having a second casting vote. The Treasury's representative may not vote at the meeting. The FPC is to determine how to treat members who are not present at the meeting but are in communication with the meeting (for example via video conferencing facilities). The FPC has discretion to invite other persons to attend meetings and to determine whether they may speak at the meeting. *Paragraph 14* makes provision for disclosure and handing of conflicts of interest.

41. *New section 9C* provides that the objective of the FPC is to contribute to the achievement by the Bank of the financial stability objective provided for in section 2A of the BoE Act (as amended by *section 2* of the Act) ("the stability objective") and, subject to that, to support the economic policy of Her Majesty's Government, including its objectives for growth and employment ("the growth objective"). *Subsection (2)* provides that the FPC is to contribute to the stability objective primarily by identifying, monitoring and taking action to remove or reduce systemic risks (such as those set out in *subsection (3)*) with a view to protecting and enhancing the resilience of the UK financial system. "Systemic risk" is defined in *subsection (5)*. *Subsection (6)* makes it clear that it is immaterial for these purposes whether the risk arises in the United Kingdom or elsewhere. For example, a risk arising from the exposure of banks in the UK to risky overseas assets or institutions may become a systemic risk those poses a threat to the resilience of the UK financial system. *Subsection (4)* limits the operation of the stability objective by providing that it does not allow or require the FPC to exercise its functions in a way which would be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.

42. *New section 9D* enables the Treasury by notice in writing to the FPC specify for the purposes of the FPC's growth objective what the economic policy of Her Majesty's Government is to be taken to be. The Treasury is required to give such a notice at least once in every calendar year following the first notice. The notice must be published and laid before Parliament.

43. *New section 9E* enables the Treasury to make recommendations to the FPC. These recommendations may relate to: matters that the FPC should regard as relevant to the Committee's understanding of the Bank's stability objective; the responsibility of the FPC in relation to the achievement of that objective; the responsibility of the FPC in relation to support for the Government's economic policy, including its objectives for growth and employment; and matters to which the Treasury consider the FPC should have regard in the exercise of its functions. For example, the Treasury could recommend that the FPC take into account the experience of another country in using a particular macro-prudential measure.

44. Recommendations about the objective must be made at least once in every calendar year following the first recommendation. *Subsection (3)* provides that the FPC must respond to the recommendation indicating what action it has taken in accordance with the recommendation, or where the recommendation is not to take action immediately, whether the FPC intends to act in accordance with the recommendation. To the extent that it does not intend to act in accordance with the recommendation, the FPC must state its reasons. The recommendations of the Treasury, and any notification by the FPC in respect of a recommendation, must be published by the Treasury and laid before Parliament.

45. *New section 9F* provides that the FPC must have regard to the financial stability strategy prepared by the court of directors under section 9A (except when exercising functions which relate to the strategy). *Subsection (2)* provides that the FPC should seek to avoid exercising its functions in a way which would prejudice the advancement by the FCA of

any of its operational objectives or the advancement by the PRA of any of its objectives. This duty operates subject to the FPC's objectives.

46. *Subsection (3)* sets out three further factors to which the FPC must have regard in the exercise of its functions. These are the principle of proportionality (as outlined in *paragraph (a)*); the merits of disclosure of the FPC's views and the disclosure of information (*paragraph (b));* and the international obligations of the United Kingdom, particularly where relevant to the exercise by the FPC of its functions which relate to the PRA or FCA (*paragraph (c)*).

47. *New section 9G* sets out the functions of the FPC. These comprise the monitoring of the stability of the UK financial system; giving directions to the PRA or FCA under section 9H; making recommendations to the PRA, FCA and others; and preparing financial stability reports under section 9W.

48. *Subsection (2)* enables the court of directors to delegate further functions of the Bank to the FPC but only with the consent of the Treasury.

49. *New section 9H* enables the FPC to give a direction to the PRA or FCA. The FPC may require a regulator to exercise its functions to implement a macro-prudential measure (a measure prescribed by the Treasury by order made under *new section 9L*). The direction may require the regulator to implement the macro-prudential measure in relation to all regulated persons or a class of regulated persons. However the direction may not relate to a specified regulated person. "Regulated person" is defined in *subsection (2)*. *Subsection (5)* allows the FPC to refer to the opinion of the regulator (for example, to make provision such as "if the PRA considers that condition X is satisfied") or authorise the exercise of a discretion by the regulator (for example, to make provision such as "the FCA may provide for such exemptions as it considers appropriate"). *Subsection (6)* enables the FPC to give recommendations as to how and when the direction is to be implemented. The FPC may not give a direction as to how a direction is to be implemented but may give a recommendation as to implementation. Thus it will be for the regulator which receives the direction to determine, taking into account any recommendation from the FPC, how the direction is to be implemented (for example, whether it should be implemented by way of rules made under Part 9A of FSMA or requirements imposed on specific authorised persons under Part 4A of FSMA) and when the direction is to be implemented (for example, whether it is appropriate to consult on a draft of any proposed rules or whether it is appropriate to make the rules without prior consultation.) Where it gives a recommendation as to implementation, the FPC may provide for the "comply or explain" mechanism provided for in new section 9Q(3) to apply to such recommendations. In this case, where the regulator did not implement the direction in the manner recommended by the FPC, the regulator would be required to provide the FPC with its reasons. *Subsection (8)* prevents the FPC purporting to direct a regulator to do something that it has no power to do. However in determining whether it is appropriate to exercise a power in a particular way, a regulator may have regard to the direction. For example, in determining whether a proposed rule can be said to be necessary or expedient for the purpose of advancing its objectives (see *new section 137A* of FSMA as inserted by *section 24*), the PRA may have regard to the fact that the FPC has directed it to take certain action for the purpose of protecting or enhancing financial stability. *Subsection (9)* enables the FPC to specify matters to which the regulator is to have regard in complying with the direction, so long as those matters do not relate to a specified regulated person. *Subsection (10)* enables the FPC, when giving a direction, to make references to publications issued by the FCA, PRA or other persons in the United Kingdom or international organisations, including ambulatory references to such publications as they have effect from time to time. For example, the FPC's direction might refer to the rate of growth of GDP, or the interest rate set by the European Central Bank.

50. *New section 9I* requires the PRA and FCA to comply with any direction from the FPC as soon as reasonably practicable. *Subsection (2)* enables the Treasury, when making an

order under section 9L, to exclude or modify any procedural requirement which would otherwise apply under FSMA to the FCA or PRA when it is complying with a direction. For example, an order under section 9L which specifies a macro-prudential measure could provide that the obligation of the PRA or FCA under *new section 138I* of FSMA or *new section 138J* of FSMA (as inserted by *section 24*) to consult on proposed rules does not apply to rules made to implement a direction from the FPC which relates to that macro-prudential measure.

51. *Subsection (3)* requires the regulator which has received a direction to report to the FPC on how it is complying with the direction. Under *subsection (4)*, the FPC may specify the times at which such reports are required.

52. *New section 9J* enables the FPC to revoke a direction. A direction is to be treated as being revoked if it relates to a macro-prudential measure which ceases to be a macro-prudential measure (subject to any transitional provision made under *new section 9L(4)(e)*). *Subsection (3)* provides that the revocation of direction does not affect the validity of any action taken in accordance with the direction before it was revoked.

53. *New section 9K* contains procedural matters relating to directions, including the obligation on the FPC to give a direction in writing and to give the Treasury a copy of a direction or notice of revocation of a direction. The Treasury may lay before Parliament a copy of the direction or revocation it receives from the FPC. Where the Treasury has not done so before the direction or revocation is included in the record of the FPC meeting at which the direction or revocation was given (for example, because disclosure of the direction in full would be contrary to the public interest), the Treasury must lay before Parliament the direction or revocation included in the record (which may have been redacted in accordance with *new section 9U(8)(b)*).

54. *New section 9L* enables the Treasury to prescribe, by order, what macro-prudential measures are. *Subsection (2)* provides that before making an order under *section 9L*, the Treasury must consult the FPC (or, in cases of urgency, the Governor). By virtue of *subsection (3)*, the order must specify if the measure is prescribed in relation to the PRA, the FCA or both. *Subsection (4)* sets out various matters that an order may contain including the making of ambulatory references to certain publications (for example references to publications as they have effect from time to time, rather than to the version of that publication which had effect at the time of the order) and referring to rules made by the PRA or FCA.

55. *New section 9M* requires the FPC, in relation to each macro-prudential measure prescribed under *section 9L*, to prepare and maintain a statement of the general policy that it proposes to follow in exercising its power of direction under *section 9H* in connection with that macro-prudential measure. *Subsection (3)* requires the Bank to publish each statement maintained under this provision. *Subsection (5)* provides that the FPC may exercise its power of direction under section 9H before it has prepared a relevant statement of policy in cases of urgency.

56. *New section 9N* sets out the requirements for Parliamentary control of orders under *section 9L*. Such orders must be approved in draft by each House of Parliament before being made except in urgent cases where the order may be made immediately but ceases to have effect if not approved by each House within 28 sitting days.

57. *New section 9O* enables the FPC to make recommendations within the Bank. *Subsection (3)* provides that recommendations may not be made on the provision by the Bank of financial assistance to a particular financial institution or the exercise by the Bank of its powers under Parts 1 to 3 of the Banking Act 2009 in relation to a particular institution.

58. *New section 9P* enables the FPC to make recommendations to the Treasury. Those recommendations may in particular relate to the exercise by the Treasury of certain powers to make secondary legislation including section 9L (power to determine macro-prudential measures), section 22 of FSMA (power to specify activities and

investments), section 22A of FSMA (designation of activities requiring prudential regulation by the PRA) (inserted by *section 9* of the Act) and section 165A(2)(d) of FSMA (additional persons who may be required by the PRA to provide information; see also the amendment to section 165C made by paragraph 4 of Schedule 12 to the Act). *Subsections (4) and (5)* make additional provision in relation to a recommendation which relates to section 165A(2)(d). *Subsection (4)* provides that a recommendation may only be made if the FPC considers that the exercise by the Treasury of their power is desirable for the purposes of the exercise by the Committee of its function. *Subsection (5)* requires the FPC to consult the Treasury before giving such a recommendation.

59. *New section 9Q* enables the FPC to make recommendations to the FCA and PRA about the exercise of their functions. Such recommendations may relate to all regulated persons or to regulated persons of a specified description, but may not relate to the exercise of functions in relation to a particular regulated person. If the FPC so provides in its recommendation, the PRA or FCA must either act in accordance with the recommendation or explain why it has not done so.

60. *New section 9R* enables the FPC to make recommendations to other persons, for example the Financial Reporting Council.

61. *New section 9S* requires the FPC to prepare an explanation when it exercises certain powers (the power to give a direction to the FCA or PRA under section 9H; the power to make a recommendation to the Bank in relation to the regulation of payment, settlement or clearing systems; the power to make recommendations to the Treasury as to the exercise of their statutory functions; and the power to make recommendations to the FCA or PRA). Such explanations must give the FPC's reasons for exercising the power and the FPC's reasons for believing the exercise of the power is compatible with the FPC's duties under section 9C and section 9F (objectives and matters to which the FPC is to have regard). The explanation must include an estimate of the costs and benefits that would arise from compliance with the direction or recommendation, unless the FPC considers that it is not reasonably practicable to do so. Any such explanation must, by virtue of new section 9W(5), be published in the next financial stability report published by the Bank.

62. *New section 9T* requires the FPC to review every direction it has given under section 9H once a year (unless the direction has already been revoked). The FPC must maintain arrangements for the regular review of any recommendations it has given under sections 9O to 9R which continue to be relevant. *Subsection (4)* makes it clear that the purpose of a review under this section is to consider whether the direction should be revoked or the recommendation should be withdrawn. By virtue of section 9W(6), a summary of any such review must be included in the next financial stability report published by the Bank.

63. *New section 9U* requires the Bank to publish a record of each meeting of the FPC within 6 weeks of the day of the meeting. The record must set out the decisions taken at the meeting and a summary of the discussion at the meeting. Under *subsection (4)*, the record must include the text of any direction under section 9H (a direction to the PRA or FCA require that regulator to exercise its functions to implement a macro-prudential measure) that is given or revoked. *Subsection (5)* requires any recommendations made by the FPC to be included in the record. *Subsection (6)* requires the FPC to include in the record any explanation from the PRA or FPC under section 9Q as to why they have not complied with a recommendation. *Subsection (7)* specifies that the record is not required to include information identifying particular members of the FPC.

64. *Subsection (8)* provides for exclusions from the record. This includes information about recommendations from the FPC to the Bank which relate to the provision by the Bank of financial assistance (*subsection (8)(a)*); information publication of which the FPC considers be contrary to the public interest (*subsection (8)(b)*); and information about a direction given to the PRA or FCA which has been revoked before the record is published (*subsection (8)(d)*).

65. *New section 9V* deals with information which has not been included in the record of a FPC meeting on the basis that its publication at that time would be against the public interest (see *section 9U(8)(b)*). In such cases, the FPC must consider whether to fix a date when the information may be published. This might be appropriate where information is to be made public by other means on a certain date, for example as part of the duty of financial institutions to publish their accounts. Where the FPC does not fix a date, it must keep under review whether publication of the information would still be contrary to the public interest, in line with a procedure to be adopted under *subsection (2)*. Publication of information previously excluded from the record is to take place at the time when the FPC next publishes a record of a meeting of the FPC.

66. *New section 9W* requires the FPC to publish reports relating to financial stability (Financial Stability Reports (FSRs)). The FPC must publish two such reports each year. Under *subsections (3) and (4)*, each report must include certain matters including the FPC's view on the stability of the UK financial system (*subsection (3)(a)*); an assessment of risks to the stability of the UK financial system (*subsection (3)(d)*); the FPC's view of the outlook for the stability of the UK financial system (*subsection (3)(e)*); a summary of the activities of the FPC in the reporting period (*subsection (4)(a)*); and an assessment of the extent to which the FPC has succeeded in achieving its objectives in the reporting period (*subsection (4)(b)*). *Subsections (5) and (6)* provide that the FSR must include the explanation prepared under section 9S for any of its actions since the previous FSR and a summary of any review of the FPC's actions completed under section 9T since the previous FSR.

67. *Subsection (8)* specifies that the FPC is not required to include in the report any information publication of which would be against the public interest. *Subsections (9) to (11)* require the FPC to publish each report and to give a copy of each report to the Treasury who must lay it before Parliament.

68. *New section 9X* requires the Governor and the Chancellor of the Exchequer to meet as soon as possible after the publication of each FSR to discuss the report and other matters relating to the stability of the UK financial system. The Treasury are to publish records of the meeting, except where, having consulted the Bank, the Treasury are of the view that it would be against the public interest to do so.

69. *New section 9Y* enables the Bank to direct the FCA or PRA to provide the Bank with specified information or produce to the Bank specified documents. The Bank may only do so where it considers that the information or documents are reasonably required in connection with the exercise of its functions in pursuance of its Financial Stability Objective (see section 2A of the BoE Act as amended by *section 2*). This will include the functions of the FPC and functions of the Bank under Parts 1 to 3 of the Banking Act 2009, functions in relation to systemically important market infrastructure and functions in relation to the provision of liquidity support to financial institutions.

70. *Subsection (4)* provides that the FCA and PRA may exercise their powers under sections 165 and 165A FSMA to obtain information or a document which is the subject of a direction from the Bank.

71. *New section 9Z* makes further provision about direction under section 9Y. *Subsection (1)* requires the Bank to have regard to the principle of proportionality. *Subsection (2)* requires the Bank to consult the PRA or FCA before giving the regulator a direction. Under *subsections (4) to (6)* a direction must be published as soon as practicable after it is given except to the extent that publication would be against the public interest; the Bank must keep under review any decision that publication is against the public interest.

72. *Section 4(3)* introduces Part 2 of Schedule 1 which makes further amendments to the BoE Act in connection with the FPC.

73. *Paragraph 1 of Part 2 of Schedule 1* amends section 4 of the BoE Act to require the annual report by the Bank to include a report by the court of directors on the activities of the FPC.

74. *Paragraph 2 of Part 2 of Schedule 1* amends section 15 of the BoE Act to require the Monetary Policy Committee to exclude from its published minutes information which relates to the proceedings of the FPC (for example, decisions taken by the FPC) publication of which the Bank considers would be against the public interest. This reflects the basis on which the FPC may determine not to include information in the record of its meetings under section 9U(8)(b).

75. *Paragraphs 4 and 5 of Part 2 of Schedule 1* provide for appointed members of the FPC to be disqualified from being a member of the House of Commons or the Northern Ireland Assembly.

76. *Section 4(4)* repeals the provisions of the BoE Act which relate to the Financial Stability Committee.

Section 5 and Schedule 2: Further amendments relating to Bank of England

77. *Section 5* introduces *Schedule 2* to the Act. This amends the provisions of the BoE Act which relate to the Monetary Policy Committee and the court of directors and section 244 of the Banking Act 2009 (immunity).

78. *Paragraph 1 of Schedule 2* amends Schedule 1 to the BoE Act which makes provision for the court of directors.

79. *Paragraph 1(2)* substitutes paragraph 1 of Schedule 1 to the BoE Act. The effect of the amendment is to provide that the Governor of the Bank is to serve a single term of 8 years. (Under the BoE Act currently, the Governor serves a term of office of 5 years and may be reappointed once.) *Paragraph 1(15)* specifies that this amendment does not affect any term of appointment that begins before the commencement of the amendment. New paragraph 1 of Schedule 1 to the BoE Act also provides that work in a post which is required by an enactment to be held by the Governor or Deputy Governor (for example, that of the chief executive of the PRA) is to be taken as work for the Bank (and so such work will not breach the requirement that the Governor and Deputy Governors work exclusively for the Bank). *Paragraph 1(7)* makes a consequential amendment to paragraph 6 of Schedule 1 to the BoE Act.

80. *Paragraph 1(3)* provides that the members of the court of directors who are not Bank executives are to be called “non-executive directors”. The term of appointment for non-executive directors of the Bank is to be 4 years or such shorter term as may be specified in the term of appointment (rather than 3 years). *Paragraph 1(15)* specifies that this amendment does not affect any term of appointment that began before the commencement of the amendment.

81. *Paragraph 1(6)* amends paragraph 5 of Schedule 1 to the BoE Act to provide that an officer or employee of the Bank, other than a person who is appointed by the Chancellor to be a member of the FPC, is disqualified for appointment to the court of directors. This amendment replaces the existing disqualification of a “servant of the Bank” for appointment as a director. The reference to “servant” is considered to be unusual and rather old fashioned, *Paragraph 1(10)* and *paragraphs 2(6), 4 and 5* makes related amendments to references to “servants” in Schedule 1 to the BoE Act.

82. *Paragraph 1(9)(c)* ensures that the inability or unfitness of the Deputy Governor for prudential regulation to discharge the functions of being the chief executive of the PRA can be taken into account in considering his ability or fitness to be that Deputy Governor.

83. *Paragraph 1(10)(d)*clarifies that where an enactment expressly confers functions or imposes duties on the court of directors, the court of directors may not delegate those functions.

84. *Paragraph 1(11)*requires the Bank to publish a record of each meeting of the court of directors. The record must specify any decisions taken at the meeting (including decisions to take no action) and set out a summary of the court's deliberations in relation to each decision. The record is to be published within 6 weeks of the meeting unless no meeting of the court has been held in that period whereupon the record is to be published within 2 weeks of the next meeting. This arrangement reflects the fact that the court of directors (which is expected to approve the record of each meeting prior to publication) generally meets once a month except in the summer when there is one month where no meeting is held.

85. *Paragraph 1(12)*provides that the Governor or Deputy Governor may not be designated to chair the court of directors or a sub-committee of court.

86. *Paragraph 2*amends Schedule 3 to the BoE Act which makes further provision for the Monetary Policy Committee ("MPC").

87. *Paragraph 2(4)*inserts a *new paragraph 2B* which allows the Chancellor to extend the term of appointment of a member appointed by the Chancellor to the MPC for up to 6 months. This might be appropriate to avoid a vacancy in cases where the person identified as a new member is unable to take up his post and a new recruitment exercise is required. Any period of extension under this provision is to be counted towards the person's term if that person is reappointed to the MPC. Similar provision is made for members of the FPC who are appointed by the Chancellor in paragraph 3 of new Schedule 2A to the BoE Act.

88. *Paragraph 2(5)*amends paragraph 3 to require a member of the MPC who was appointed by the Chancellor who resigns to send a copy of his notice of resignation to the Treasury. This reflects the approach taken to a member of the FPC who has been appointed by the Chancellor under paragraph 4 of new Schedule 2A to the BoE Act.

89. *Paragraph 2(7)* inserts a *new paragraph 5A* to Schedule 3 to the BoE Act which prevents a member of the FPC who has been appointed by the Chancellor from being appointed by the Chancellor to the MPC.

90. *Paragraph 3* amends section 244 of the Banking Act 2009 (immunity) to make clear that the Bank has immunity from liability in damages (save in specified cases) in relation to the exercise or purported exercise of its regulatory functions, including those relating to recognised clearing houses (under Part 18 of FSMA (recognised investment exchanges and clearing houses)) and recognised inter-bank payment systems (under Part 5 of the Banking Act 2009) and when exercising investigative functions under FSMA as a result of an appointment by the FCA or PRA under sections 97, 166 to 169, and 284 of FSMA.