



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 1

RING-FENCING

Reviews

8 Independent review of operation of legislation relating to ring-fencing

- (1) The Treasury must, before the end of the initial period, appoint a panel of at least 5 persons (“the review panel”) to carry out a review of the operation of the legislation relating to ring-fencing.
- (2) “The legislation relating to ring-fencing” means—
 - (a) Part 9B of FSMA 2000 (as inserted by section 4);
 - (b) orders and regulations made by the Treasury under that Part;
 - (c) ring-fencing rules, as defined by section 142H(3) of FSMA 2000, made by the FCA or the PRA;
 - (d) section 192JA of FSMA 2000 (as inserted by section 133);
 - (e) rules made by the FCA or the PRA under that section.
- (3) The initial period is the period of 2 years beginning with the first day on which section 142G of FSMA 2000 is fully in force.
- (4) The members of the review panel must be persons—
 - (a) who appear to the Treasury to be independent of the PRA, the FCA, the Bank of England and the Treasury, and
 - (b) who do not appear to the Treasury to have any financial or other interests that could reasonably be regarded as affecting their suitability to serve as members of the review panel.

Status: This is the original version (as it was originally enacted).

- (5) In appointing the members of the review panel, the Treasury—
- (a) must have regard to the need to ensure that the review panel (considered as a whole) has the necessary experience to undertake the review, and
 - (b) must ensure that at least one of the members is a person appearing to the Treasury to have substantial experience in central banking or banking regulation at a senior level.
- (6) Before appointing the members of the review panel, the Treasury must consult the chair of the Treasury Committee of the House of Commons.
- (7) The reference in subsection (6) to the Treasury Committee of the House of Commons—
- (a) if the name of that Committee is changed, is a reference to that Committee by its new name, and
 - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable;
- and any question arising under paragraph (a) or (b) is to be determined by the Speaker of the House of Commons.
- (8) The Treasury must appoint one of the members of the review panel to be the chair of the panel.
- (9) The review panel must, within a reasonable time after the end of the initial period, make a written report to the Treasury—
- (a) setting out the results of the review, and
 - (b) making such recommendations (if any) as the panel considers appropriate.
- (10) The Treasury must—
- (a) lay a copy of the report before Parliament, and
 - (b) publish the report in such manner as they think fit.
- (11) Any expenses reasonably incurred in the conduct of the review are to be paid by the Treasury out of money provided by Parliament.

9 PRA review of proprietary trading

- (1) The PRA must carry out a review of proprietary trading engaged in (whether or not as a regulated activity) by relevant authorised persons, for the purpose of considering whether further restrictions on any kind of proprietary trading ought to be imposed.
- (2) The review must begin before the end of the 12 months beginning with the first day on which section 142G of FSMA 2000 is fully in force.
- (3) On completion of the review, the PRA must make a written report to the Treasury on—
- (a) the extent to which relevant authorised persons engage in proprietary trading;
 - (b) whether proprietary trading engaged in by relevant authorised persons gives rise to any risks to their safety and soundness;
 - (c) whether any kinds of proprietary trading are particularly likely to give rise to such risks;

- (d) anything done by the PRA to minimise risks to the safety and soundness of relevant authorised persons arising from proprietary trading engaged in by them;
 - (e) any difficulties encountered by the PRA in seeking to minimise such risks.
- (4) The report must include an assessment by the PRA of each of the following—
- (a) whether the PRA’s powers under FSMA 2000 are, and might be expected to continue to be, sufficient to enable it to advance its objectives in relation to relevant authorised persons who engage in proprietary trading;
 - (b) the effectiveness of restrictions imposed in countries or territories outside the United Kingdom on proprietary trading by banks (so far as experience in those countries or territories appears to the PRA to be of relevance to the United Kingdom).
- (5) The report must be made within 9 months of the beginning of the review.
- (6) The Treasury must lay a copy of the report before Parliament.
- (7) The PRA must publish the report in such manner as it thinks fit.
- (8) The functions of the PRA under this section are to be taken for the purposes of FSMA 2000 to be functions under that Act.
- (9) This section is to be read with the interpretative provisions in section 11.

10 Independent review of proprietary trading

- (1) The Treasury must, after receiving the report of the PRA under section 9 but before the end of the initial period, appoint one or more persons (“the review panel”) to carry out a review of proprietary trading engaged in (whether or not as a regulated activity) by relevant authorised persons.
- (2) The initial period is the period of 2 years beginning with the first day on which section 142G of FSMA 2000 is fully in force.
- (3) The members of the review panel must be persons—
- (a) who appear to the Treasury to be independent of the PRA, the FCA, the Bank of England and the Treasury, and
 - (b) who do not appear to the Treasury to have any financial or other interests that could reasonably be regarded as affecting their suitability to serve as members of the review panel.
- (4) In appointing the members of the review panel, the Treasury must have regard to the need to ensure that the review panel (considered as a whole) has the necessary experience to undertake the review.
- (5) Before appointing the members of the review panel, the Treasury must consult the chair of the Treasury Committee of the House of Commons.
- (6) The reference in subsection (5) to the Treasury Committee of the House of Commons—
- (a) if the name of that Committee is changed, is a reference to that Committee by its new name, and

- (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, is to be treated as a reference to the Committee by which the functions are exercisable; and any question arising under paragraph (a) or (b) is to be determined by the Speaker of the House of Commons.
- (7) If the review panel consists of two or more members, the Treasury must appoint one of them to be the chair of the panel.
- (8) The review panel must, within a reasonable time after the end of the initial period, make a written report to the Treasury—
 - (a) stating whether the panel agrees with the conclusions reached by the PRA in its report under section 9,
 - (b) stating whether the panel recommends any further restrictions on any kind of proprietary trading in relation to relevant authorised persons, and
 - (c) making such other recommendations as the panel thinks fit.
- (9) The Treasury must—
 - (a) lay a copy of the report before Parliament, and
 - (b) publish the report in such manner as they think fit.
- (10) Any expenses reasonably incurred in the conduct of the review are to be paid by the Treasury out of money provided by Parliament.
- (11) This section is to be read with the interpretative provisions in section 11.

11 Reviews of proprietary trading: interpretation

- (1) This section has effect for the interpretation of sections 9 and 10.
- (2) A person engages in “proprietary trading” where the person trades in commodities or financial instruments as principal.
- (3) In subsection (2)—
 - (a) “commodity” includes any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;
 - (b) “financial instrument” includes anything specified in Section C of Annex I to Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
- (4) “Relevant authorised person” means a PRA-authorised person which—
 - (a) is a UK institution,
 - (b) meets condition A or B, and
 - (c) is not an insurer.
- (5) Condition A is that the UK institution has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.
- (6) Condition B is that—
 - (a) the institution is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),
 - (b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and

- (c) when carried on by it, that activity is a PRA-regulated activity.
- (7) In subsections (4) to (6)—
- (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
 - (b) “insurer” means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
 - (c) “PRA-authorised person” and “PRA-regulated activity” have the same meaning as in FSMA 2000.
- (8) Subsections (5), (6)(b) and (7)(b) are to be read in accordance with section 22 of FSMA 2000, taken with Schedule 2 to that Act and any order under that section.

12 Right to obtain documents and information

- (1) A review panel appointed under section 8 or 10—
- (a) has a right of access at any reasonable time to all such documents as the panel may reasonably require for the purposes of the review, and
 - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.