EXPLANATORY NOTES

Financial Services (Banking Reform) Act 2013

Chapter 33

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FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Financial Services (Banking Reform) Act 2013 ("the Act") which received Royal Assent on 18 December 2013. They have been prepared by Her Majesty's Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

3. In these Notes the following abbreviations are used:

"BS Act" means the Building Societies Act 1986;

"CA98" means the Competition Act 1998;

"the CAT" means the Competition Appeal Tribunal;

"the CMA" means the Competition and Markets Authority;

"EA02" means the Enterprise Act 2002;

"the FCA" means the Financial Conduct Authority;

"FSMA" means the Financial Services and Markets Act 2000;

"the PRA" means the Prudential Regulation Authority.

SUMMARY AND BACKGROUND

Background

4. This Act implements the final recommendations of the Independent Ccommission on Banking ("ICB"), established in June 2010, and recommendations made by the Parliamentary Commission on Banking Standards ("PCBS"), appointed by Parliament to consider how culture and standards in the banking sector could be improved as a consequence of the LIBOR scandal. It also makes available to the Bank of England a new stabilisation option (the "bail-in option") under Part 1 of the Banking Act 2009.

5. The ICB published its final report on 12 September 2011. It recommended structural reform of the banking industry, together with measures designed to increase the capacity of banks to absorb losses. Its proposals for structural reform centred on the principle that it should be made easier and less costly to resolve banks which get into financial difficulties, or in other words to determine which activities of a failing bank are to be continued, and how they should be continued in an orderly process. In particular, the ICB recommended that retail banking should be separated from wholesale or investment banking, and that this should be achieved by ring-fencing, or separating, retail banking within a banking group in order to isolate banking activities where continuous provision of service is vital to the economy and to the customers of a bank. They also recommended that measures should be taken to ensure the economic independence of the retail bank from the wider banking group, and its independent governance.

6. The ICB recommended that large UK banking groups (and ring-fenced banks on their own behalf, irrespective of the requirements placed on the rest of their group) should be required to hold equity and other regulatory capital, and long-term unsecured debt (referred to as the "primary loss-absorbing capacity" by the ICB), sufficient to cover (for the largest groups) at least 17 percent of the group's risk-weighted exposures.[1] The regulatory capital and debt forming part of this primary loss-absorbing capacity would be available to bear losses in the event that the bank failed. The ICB further recommended that deposits eligible for protection under the Financial Services Compensation Scheme should be made preferential debts in the event of insolvency.

7. The Government published its initial response accepting the ICB's recommendations and setting out its plans for implementation on 19 December 2011 in Cm 8252 *Government response to the Independent Commission on Banking*. The Government developed its proposals further and set them out in a White Paper, Cm 8356 *Banking reform: delivering stability and supporting a sustainable economy*. This set out more detail on the policy design and was followed by a further period of consultation. The government's proposals were intended to deliver a robust ring-fence, separating investment banking and its related activities from retail banking, in order to reduce the structural complexity of banks (making them easier to resolve in a crisis) and ensuring their independence from other parts of the group. Copies of the relevant documents, including these consultation documents, are available on the Treasury's website (www.hm-treasury.gov.uk) and the website of the ICB (bankingcommission.independent.gov.uk).

[1] Exposures are assigned risk weights in accordance with international practice, to determine how much regulatory capital should be held by the bank.

8. A draft Bill was published on the 10 October 2012 in Cm 8453 *Sound Banking:Delivering Reform*. This was to enable pre-legislative scrutiny of the draft Bill by the PCBS. On 21 December 2012 the PCBS published its first report (HL98-HC848) making recommendations on the draft Bill. The Government published a response to the first report of the PCBS and this is available at www.gov.uk. On 11 March 2013 the PCBS published its second report (HL 126-HC 1012) which discussed the Government's response to its first report and made further recommendations about the draft Bill. On the 19 June 2013 it published its final report on banking reform *Changing Banking for Good* (HL 27-I- HC 175-I).[2] This report made a substantial number of recommendations, many of which were for the Bank of England, the Prudential Regulation Authority or the Financial Conduct Authority. Those intended for and accepted by the Government, and requiring legislative effect, have been implemented in this Act.

9. In addition, the Act confers on the Bank of England the power to deploy a new stabilisation option called the "bail-in option" in relation to banks, building societies, investment firms and banking group companies. This will enhance the resolution toolkit, consistent with the range of tools that Member States will be required to make available to their resolution authorities under the European Commission's proposals for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (the "Recovery and Resolution Directive"). It also provides for a special administration regime for financial market instructure companies.

Summary

10. Part 1 of the Act makes provision for the separation of the banking activities on which households and small businesses depend (in the Act "core activities") from wholesale or investment banking activities which may involve a greater degree of risk and expose an entity undertaking them to financial problems arising elsewhere in the global financial system. This separation is referred to in these notes as "ring-fencing". Certain banks carrying on core activities will be required to be ring-fenced: that is, they will have to comply with restrictions on the other activities they can undertake, and with rules made by the regulator intended to ensure that they are capable of carrying on the business of providing the core services related to the acceptance of deposits independently of other members in their group. They will, for example, be prohibited from carrying on activities (excluded activities) which make them vulnerable to problems arising in the financial system or which may make it more difficult for the banks to be wound down in an orderly fashion (avoiding damage to the wider provision of banking services) if they fail. In certain circumstances the PRA and the FCA will be able to require companies within the same group as a ring-fenced body to divest themselves of a ring-fenced body, or of non-ring-fenced bodies; or to require ring-fenced bodies to divest themselves of specified property or rights. The general objective of the PRA is amended to require it to discharge its general functions in relation to ring-fencing and ring-fenced bodies to protect the continuity of the provision in the United Kingdom of the core services related to core activities. Further, provision is made to ensure that, in the event that the FCA ever becomes responsible for regulating a core activity, it would have an additional objective to protect the continuity of core services associated with that activity.

[2] The PCBS has also published two other reports: *Proprietary Trading* (HL 138-HC 1034), 15 March 2013 and *'An Accident Waiting to Happen: The Failure of HBOS'* (HL 144-HC 705), 5 April 2013.

11. Part 1 of the Act also gives the Treasury power to make regulations in connection with the pension liabilities of ring-fenced bodies, and gives the Treasury power to make regulations governing the way in which the PRA may use its powers under FSMA to impose debt requirements on specified classes of institutions.

12. Part 2 of the Act amends the Insolvency Act 1986 and related Scottish legislation to provide that deposits which are eligible for protection under the Financial Services Compensation Scheme are to be preferential debts. This will ensure that such deposits rank ahead of other unsecured claims in insolvency. Part 2 also makes provision as to the way in which the scheme manager of the financial services compensation scheme must exercise its functions; gives the Treasury power to require the scheme manager to provide accounting information to the Treasury, and requires the appointment of an accounting officer to the scheme.

13. Part 3 of the Act (section 17 and Schedule 2) makes provision for a "bail-in stabilisation option" by amending Part 1 of the Banking Act 2009 and modifying the Investment Bank Special Administration Regulations 2011. Currently, Part 1 of the Banking Act 2009 Act includes three stabilisation options: (i) transfer to a private sector purchaser (section 11 of the Act), (ii) transfer to a bridge bank (section 12 of the Act) and (iii) transfer to temporary public ownership (section 13 of the Act, see also section 82 in relation to the power to transfer into public ownership the parent undertaking of a failing bank). The private sector purchaser and the bridge bank stabilisation options can be deployed by the Bank of England. The temporary public ownership option, as a last resort option, can be deployed by the Treasury.

14. The bail-in option enables the Bank of England to take a range of actions for the purposes of stabilising a failing bank. Following an application of the bail-in option the Treasury are required to make provision in relation to compensation.

15. Part 4 of the Act (sections 18 to 38 and Schedule 3) amends Part 5 of FSMA (performance of regulated activities) to provide for the introduction of a new regime for senior managers and banking standards. The amendments implement the recommendations of the PCBS in this area. It also provides for a new criminal offence in relation to decisions which have caused a bank to fail.

16. Part 5 of the Act (sections 39 to 110 and Schedules 4 and 5) establishes a new regulatory regime for payment systems in the United Kingdom, providing for the establishment of a new body, the Payment Systems Regulator, which is given various regulatory and competition functions in relation to payment systems.

17. Part 6 of the Act (sections 111 to 128 and Schedules 6 and 7) establishes a new special administration regime known as "FMI administration". This applies to "infrastructure companies", as defined in *section 112,* that become insolvent. Part 6 also restricts powers of persons other than the Bank of England in the event of the insolvency of an infrastructure company.

18. Part 7 of the Act (sections 129 to 141 and Schedules 8 to 10) makes provision about the duties of the PRA and the FCA in relation to competitition, the power of the regulators to make rules applying to parent undertakings which are not themselves authorised persons under FSMA, and the duty of the regulators to meet the auditors of certain banks and investment firms. It also gives the Treasury power to require the PRA, the FCA and the Bank of England to impose fees on members of the financial services industry in order to cover certain expenses incurred by the Treasury in connection with UK membership of, or Treasury participation in, specified international organisations, such as the Financial Stability Board, and enables the Bank of England by direction to exclude the application of requirements of the Companies Act 2006 relating to the preparation of company accounts to certain of its subsidiaries.

19. Part 7 of the Act also makes provision relating to building societies, claims managements services and makes a number of minor and technical changes to the Financial Services Act 2012, and related legislation.

TERRITORIAL EXTENT AND APPLICATION

20. In general, the Act extends to England and Wales, Scotland, and Northern Ireland. The exceptions are as follows:

(a) section 13 (which relates to preferential debts) extends to England and Wales and Scotland only;

(b) sections 139 and 140 (which relate to claims management services) extend to England and Wales only.

COMMENTARY

PART 1 – RING-FENCING

Ring-fencing

21. Section 1: Objectives of the Prudential Regulation Authority

22. Section 1 amends FSMA to require the PRA, when acting in relation to ring-fencing matters (that is, the matters specified in the new subsection (4A) inserted in section 2B of FSMA) to further its general objective (promoting the safety and soundness of PRA-authorised persons) by exercising its functions so as to protect the continuity of core services.

23. *Subsection (2)(b)* amends section 2B of FSMA, inserting paragraph (c) into subsection (3) so as to provide that when the PRA is discharging its general functions in relation to ring-fencing matters (see below), it must advance its general objective in a way that ensures that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of core services; ensures that the business of ring-fenced bodies is protected from risks arising elsewhere in the financial system (whether in the United Kingdom or otherwise); and that minimises the risk that the failure of a ring-fenced body or of a member of its group would harm the continued provision of core services in the United Kingdom. The PRA is not required to ensure that a particular ring-fenced body does not fail,

provided that its failure can be so managed that the continued provision of core services elsewhere in the UK is not adversely affected. *Subsection (4)* inserts in section 2B of FSMA a new subsection (4A), which lists the ring-fencing matters to which subsection (3)(b) of that section applies. They comprise: Part 9B (which relates to ring-fencing), ring-fenced bodies, bodies which are members of the same corporate group as a ring-fenced body, and applications for permission under Part 4A of FSMA which would lead to the applicant becoming a ring-fenced body. *Subsection (5)* amends section 2J of FSMA to state what "failure" means in the case of a person who is not an "authorised person", as not all members of the same group as a ring-fenced person will necessarily be authorised persons.

Section 2: Modification of objectives of the Financial Conduct Authority

24. *Section 2* amends FSMA to give the Financial Conduct Authority ("FCA") a new continuity objective. This is applicable only if a core activity is not regulated by the PRA and accordingly falls under the remit only of the FCA. New section 1EA defines the "continuity objective": the protection of the continued provision in the UK of core services. This objective will be relevant when the FCA is exercising its general functions in relation to the ring-fencing matters listed in *subsection (2)* of the new section 1IA. *Subsection (3)* of that section sets out the ways in which the FCA is to be required to advance the continuity objective. The focus is on ensuring that there is no adverse effect on the continuity of the core services in the United Kingdom. The modification of section 1B(4) of FSMA by section *2* would have the effect that promoting effective competition in the interests of consumers would be relevant when the FCA is acting so as to advance its continuity objective.

Section 3: Amendment of PRA power of direction

25. *Section 3* amends section 3I of FSMA so that the PRA may by direction require the FCA to refrain from specified action if in the opinion of the PRA that action may threaten the continuity of core services provided in the United Kingdom.

Section 4: Ring-fencing of certain activities

26. *Section 4(1)* inserts new Part 9B (ring-fencing) into FSMA.

27. *New section 142A(1)* defines "ring-fenced body" for the purposes of FSMA, as any UK institution which carries on at least one core activity for which it has been given a Part 4A permission under FSMA. *Subsection (2)* excludes building societies from the definition of "ring-fenced bodies" and gives the Treasury power to exclude other institutions from the definition by order. This power will enable the Treasury to provide that only banks above a certain size will be required to be "ring-fenced bodies". *Subsection (3)* sets out the condition which must be satisfied before the Treasury are able to make such an order: the Treasury must be satisfied that excluding the classes of institution in question from the definition of a ring-fenced body would not harm the continued provision in the United Kingdom of core services. *Subsection (4)* requires the Treasury to consider the impact the exercise of their powers to exempt certain UK institutions from the definition of "ring-fenced body" might have on competition in the provision of core services, and whether any adverse impact might be mitigated. *Subsection (6)* allows the Treasury to set conditions on the grant of an exemption from the definition of a "ring-fenced body", and *subsection (7)* defines "UK institution" for the purposes of the section.

28. *New section 142B* defines "core activity" for the purpose of FSMA. *Subsection (2)* provides that the regulated activity of accepting deposits is to be a core activity, but also gives the Treasury power to provide for exceptions to this, by making an order setting out circumstances in which accepting deposits is not to be treated as a core activity. The Treasury therefore have power to provide (for example) that accepting deposits of high net-worth individuals, or large corporate entities, is not a core activity, so that such deposits may be held in banks which are neither ring-fenced bodies nor exempt under section 142A(2) from the obligations that apply to ring-fenced bodies.

29. *Subsections (3) and (4)* set out the conditions which must be satisfied before the Treasury are able to make an order setting out circumstances in which accepting deposits is not a core activity. The Treasury must be satisfied that it is not necessary for accepting deposits in those circumstances to be treated as a core activity either to protect the depositors specified in the order, or to protect the continued provision of the core services in the United Kingdom.

30. *Subsection (5)* gives the Treasury power to provide for additional core activities (and, when creating a new core activity, to provide for the circumstances in which the carrying on of the activity concerned is not to be considered to be a core activity).

31. *Subsection (6)* sets out the conditions which must be satisfied for the Treasury to designate a new core activity by order. First, the Treasury must be satisfied that an interruption in the provision of the services which are provided in the carrying on of that activity would harm UK financial stability (or the financial stability of a significant part of the UK financial system), and secondly, the Treasury must consider that making the activity in question a core activity is a more effective way of protecting the continued provision of those services.

32. *New section 142C* defines "core services" for the purposes of FSMA. *Subsection (2)* defines the "core services" which are associated with the core activity of accepting deposits (the only core activity specified in primary legislation), by identifying the categories of services which are to be "core services". It will not be necessary for ring-fenced bodies to provide every possible service which could be described as falling into these categories. Some banks only provide for certain forms of payment from their accounts. Some banks may choose not to provide any overdraft facilities. S*ubsection (3)* gives the Treasury power to require that any service not included in the categories listed in *subsection (2)* which is provided in connection with the core activity of accepting deposits is also to be considered to be a core service. *Subsection (4)* requires that, when the Treasury creates a new core activity in the exercise of its power under section 142B(5), the Treasury must also identify those services provided in the course of that activity which are to be core services.

33. The definition of core services is intended to be comprehensive, and those services which do not fall within the categories of services listed in *subsection (2)*, and are not specified as core services in an order made by the Treasury under *subsection (3)* or *(4)* will not be core services, however closely they are associated with a particular core activity.

34. *New section 142D* defines "excluded activity" for the purposes of FSMA. *Subsection (2)* provides that the regulated activity of dealing in investments as principal is an excluded activity, but also gives the Treasury power to provide for exceptions to this, by making an order setting out the circumstances in which dealing in investments as principal is not to be an excluded activity.

35. *Subsection (3)* sets out the condition which must be satisfied before the Treasury may make such an order. The Treasury must be satisfied that allowing ring-fenced bodies to deal in investments on their own account in the specified circumstances will not cause significant harm to the continued provision of core services in the United Kingdom.

36. *Subsection (4)* gives the Treasury power to provide for additional excluded activities (and, when creating a new excluded activity, to provide for the circumstances in which the carrying on of the activity concerned is not to be considered to be an excluded activity). *Subsection (5)* clarifies that the activity concerned need not be regulated under FSMA. *Subsections (6)* and *(7)* set out the conditions which must be satisfied before the Treasury may provide for an additional excluded activity. Under *subsection (6),* the Treasury are required to consider the risks which would arise for the ring-fenced body in the event that it carried on the activity concerned, and whether permitting a ring-fenced body to carry on that activity would increase the risk that its failure would harm the continued provision of the core services in the UK. *Subsection (7)* requires the Treasury to be of the opinion that it is necessary or expedient to make the order to protect the continued provision in the UK of the core services.

37. *New section 142E* gives the Treasury power to make an order imposing prohibitions on ring-fenced bodies. *Subsection (1)* specifies the prohibitions which may be imposed in such an order. *Subsection (2)* specifies the conditions which must be satisfied before the Treasury may make such an order. The Treasury must have regard to the risks to which a ring-fenced body would be exposed if it did anything the Treasury propose to prohibit in the order, and consider whether allowing a ring-fenced body to do the things prohibited in the order would increase the chance that the failure of the ring-fenced body would harm the continuous provision of the core services in the UK. Under *subsection (3),* the Treasury must also be of the opinion that it is necessary or expedient to make the order to protect the continued provision in the UK of the core services. Under *subsection (4)* an order made under this section may also contain exemptions from the proposed prohibitions, and make any such exemptions subject to conditions.

38. *New section 142F* makes additional provision as to what may be included in an order made by the Treasury under new sections 142A, 142B, 142D or 142E. In particular, the Treasury are given power to confer powers on either the FCA or the PRA in such an order. They may authorise the regulator to make rules or other instruments, and, under *subsection (2),* make the exercise of the regulator's new powers (including any rule-making power provided for) subject to conditions or requirements set out in the order. The Treasury are also permitted to include in an order made under these provisions references to publications of different bodies (such as rules made by one of the regulator) as those publications are amended from time to time.

39. *New section 142G* provides for the consequences where a ring-fenced body carries on any excluded activity, or contravenes any prohibition imposed under new section 142E. Under *subsection (1)* a ring-fenced body which has done this is treated as having contravened a requirement imposed on that body by the regulator under FSMA. It will in consequence be liable to the disciplinary measures and penalties which the regulators may impose under Part 14 of FSMA. However, under *subsection (2),* the ring-fenced body will not have committed a criminal offence solely by reason of the contravention, and transactions entered into contrary to a prohibition remain valid. Further, no-one will be able to rely on the contravention to bring an action for breach of statutory duty against the ring-fenced body, unless the Treasury make express provision for this in the exercise of the power given in *subsection (3). Subsection (4)* defines "the appropriate regulator" for the purposes of the section.

40. *New section 142H* makes provision requiring the PRA and the FCA to make rules about ring-fencing. It requires (in *subsection (1))* the appropriate regulator (which will be the PRA in relation to PRA-authorised persons, and the FCA in relation to other authorised persons) to make rules ensuring that ring-fenced bodies have appropriate arrangements in place for the supply of services and facilities which they need to carry on the core activity. *Subsection (1)* also requires the appropriate regulator to make rules for certain purposes ("the group ring-fencing purposes"), which apply to ring-fenced bodies and to authorised persons that are members of a ring-fenced body's group. The group ring-fencing purposes are set out in *subsection (4).* They are intended to ensure that a ring-fenced body has the ability to take decisions for itself, and is both economically and operationally independent of the other members of the group, in the sense that it is not reliant on resources provided by the group and would be able to continue carrying on the core activities even if one or more other companies in the group become insolvent. Further, the areas where the regulator is required to make rules for the group ring-fencing purposes are listed in *subsection (5).* Each area is concerned with the regulation of the relationship between the ring-fenced body and the group: such as the terms on which it contracts with other members of the group (*paragraph (a)*), payments it may make to the group (*paragraph (b)*), disclosure of intra-group transactions (*paragraph (c)),* and the composition and independence of its board of directors (*paragraph d)*). In addition, the regulator is required to make rules in relation to the remuneration and human resources policies (defined in *subsections (6)* and *(7)* respectively) of a ring-fenced body, and its risk management arrangements (*paragraphs (e), (f)* and *(g)*), to ensure that these policies and arrangements are separate to those of other companies of the group. Finally, in *paragraph (h),* the regulator is required to make any other rules which it considers to be necessary or expedient to achieve the purposes set out in *subsection (4)* whether or not the rules concerned fall within one of the areas listed in *subsection (5).* These provisions do not limit the general rule-making power of either regulator. Each regulator may also make any other rules it considers to be necessary or expedient, in the case of the PRA, for the purpose of advancing its general objective or, in the case of the FCA, to advance one or more of its operational objectives.

41. *Subsection (2)* of *new section 142H* provides that the power given to the Treasury in section 142E(1)(c) to prohibit ring-fenced bodies from holding shares or voting power in other companies in specified circumstances does not prevent the regulator exercising its own power to make general rules imposing restrictions in this area, but rules made by the regulator are subject to any such provision made by the Treasury. For example, if the Treasury made an order which prevented a ring-fenced body from having a shareholding of more than 10% in a

certain type of company, it would not be possible for the regulator to make rules preventing ring-fenced bodies from having shareholdings of more than 5%.

42. *New section 142I* gives the Treasury power to specify further what matters must be dealt with by rules made by the regulator in each of the areas specified in *section 142H(5),* or to require the regulator to make rules in other areas, if this is necessary to ensure the independence of the ring-fenced body from the other members of its group.

43. *New section 142J* requires the PRA (and where relevant the FCA) to carry out a review of their ring-fencing rules and of any rules they have made under section 192JA applying to parent undertakings every five years, to report to the Treasury on that review, and publish the report. The Treasury must lay a copy of the report before Parliament.

44. *New sections 142K to 142V* set out the powers of the PRA and the FCA to require groups including a ring-fenced body to restructure themselves, and provide for the procedure which must be followed when those powers are exercised. *New section 142K* sets out four conditions at least one of which must be satisfied before "the group restructuring powers" (see section 142L) may be exercised. Conditions A to C reflect the group ring-fencing purposes provided for in section 142H: under condition A, the regulator must be satisfied that the ring-fenced body's core business is being harmed by the conduct of a member of its group, under condition B, the regulator must be satisfied that the ring-fenced body cannot carry on that business independently of its group, and under condition C, the regulator must be satisfied that the insolvency of a member of its group would prevent the ring-fenced body carrying on its core business. Under Condition D, the group restructuring powers may be exercised if the regulator is satisfied that the conduct, present or past, of a member of the group is making it more difficult to achieve the continuity element of the regulator's objective. It is only necessary for one of the four conditions to be satisfied for the regulator to be able to exercise the group restructuring powers.

45. *New section 142L* sets out the group restructuring powers for each regulator. Any authorised person in the group, and any UK incorporated parent undertaking of the ring-fenced body, may be required to divest itself of specified property (including shareholdings in the ring-fenced body, or any other member of the group) and to apply to the court for approval of a ring-fencing transfer scheme, to enable it to transfer part of its business to another entity. This section also provides for the case where the PRA or the FCA wishes to impose a requirement on an entity for which it is not the appropriate regulator. The PRA is given power to require the FCA to impose the relevant requirement. The FCA is given an equivalent power where it is the appropriate regulator, and it wishes to impose a requirement on a PRA-authorised person. The powers set out in this section include a power to require a ring-fenced body to make arrangements discharging it from liabilities specified by the regulator (*subsection (5)(c)).* In some cases the regulator may be able to impose the same requirements on authorised persons under sections 55L or 55M. *Subsection (8)* makes it clear that this does not affect the regulator's use of the group restructuring powers set out in this section.

46. *New section 142M* requires the regulator to issue preliminary notices where it proposes to exercise any of the group restructuring powers. Notices must be given to the person on whom the requirement is imposed (referred to as "the person concerned"), to the ring-fenced body and to any other authorised person who may be affected by the exercise of

those powers. The preliminary notice must state what action the regulator proposes to take, and why the regulator considers that the group restructuring powers have become exercisable. A copy must be provided to the Treasury. The recipients of the notice (referred to as "the relevant persons") are given the opportunity to make representations to the regulator.

47. *New section 142N* sets out the next stage of the process. After the issue of the preliminary notice, the regulator may at any time give the relevant persons a notice stating it will not exercise its group restructuring powers. However if it proposes to continue it may take no further action for a period of 3 months. Once that period has expired it has 3 months within which to decide whether to proceed by issuing a warning notice. The regulator must take into account any representations made by the relevant persons in response to the preliminary notice and anything done by those concerned to address its concerns in the period since the end of the preliminary stage, and must obtain the consent of the Treasury before it may issue a warning notice. The regulator is not limited to exercising the group restructuring powers in the way specified in the preliminary notice – if circumstances have changed (or if the person concerned consents) the warning notice may specify different action.

48. Following the warning notice, after consideration of any representations made in response to it, the regulator must within a reasonable period issue a decision notice setting out the action it proposes to take. After those representations have been considered, the regulator may issue a decision notice. The decision notice must specify the date by which any divestment required by the notice has to be completed.

49. *New section 142O* gives those who have received a decision notice in relation to the exercise by either regulator of its group restructuring powers (or who should have received such a notice under *new section 142N*) the right to refer the decision to the Upper Tribunal.

50. *New section 142P* permits the regulator to vary any requirement imposed in the exercise of its group restructuring powers, provided that the person concerned consents to the variation. The PRA may also vary a direction given to the FCA requiring it to impose a requirement on the person concerned, and the FCA may vary a direction when it has used its equivalent power to direct the PRA. Anyone who is a person concerned may apply for a variation of a requirement imposed on them. Such an application is subject to the same procedure as an application for a variation of a Part 4A permission given under FSMA 2000.

51. *New section 142Q* provides that where the PRA is considering imposing a requirement on an authorised person that is not a PRA-authorised person by way of a direction to the FCA, the PRA must consult the FCA before giving a preliminary notice, warning notice or decision notice in the proceedings. The FCA would be subject to the same requirement if it wished to direct the PRA to impose a requirement on a PRA-authorised person.

52. *New section 142R* explains the relationship between the group restructuring powers and the powers of the regulator to impose requirements on authorised persons or to direct qualifying parent undertakings to take specified action under the existing powers referred to in *subsection (6)*. The regulator is not permitted to exercise its existing powers to effect a change of control of the ring-fenced body so that it is no longer controlled by an existing member of the group, or to require companies in the same group as a ring-fenced body to cease undertaking any excluded activity. Subject to this, the regulators' powers under

sections 55L, 55M and 192C are not in any way limited by the provisions of new sections 142K to 142Q.

53. *New section 142S* enables the regulator to impose penalties on, or publish a statement of censure in relation to, a qualifying parent undertaking who has breached a direction given under new section 142L. Such action may not be taken outside the limitation period (as defined in *subsection (5)*).

54. *New section 142T* sets out the procedure the regulator must follow before taking action under section 142S. *Subsection (7)* provides that a person who has received a penalty or been the subject of a statement of censure may refer the matter to the Tribunal.

55. *New section 142U* requires a regulator to provide a copy of any statement of censure to certain persons (including the person in respect of whom it is made).

56. *New section 142V* requires the FCA and PRA to prepare a statement of policy with respect to the imposition of, and amount of, penalties under new section 142S. The regulator must have regard to any such statement when exercising its power to impose a penalty. The statement must be published, and a copy must be provided to the Treasury.

57. *New section 142W* gives the Treasury power to make regulations in relation to the pension liabilities of ring-fenced bodies. Under *subsection (1)* they may require requiring ring-fenced bodies to make arrangements to ensure that they will only be liable for pension liabilities arising after a specified date in connection with employment in a ring-fenced body in relation to their pension liabilities, and that their liabilities in relation to pension liabilities arising before that date cannot be increased by the default of any other person. Where this is not possible, the regulations may require ring-fenced bodies to take steps to minimise their potential pension liabilities. Under *subsection (2)* the regulations may also enable the trustees or managers of pension funds to transfer all or part of the pension liabilities arising before the specified date to another pension scheme, or to divide their existing pension scheme into two or more sections. Under *subsections (3) and (4)* where ring-fenced bodies have been unable to reach any agreement with third parties necessary to enable them to make arrangements for the purposes set out in subsection (1), the regulations may enable them to apply to the court for an order requiring the third party to enter into appropriate arrangements on commercial terms.

58. *Subsection (6)* contains a non-exhaustive list of the provisions that may be included in the regulations. Many are provisions which will enable a ring-fenced body to make arrangements under existing pensions legislation, by removing potential obstacles. For example, the terms of a pension scheme may need to be modified and the trustees may have no power to do this. The regulations could give the trustees power to modify the scheme, but only with the consent of the participating employers. Similarly, the arrangements a ring-fenced body may need to make may require trustees' consent. If the trustees unreasonably refuse consent the regulations can enable a court to dispense with the need for consent. But the regulations cannot allow a court to dispense with consent where consent has been withheld reasonably. The regulations may provide that a contravention of a requirement included in them is to be treated in the same way as a contravention of a requirement imposed by the PRA under FSMA. The effect of this would be to ensure that the disciplinary powers

available to the PRA under FSMA could be used to penalise any contravention of the regulations. The regulations may also modify, exclude or apply existing legislation.

59. Under *subsections (7) and (8)*, a ring-fenced body may be required to do all it can to obtain a clearance statement from the Pensions Regulator under sections 42 or 46 of the Pensions Act 2004 (or under equivalent provisions of the Pensions (Northern Ireland) Order 2005) in relation to anything it does to comply with the regulations.

60. *Subsection (9)* provides that if a ring-fenced body is not a PRA-authorised person, references to the PRA are to be read as references to the FCA.

61. *Subsection (10)* provides that regulations made by Treasury under this section may not require ring-fenced bodies to make arrangements in accordance with regulations made under this section before 1 January 2026. Though the Treasury may require preparatory steps to be taken earlier than 2026, this means ring-fenced bodies will have until at least 2026 to ensure they have made the arrangements necessary to comply with regulations made under new section 142K.

62. *New section 142X* contains interpretative provisions applying to section 142W.

63. *New section 142Y* gives the Treasury power to make an order regulating the way in which the PRA and the FCA may exercise their functions under FSMA to impose requirements on a relevant body as to the debt which must be issued or maintained by that body. The ICB recommended that certain banks should be required to hold minimum levels of debt (or extra capital in its place if a bank chooses to do this). This is intended to facilitate the exercise of the new powers proposed in the Recovery and Resolution Directive. If, for example, a bank suffers a significant drop in the value of its assets, the powers proposed in the Directive may be exercised to impose a reduction in the value of the obligations due under the bank's debt before the bank actually becomes insolvent, so reducing the chance that the bank will need to be liquidated, undermining the stability of the financial system.

64. The Treasury may wish to specify which types of debt instrument can count towards the minimum level of debt recommended by the ICB, as the Treasury must be satisfied (and markets must believe it credible) that resolution authorities would be both prepared and able to impose losses on a bank's creditors in a crisis situation. For example, the Treasury may decide it is necessary for eligible instruments to have at least 12 months remaining on their term, because investors in longer-term instruments would be less able to withdraw their investment in the bank by demanding that their debts are repaid as a crisis approaches, and because this would give the authorities responsible for exercising the powers proposed in the Recovery and Resolution Directive a grace period to exercise those powers, restructure the firm if necessary, and restore market confidence before it needs to refinance these debt instruments.

65. *Subsection (2)* defines "relevant body" for the purpose of the section. Ring-fenced bodies will be relevant bodies, but the definition is not limited to ring-fenced bodies. A body corporate which has permission under FSMA to accept deposits, and a body corporate which is a member of the same group as a ring-fenced body or of another body corporate which has permission under FSMA to accept deposits which is not itself a ring-fenced body will also be "relevant bodies" for the purposes of this section. Relevant bodies will therefore include any

global systemically important banks which are based in the UK, even if the bank in question is not a ring-fenced body. *Subsection (3)* defines "debt instrument" for the purposes of the section. The definition is a broad one: all forms of debt including bonds and any form of transferable debt would be covered. *Subsection (4)* contains a non-exhaustive list of the provisions that may be included in an order made by the Treasury under this section. The Treasury may both require the regulator to impose specified debt requirements on a relevant body, and limit the requirements which may be imposed. They may set out the matters to which the regulator must (or must not) have regard or refer to. They may require the regulator to consult or obtain the consent of the Treasury before it exercises its powers or require the regulator to make additional procedural provision in relation to the exercise of its functions. The Treasury may also refer in an order to a publication of any body in the UK or abroad (such as rules made by the regulator), as that publication is in force for time to time.

66. *New section 142Z* makes provision for the draft affirmative resolution procedure to be used in relation to orders made by the Treasury under the provisions listed in *subsection (1),* so that no such order may be made unless the draft order has been laid before Parliament and approved by each House (*subsection (2)). Subsections (3)* to *(6)* provide for the application of the made affirmative resolution procedure to apply to orders made under sections 142D(4) (new excluded activities) and 142E (prohibitions), where the Treasury consider that the matter is urgent so that it is not appropriate to proceed by the draft affirmative procedure. If this applies, the order may be made without being approved in draft, but it must be approved by each House of Parliament within 28 days from the day on which it is made if it is to continue in force (*subsection (4))*.

67. *New section 142ZI* explains how the references to the regulated activities of accepting deposits and dealing in investments as principal, and the references to the group restructuring powers are to be understood for the purpose of Part 9B of FSMA.

68. The effect of the amendment to section 133 of FSMA 2000 (proceedings before Tribunal: general provision) in *section 4(2)* is to include in the list of "disciplinary references" references to the Tribunal in relation to decisions to impose a penalty under section 142S or to issue a statement under that section censuring a qualifying parent undertaking.

69. *Section 4(3)* provides that the regulators may, if they consider it appropriate, publish details of any warning notice given under section 142N (procedure: warning notice and decision notice) in relation to the proposed exrcise of the group restructuring powers.

70. *Section 4(4)* ensures that third parties affected by the issue of a warning notice or decision notice to a qualifying parent undertaking benefit from the rights in FSMA to receive a copy of that notice; and that those qualifying parent undertakings on which warning notices or decision notices are served will be given access to FCA or PRA material in relation to the decision.

71. *Section 4(5)* of the Act inserts definitions of "core activities", "core services", "excluded activities", "ring-fenced body" and "ring-fencing rules" into section 417 of FSMA.

72. The amendments made by *section 4(6) and (7)* add the function of issuing statements of policy under new section 142V (with respect to the imposition and amount of penalties which may be imposed under section 142S) to the list of legislative functions of the FCA and the PRA respectively. This means that the PRA or the FCA must act through their governing bodies when issuing such statements of policy, and may not for example discharge this function through a sub-commitee or an officer or member of staff.

Section 5: PRA annual report

73. *Section 5* amends Schedule 1ZB (the Prudential Regulatory Authority) of FSMA to require the PRA to make an annual report on the way in which ring-fenced bodies comply with the ring-fencing provisions (defined to cover not only the obligation imposed on ring-fenced bodies under section 142G of FSMA, as inserted by the Act, but also any ring-fencing rules made by the regulator). The PRA must also report on the extent to which ring-fenced bodies are dealing in investments as principal, or doing anything which would otherwise be prohibited for ring-fenced bodies in reliance on exceptions or exemptions set out in secondary legislation made under sections 142D and 142E, or to which any guidance which it has issued in relation to ring-fencing has been complied with by ring-fenced bodies.

Section 6: Ring-fencing transfer schemes

74. *Section 6* gives effect to Schedule 1, which amends Part 7 of FSMA to make provision for ring-fencing transfer schemes. Part 7 provides a mechanism for transferring, with the sanction of the court, all or part of the business of banks, insurance companies and reclaim funds, without requiring the approval of all those who may be affected by the transfer. Section 7 and Schedule 1 provide for an additional form of transfer scheme (a "ring-fencing transfer scheme"), which will enable bodies to use the procedures set out in Part 7 of FSMA to give effect to any transfers of business needed to ensure that core activities are only undertaken by ring-fenced bodies, and that no entity wishing to be a ring-fenced body carries on excluded activities.

75. *Paragraph 2* of Schedule 1 replaces the expression "authorised person concerned" with "transferor concerned", throughout Part 7, to allow for the possibility that in the case of a ring-fencing transfer scheme, the transferor may not be an authorised person.

76. *Paragraph 3* amends section 103A of FSMA (meaning of "the appropriate regulator") to provide for ring-fencing transfer schemes.

77. *Paragraph 4* amends section 106 of FSMA to exclude ring-fencing transfer schemes from banking business transfer schemes, so that the categories of scheme are separate.

78. *Paragraph 5* inserts *new section 106B* into FSMA 2000. This makes provision about ring-fencing transfer schemes. *Subsection (1)* defines "ring-fencing transfer scheme". A scheme is a ring-fencing transfer scheme if the whole or part of the business to be transferred is carried on by a UK authorised person, or by a "qualifying body" (defined in *subsection (2)*), provided the scheme is not an excluded scheme (see *subsection (4)*) and is made for the purposes set out in *subsection (3)*. The qualifying body does not have to be an authorised person.

79. *Subsection (3)* specifies the relevant purposes. These are: to enable the person transferring the business, or the person to whom it is transferred lawfully to carry on the core activities lawfully as a ring-fenced body; or to assist a corporate restructuring of the group of the transferor or of the transferee made in connection with one or more members of the group becoming ring-fenced bodies, whilst one or more other members of the group are not ring-fenced bodies. It is not necessary for the transfer scheme to take place at the same time that a member of the group becomes a ring-fenced body: it may be necessary for the corporate restructuring necessary to enable a banking group to reorganise its business to comply with ring-fencing requirements over a number of years before those requirements come into force, and in some cases more than one transfer may be required.

80. *Subsection (4)* defines excluded schemes for the purposes of the section. An excluded scheme is a scheme in which the person transferring part of their business is a building society or credit union, or a scheme which is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

81. *Subsection (5)* provides that in determining whether a business transfer is a ring-fencing transfer scheme, it does not matter whether the business is carried on in the UK.

82. *Subsections (6)* to *(8)* define "UK authorised person", "building society", "credit union" and "the ring-fencing provisions" for the purposes of new section 106B.

83. *Paragraph 6* amends section 107 of FSMA (application for order sanctioning transfer scheme) to add a reference to ring-fencing transfer schemes (*sub-paragraph (2)*). It also inserts new subsection (2A), providing that no application may be made to the court for approval of a ring-fencing transfer scheme unless the PRA has consented to the application, and new subsection (2B), which requires the PRA, in deciding whether or not to approve the scheme, to have regard to the scheme report prepared in relation to ring-fencing transfer schemes under section 109A of FSMA.

84. *Paragraphs 7 and 8* make provision for a report to be prepared in relation to any ring-fencing transfer scheme by a person nominated or approved for the purpose by the PRA. The report must provide information as to whether any adverse effect the proposed scheme can be likely to have on third parties is greater than reasonably necessary to achieve the purposes of the scheme.

85. *Paragraph 9* amends section 110 of FSMA (right to participate in proceedings) to provide who is entitled to be heard before the court on any application for the approval of a ring-fencing transfer scheme. This includes any person who alleges he would be adversely affected by a transfer scheme. This right is limited under *new subsection (5)* of section 110. Such a person is not entitled to be heard on an application for the approval of a transfer scheme unless before the hearing they have filed with the court a written statement of the representations that they wish the court to consider, and served copies of the statement on the PRA and the person by whom the proposed transfer is to be made.

86. *Paragraph 10* amends section 111 of FSMA (sanction of the court for business transfer schemes), extending it to apply to ring-fencing transfer schemes, and setting out the conditions which must be satisfied before the court may make an order sanctioning a ring-fencing transfer scheme.

87. *Paragraph 11 and 12* amend sections 112 (effect of order sanctioning business transfer schemes) and 112A (rights to terminate etc.) to include references to ring-fencing transfer schemes.

88. *Paragraph 13* amends Schedule 12 of FSMA so as to insert a new Part 2B. In that new Part, *paragraph 9B* provides what certificates must be obtained in support of an application to the court for the approval of a ring-fencing transfer scheme; *paragraph 9C* determines which authority must provide a certificate as to the financial resources of the transferee and *paragraph 9D* sets out what must be certified by the home state regulator of the transferee.

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

89. *Section 7* enables the Treasury to ensure that building societies are subject to restrictions equivalent to those applying to ring-fenced bodies in Part 9B of FSMA, or in rules or orders made under that Part. Building societies are excluded from the definition of a ring-fenced body under section 142A because they are already subject to significant restrictions under the Building Societies Act 1986. The powers in this section will enable the regime for building societies to be aligned with the regime which is to apply to ring-fenced bodies under Part 9B of FSMA. *Section 8(1)* gives the Treasury power to make regulations making provision corresponding to that made by or under Part 9B (ring-fencing) in relation to building societies, for the same purposes as the provisions in new Part 9B of FSMA, or in any secondary legislation made under powers given in that Part. The Treasury may also provide that the PRA's obligation under section 2B of FSMA (as amended by section 1) to advance its general objective, in relation to ring-fencing matters, by protecting the continuous provision within the UK of the core services, and (where applicable) the FCA's continuity objective also applies in relation to any function given to the PRA or the FCA in such regulations, or as a result of such regulations. *Subsection (2)* lists a number of things which may be done by the Treasury in regulations made under this power, including the amendment of the Building Societies Act 1986. *Subsection (3)* defines the terms "building society" and "the relevant continuity provision", for the purposes of the section.

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

90. *Section 8* provides for an independent review of the ring-fencing legislation. Under *subsections (1) and (2),* the Treasury are required to appoint a panel of five or more people to carry out a review of the way in which ring-fencing legislation works in practice. The panel must be appointed within 2 years after that legislation has come into force. Ring-fencing legislation is defined in *subsection (2)* as Part 9B of FSMA (ring-fencing); the secondary legislation made under that Part, and any rules made by the PRA or by the FCA either under Part 9B, or under new section 192JA of FSMA, which permits the regulators to make rules applying to parent undertakings of ring-fenced bodies. The secondary legislation covered by the review will include, for example, any orders exempting certain classes of banks from the definition of "ring-fenced body" or providing that only deposits of individuals and small and medium sized businesses need be kept in a ring-fenced body; and any orders setting out the circumstances in which a ring-fenced body is permitted to deal in investments as principal, or specifying other activities which it may not do. The requirements which must be satisfied by members of the review panel are set out in *subsections (4) and (5).* They must be independent of the regulators (including the Bank of England) and the Treasury, and have no financial or other interest which might be thought to influence their views on ring-fencing. The members of the panel must include someone who has significant experience as a senior

central banker or bank regulator, and more generally, the members of the panel must collectively have sufficient experience of the subjects under review to undertake the review. The Treasury is required to consult the chair of the Treasury Select Committee before before appointing any members of the panel (*subsection (6)),* and provision is made in *subsection (7)* for the possibility that that Committee may be renamed or its functions be reassigned. The Panel must complete their report to the Treasury within a reasonable time after finishing the review *(subsection 9)* and that report must be laid before Parliament and published (*subsection (10)).*

Section 9: PRA review of proprietary trading

91. *Section 9* requires the PRA to carry out a review of proprietary trading by banks and PRA-regulated investment firms ("relevant authorised persons"). On the completion of the review, the PRA must make a written report to the Treasury setting out their conclusions on proprietary trading, and in particular on whether any kinds of proprietary trading are likely to be especially risky to relevant authorised persons, whether the PRA's powers are sufficient to deal with proprietary by relevant authorised persons (whether now or anticipated in the future), and on the effectiveness of any restrictions on proprietary trading imposed by other countries. The PRA's report must be completed within 9 months of the beginning of the review, delivered to the Treasury, and laid before Parliament.

Section 10: Independent review of proprietary trading

92. *Section 10* requires the Treasury (once it has received the PRA's report on proprietary trading) to make arrangements for an independent review of proprietary trading, by appointing one or more independent reviewers, following consultation with the Chair of the Treasury Committee of the House of Commons. The independent review must state whether the reviewers agree with the conclusions of the PRA's report; whether any additional restrictions should be imposed on proprietary trading by relevant authorised persons, and make any other recommendations the reviewers consider to be appropriate. As with the PRA's report, the report of the independent review must be delivered to the Treasury and laid before Parliament.

Section 11: Reviews of proprietary trading: interpretation

93. *Section 11* contains the interpretation provisions for *section 9* (relating to the PRA's report on proprietary trading), and *section 10* (the independent review on proprietary trading).

Section 12: Right to obtain documents and information

94. *Section 11* gives the panel undertaking a review of ring-fencing and the panel reviewing proprietary trading a right of access to any documents they may need for the purposes of their review, and to require anyone in possession of such documents to provide additional information or explanations the panel think necessary for its review. Any requirement the panel impose under this provision may be enforced by an application to the court for an injunction (or in Scotland, for an order of specific performance).

PART 2 – DEPOSITOR PREFERENCE AND THE FINANCIAL SERVICES COMPENSATION SCHEME

Depositor preference

Section 13: Preferential debts: Great Britain

95. *Section 13* makes amendments to the Insolvency Act 1986 and the Bankruptcy (Scotland) Act 1985 to add to the existing categories of preferential debts on insolvency in Great Britain. *Subsection (1)* amends Schedule 6 to the Insolvency Act 1986, to insert new paragraphs 15B and 15C. *Paragraph 15B* defines the new category of preferential debts. Where a deposit is within the scope of the financial services compensation scheme ("FSCS"), it will be a preferential debt. Where a deposit is not eligible for protection under the FSCS, it will not be a preferential debt. If a single depositor has a very large deposit, part of which is not eligible for protection under the FSCS, only the part of that deposit which is covered by the FSCS will be a preferential debt. The remainder of the deposit will not be a preferential debt: it will rank equally to other non-preferred unsecured debts. *Paragraph 15C* defines the terms "eligible deposit" and "deposit" for the purposes of the new category of preferential debts. Deposits which were held in dormant accounts and have been transferred to authorised reclaim funds under the Dormant Bank and Building Society Accounts Act 2008 are included in the definition of "deposit".

96. *Subsection (2)* makes a consequential amendment to section 386 of the Insolvency Act 1986.

97. *Subsection (3)* amends Part 1 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 to insert new paragraph 6B. The Insolvency Act 1986 covers corporate insolvency in both England and Wales and Scotland, but deals with bankruptcy only in England and Wales. Bankruptcy in Scotland is dealt with under the Bankruptcy (Scotland) Act 1985. This paragraph makes provision in relation to bankruptcy and sequestration proceedings in Scotland equivalent to the provision made in new paragraphs 15B of Schedule 6 to the Insolvency Act 1986 which will apply to England and Wales and corporate insolvency proceedings in Scotland. *Subsection (4)* amends Part 2 of Schedule 3 to the 1985 Act to insert new paragraph 9A. This paragraph contains equivalent definitions of "eligible deposit" and "deposit" to those set out in new paragraph 15C of Schedule 6 to the Insolvency Act 1986. A balance transferred to an authorised reclaim fund is not mentioned as the insolvency of a reclaim fund in Scotland is subject to the Insolvency Act 1986, not the 1985 Act.

Financial Services Compensation Scheme

Section 14: Discharge of functions by scheme manager

98. *Sections 14* to *16* make provision in relation to the scheme manager of the financial services compensation scheme.

99. *Section 14* inserts a new section 224ZA into FSMA to require the scheme manager to have regard to the need for efficiency and effectiveness in the way in which it discharges its functions. It must also have regard to the need to minimise public expenditure in relation to loans or financial assistance to the scheme manager. For example, the scheme manager would be expected to have regard to the need to ensure that the cost to the government of making a

loan or providing other financial assistance to the financial services compensation scheme (such as a loan) is covered by repayments made by the scheme to the government.

Section 15: Power to require information

100. *Section 15* gives the Treasury power by written notice to require the scheme manager to provide specified information needed by the Treasury in connection with its duties under the Government Resources and Accounts Act 2000 (such as its duty to prepare consolidated accounts for the public sector, and to consolidate information relating to the financial services compensation scheme in its departmental accounts). *Subsection (2)* requires such information to be provided before the end of a reasonable period specified in the notice.

Section 16: Scheme manager: appointment of accounting officer

101. *Section 16* amends section 212 of FSMA. *Subsection (2)* amends subsection 212(3) of FSMA so that the constitution of the scheme manager must provide for it to have a chief executive, who is to be a member of the board of the scheme manager. The chief executive is also to be the accounting officer. *Subsection (3)* amends subsection 212(4) of FSMA to provide that the chief executive must be appointed by the PRA and the FCA. The appointment, and if relevant the removal from office, of the chief executive by the regulators will be subject to the approval of the Treasury.

PART 3 – BAIL-IN STABILISATION OPTION

Section 17: Bail-in stabilisation option

102. *Section 17* of and *Schedule 2* to the Act make provision for a new stabilisation option ("the bail-in option") under Part 1 of the Banking Act 2009 ("the 2009 Act"). *Subsections (2) to (5)* of section 17 give the Treasury power by order to make provision in consequence of the application of the new stabilisation option to building societies.

103. Part 1 of Schedule 2 amends the 2009 Act.

104. *Paragraph 2* inserts *new sections 12A and 12B. New section 12A(1) and (2)* describe the bail-in option which is to be the third stabilisation option in Part 1 of the 2009 Act. The bail-in option is to make one or more resolution instruments. *Subsections (3) to (5)* describe the provision and proposals that may be made in a resolution instrument. The Bank may make special bail-in provision (see *new section 48B*) for the purposes of reducing or deferring liabilities of the bank that are not excluded liabilities (as defined in *new section 48B(8)*) and may transfer some or all of the securities of the bank to a bail-in administrator (see *new section 12B*) until such time as the bank has been stabilised and the Bank has identified transferees for the securities (for example, creditors affected by an application of the power to make special bail-in provision or private sector purchasers), following which an onward transfer resolution instrument may be made (see *new section 48V*). Resolution instruments may include any provision that may be made in a share transfer instrument (see sections 17 to 23 of the 2009 Act) and any provision that may be made in relation to the bail-in option (see *new section 12B* and *new sections 48B to 48S)*.

105. *New section 12B* makes provision about bail-in administrators. *Subsection (1)* enables an individual or body corporate to be appointed as a bail-in administrator. A person appointed in this capacity would be appointed (a) to hold any securities of the bank that may be transferred or issued to that person in the capacity of bail-in administrator; and (b) to perform any other functions that may be conferred on the bail-in administrator under any provision of Part 1 of the 2009 Act (*subsection (2)*). It will be possible for the Bank to appoint one or more persons as a bail-in administrator. For example, one person could be appointed to hold securities, another may be appointed to prepare a business reorganisation plan under *new section 48H*. Alternatively, the Bank might choose not to transfer any securities of the bank to a bail-in administrator but may appoint a person to act as bail-in administrator for other purposes under Part 1 of the 2009 Act (for example, the preparation of the business reorganisation plan).

106. Securities held by a bail-in administrator (whether as a result of a resolution instrument or otherwise, for example, as a result of the issue of new securities to the bail-in administrator during the course of the period in which the securities are held by the officer) will be held by the bail-in administrator as legal and beneficial owner. However, the securities would be held solely in accordance with the terms of a resolution instrument (*subsection (4)*). The securities would be held by the bail-in administrator only as long as is necessary having regard to the special resolution objectives following which the Bank of England may transfer (using the onward securities transfer power conferred by *new section 48V)*, or otherwise authorise the disposal of, the securities held by the administrator to another person.

107. *Subsection (5)* ensures that a resolution instrument may include provision about the specified rights and obligations of the bail-in administrator with respect to all or any of the securities held by the administrator. For example, the Bank of England may choose to specify in the resolution instrument that the administrator is to exercise shareholder rights only in accordance with directions of the Bank.

108. *Subsection (6)* imposes a requirement on the bail-in administrator to have regard, when performing their functions, to such objectives as may be specified by the Bank of England in the resolution instrument under which the administrator was appointed. *Subsection (7)* makes it clear that should the Bank of England specify more than one objective for the officer, the objectives are to be taken to have equal status unless otherwise specified by the Bank.

109. *Paragraph 3* inserts a *new section 8A* into Part 1 of the 2009 Act. *New section 8A* sets out the specific condition that must be satisfied before the bail-in option may be deployed by the Bank of England. This is in addition to the conditions set out in section 7 of the 2009 Act (general conditions) in relation to failure, or likely failure, of the threshold conditions for authorisation (*subsection (4)*).

110. *Subsection (2)* sets out the condition to be satisfied: namely that the exercise of power is necessary having regard to one or more of the public interests listed in *paragraphs (a) to (d)*.

111. *Subsection (3)* requires the Bank of England to consult with the PRA, the FCA and the Treasury before determining whether the condition is satisfied.

112. *Paragraph 4* inserts *new sections 48B to 48W* into Part 1 of the 2009 Act.

113. *New section 48B* enables the Bank of England to make "special bail-in provision" in a resolution instrument. "Special bail-in provision" is defined by subsection (1) as provision involving one or more of the following: (a) cancelling a liability of the bank; (b) modifying a liability, or changing the form of a liability; and (c) providing that a contract is to have effect as if a specified right (such as a right to close out) had been exercised under it (*subsection (1)*). The purpose of this new power is to ensure that the Bank of England can take actions, having regard to the special resolution objectives specified in section 4 of the 2009 Act, to stabilise the bank under resolution by reducing or deferring its liabilities. For example, the power enables the Bank of England to convert all or part of the liabilities attaching to securities issued by a bank into another pre-existing or new form, type or class of securities. The power could be used, for instance, to convert a debt instrument partially into shares and partially into another type of debt security. It could also be used to modify the terms of a contract in order to suspend the bank's obligations in relation to a liability for a certain period for the purpose of, or in connection with, reducing that liability.

114. *Subsection (4)* makes clear that the power to make special bail-in provision may be exercised only for the purpose of, or in connection with, reducing, deferring or cancelling a liability of the bank. It also makes it clear that the power may not be exercised so as to affect an excluded liability (that is a liability of a kind listed in *subsection (8)*).

115. *Subsection (5)* sets out the rules which apply to the interpretation of *subsection (1)*. *Subsection (6)* provides examples of special bail-in provision.

116. *Subsection (8)* makes provision in relation to the liabilities of the bank that are "excluded liabilities" and may not be affected by an exercise of powers under *subsection (1)*. For example, deposits covered by the Financial Services Compensation Scheme may not be affected by an exercise of these powers. Relevant terms are defined in *new sections 48C* (defining "protected deposit") and *section 48D* (making provision for the interpretation of other specified terms).

117. *New section 48E* imposes a requirement on the Bank of England to produce a report where it makes a resolution instrument containing provision made in reliance on *new section 48B* (a similar reporting requirement exists where special bail-in provision has been made in property transfer instrument (see *new section 44C*)). The report must be provided to the Chancellor of the Exchequer (*subsection (2)*) who must lay before Parliament a copy of each report received from the Bank (*subsection (7)*). Each report has to be made as soon as reasonably practicable after the making of the resolution instrument to which the report relates. The report must, in particular, explain any departure from the principles related to how liabilities would be treated in insolvency (*subsections (3) and (4)*), namely the order of priority on liquidation and loss bearing on an equal footing for creditors having equal priority.

118. *New section 48F* confers on the Treasury a power, by order subject to the draft affirmative procedure, to amend the definition of "excluded liabilities" set out in *new section 48B(8)*. This power may not be used so as to amend or omit *new section 48B(8)(a) to (c)*.

119. *New section 48G* confers on the Treasury a power, by order subject to the draft affirmative procedure, to specify matters or principles to which the Bank of England must have regard in making an instrument that includes special bail-in provision. These may be the insolvency treatment principles of *new section 48E(4)* or alternative principles (*subsection (2)*). *Subsection (4)* allows the insolvency treatment principles to be amended. If new principles are specified under an order made under *new section 48G(1)*, this allows, for example, the insolvency treatment principles to be aligned with those principles.

120. *New section 48H* makes provision about business reorganisation plans.

121. *Subsection (1)* specifies that a resolution instrument may require a bail-in administrator, or one or more directors of the bank under resolution, to draw up a business reorganisation plan with respect of the bank, and to submit it to the Bank of England within the period allowed by or under the instrument. Other provision may also be made in the instrument in connection with provision under *subsection (1)* (see further *subsection (7)*).

122. *Subsection (2)* defines "business reorganisation plan". Such a plan is to include specified matters, including an assessment of the factors that caused Condition 1 in section 7 of the 2009 Act (general conditions) to be satisfied in relation to the bank under resolution and a description of the measures to be adopted with a view to restoring the viability of the bank. "Viability" is assessed by reference to the matters referred to in *subsection (8)*.

123. Each business reorganisation plan must be approved by the Bank of England (*subsection (3)*). Before deciding whether to approve the plan, or to require the person who has submitted the plan to amend the plan, the Bank of England must consult with the PRA and the FCA as the regulators responsible for the ongoing supervision of the bank (*subsection (5)*).

124. A business reorganisation plan may include recommendations on the exercise by the Bank of England of its powers under Part 1 of the 2009 Act in relation to the bank under resolution (*subsection (6)*). For example, if a bail-in administrator has identified a potential purchaser for some of the business on the bank under resolution, the bail-in administrator may recommend to the Bank of England that it make a property transfer instrument under *new section 41A* to effect the sale and transfer of that business. The Bank would be under no obligation to follow the recommendations of the person who has prepared the plan. However, the Bank of England may take into account these recommendations in determining what further steps to take in relation to the bank in pursuance of the special resolution objectives specified in section 4 of the Act.

125. *New sections 48I to 48K* make provision about bail-in administrators.

126. *New section 48I* makes it clear that a resolution instrument may include further provision about the functions of a bail-in administrator. *Subsection (1)* provides that a resolution instrument may, for example, authorise a bail-in administrator to manage the bank's business and to exercise any powers of the bank. *Subsection (2)* provides that a resolution instrument may require a bail-in administrator to make reports to the Bank of England on such matters as may be specified in the instrument. *Subsection (3)* specifies that the instrument may provide for further requirements as to the content of any report required under *subsection (2)*. And *subsection (4)* specifies that a resolution instrument may require a

bail-in administrator to consult specified persons (such as the Bank of England) or first to obtain the consent of a specified person before taking specified actions, such as exercising voting rights in relation to the securities held by the bail-in administrator.

127. *New section 48J* makes supplementary provision about bail-in administrators. *Subsection (1)* specifies that a bail-in administrator may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office. *Subsection (2)* makes it clear that a bail-in administrator is not a servant or agent of the Crown. *Subsection (3)* requires the Bank of England to make provision in a resolution instrument for the resignation and replacement of a bail-in administrator and addresses the removal from office of a bail-in administrator.

128. *New section 48K* makes provision about the remuneration and allowances of the bail-in administrator. In particular, *subsection (2)* specifies that the Bank of England may provide that remuneration and allowances are to be paid by the Bank or by the bank under resolution. Under *subsection (3)* a bail-in administrator is protected from liability in relation to anything done in good faith, except damages awarded under section 8 of the Human Rights Act 1998.

129. *New section 48L* makes it clear that a resolution instrument may cancel or modify any securities which fall within Class 1 in section 14 (*subsection (2)*) or convert any such securities from one form or class into another (see further *subsection (4)*). This section also clarifies that a resolution instrument may make provision with respect to the rights attaching to securities (for example, it may enable the Bank of England or a bail-in administrator to exercise voting rights attaching to the bank's shares during a resolution), and provide for the listing of securities issued by the bank to be discontinued (see further *subsection (6)*). *Subsection (7)* also clarifies that the provision that may be made under this section is in addition to any provision that the Bank of England may make under *new section 48B* (special bail-in provision).

130. *New section 48M* ensures that the Bank of England can make in a resolution instrument provision of a kind that may be made in a share transfer instrument or property transfer instrument under the 2009 Act for the purposes of turning off default event rights that may otherwise be triggered (see sections 22 and 38 of the 2009 Act).

131. *New section 48N* ensures that the Bank of England can make the same provision in a resolution instrument as in a share transfer or property transfer instrument regarding the directors of the bank under resolution (see sections 20 and 36A).

132. *New section 48O* confers on the Bank of England a power to issue directions to one or more directors of the bank under resolution.

133. *New section 48P* confers on the Treasury a power to make orders, subject to the draft affirmative procedure, for safeguarding certain financial arrangements. (The power is analogous to section 48, which allows safeguards to be put in place under existing stabilisation options involving partial property transfers.)

134. *New section 48Q* provides that a resolution instrument may make provision in relation to continuity. For example, a resolution instrument might provide for anything that relates to anything affected by the instrument that is in the process of being done before the instrument takes effect to be continued from the time the instrument takes effect.

135. *New section 48R* specifies that a resolution instrument may permit or require the execution, issue or delivery of an instrument.

136. *New section 48S* makes it clear that provision specified in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way and may include incidental, consequential or transitional provision.

137. *New section 48T* sets out the procedural arrangements that apply in relation to the making of a resolution instrument by the Bank of England. These are the same as apply where the Bank makes a share transfer instrument or property transfer instrument using its existing powers under the 2009 Act (see sections 24 and 41).

138. *New section 48U* enables the Bank of England to make one or more supplemental resolution instruments following the making of a resolution instrument under *new section 12A(2)*. A supplemental resolution instrument may make any provision of a kind that may be made in a resolution instrument under *new section 12A(2)*.

139. *New section 48V* confers on the Bank of England power to make one or more onward transfer resolution instruments, for example, to transfer securities that were transferred to a bail-in administrator as a result of provision in a resolution instrument under *new section 12A(2)* to such other persons as the Bank may identify (e.g. creditors affected by an application of the power to make special bail-in provision or a private sector purchaser).

140. *New section 48W* confers on the Bank of England a power to transfer back to the original holders any securities transferred by a resolution instrument or an onward transfer resolution instrument.

141. *Paragraph 5* of Schedule 2 makes provision about the transfer of the property of a bank in relation to which the bail-in option has been deployed.

142. *Sub-paragraph (1)* insert *new section 41A* which enables the Bank of England to transfer property, rights or liabilities of a bank to which the bail-in option has been applied. For example, this power could be exercised to transfer to a private sector purchaser a portfolio of assets in the event a purchaser could be identified.

143. *Sub-paragraph (2)* makes consequential amendments to section 42 of the 2009 Act, so as to enable the Bank of England to make a supplemental property transfer instrument following the making of a property transfer instrument under *new section 41A*. *Sub-paragraph (4)* also makes consequential amendments.

144. *Sub-paragraph (3)* inserts *new sections 44A to 44C* which enable the Bank of England to make a reverse property transfer where a property transfer instrument has been made in accordance with *new section 41A(2)*. *New section 44B* concerns property transfer instrument under section 12(2) or *new section 41A(2)* (and certain types of supplementary property

transfer instruments). It allows such instruments to make special bail-in provision of a kind described in *new section 48B*. *New section 44C* replicates the reporting requirement which appears in *new section 48E* in relation to property transfer instruments containing special bail-in provision.

145. *Paragraph 6* makes provision about the compensation arrangements to be put in place following the making of a resolution instrument under *new section 12A(2)* and other relevant forms of instrument.

146. *Sub-paragraph (1)* amends section 49, which describes the different forms of compensation arrangementws that may be made in connection with different stabilisation options, to provide for a new form of compensation order: a "bail-in compensation order".

147. *Sub-paragraph (3)* inserts a *new section 52A* into Part 1 of the 2009 Act which provides that the Treasury must make a bail-in compensation order where the Bank of England makes a resolution instrument in accordance with *new section 12A(2)* or a property transfer instrument under *new section 41A(2)*.

148. *Sub-paragraph (4)* makes a number of consequential amendments to section 53 of the 2009 Act to take account of the new forms of transfer instrument which the Bank of England may make. This ensures that the Treasury can make appropriate compensation arrangements following onwards, reserve and supplemental transfers.

149. *Sub-paragraphs (5) to (7)* make consequential amendments to sections 54, 56 and 57.

150. *Sub-paragraph (8)* inserts *new sections 60A* and *60B*. They enable the Treasury to make regulations concerning the mandatory compensation provision to be included in the compensation arrangements to be put in place following the making of instruments by the Bank of England that include special bail-in provision. In making the regulations, *new section 60B* requires the Treasury, in particular, to have regard to the desirability of ensuring that pre-resolution shareholders and creditors do not receive less favourable treatment than they would have done had the bank entered into insolvency immediately before the coming into force of the initial instrument (e.g. in the case of the bail-in option, the first resolution instrument made under *new section 12A*). *New section 60A(5)(b)* provides that the regulations are subject to the draft affirmative procedure.

151. *Sub-paragraphs (2), (9) and (10)* make other consequential amendments.

152. *Paragraph 7* inserts *new section 81BA* and *new section 81CA* and amends section 81D (interpretation: "banking group company" etc).

153. *New section 81BA* enables the Bank of England to exercise the bail-in option in relation to a banking group company where certain conditions are met. In particular, in addition to the conditions being satisfied in relation to the bank it would have, in the opinion of the Bank of England, to be necessary to take action at the level of the banking group company having regard to various public interests (see Condition 2). This is consistent with the approach to the application of the Bank's other stabilisation options in relation to banking group companies (see section 81B of the 2009 Act (sale to a commercial purchaser and bridge bank)).

154. *New section 81CA* specifies how the provisions relating to bail-in are to be interpreted where the Bank of England deploys the bail-in option at the level of the parent undertaking of the failing bank. In most cases the provisions are to be interpreted as applying to both the bank and the parent undertaking (see the "general rule" in subsection (4)). However, in certain cases, the powers are also exercisable in relation to any other banks in the group, for example, so as to permit the Bank of England to transfer the shares of any bank in the group to a commercial purchaser (see subsection (5)(b)). This is consistent with the approach in relation to the application of powers where the Treasury transfer the shares of a holding company of a failing bank into public ownership (see section 82 (temporary public ownership) and section 83 (supplemental) of the 2009 Act).

155. *Sub-paragraph (3)* makes consequential amendments to section 81D in order to take account of the new sections.

156. *Paragraph 8* makes certain consequential amendments in respect of new sections inserted by the Act as they apply to banks which are regulated only by the FCA, for instance to provide that the Bank of England need only consult the FCA and the Treasury in relation to the *new section 8A* specific condition in such cases unless the bank has a member of its immediate group that is a PRA-authorised person.

157. *Paragraph 9* prevents the amendments of the 2009 Act relating to the bail-in option from applying to recognised central counterparties. This is because the bail-in tool is not designed for such entities.

158. *Paragraph 10* amends section 120 of the Banking Act 2009 (notice to PRA of preliminary steps to certain insolvency proceedings) so as to ensure that an order placing a bank into an insolvency proceeding may not be made unless the Bank of England has provided its consent where the bank has been placed into resolution under the bail-in option in the previous three months. The effect would be to ensure that actions can be taken to stabilise the bank under resolution without risk that they may be undermined by insolvency proceedings.

159. *Paragraph 11* inserts in the 2009 Act a *new section 256A* which confers on the Treasury a power to issue directions to a bail-in administrator in connection with the provision of State aid to the bank under resolution. This power would be similar to the power conferred by section 145A of the 2009 Act (power to direct bank administrators) in relation to bank administrators.

160. *Paragraph 12* amends section 1 of the 2009 Act (overview) so as to take account of the bail-in option (which becomes the new "third" stabilisation option). *Paragraph 13* makes a consequential amendment to section 13 of the 2009 Act (temporary public ownership) so that temporary public ownership becomes the "fourth" stabilisation option. *Paragraph 27* makes a similar amendment of section 85 of the 2009 Act (temporary public ownership).

161. *Paragraphs 14 to 16* make consequential amendments to certain provisions of the 2009 Act to reflect the introduction of a new form of instrument - a resolution instrument.

162. *Paragraphs 17 to 20* make consequential amendments to provisions regarding continuity obligations (sections 63 and 66 to 68 of the 2009 Act). These amendments ensure that the general continuity provisions apply, and special continuity obligations may be applied, in relation to certain kinds of transfer in relation to an application of the bail-in stabilisation option and relevant subsequent transfers.

163. *Paragraphs 21 to 23* make further consequential amendments to sections 71 (pensions) to 73 (disputes) of the 2009 Act.

164. *Paragraph 24* makes minor amendments to section 74 of the 2009 Act (tax) to take account of certain new transfer powers conferred on the Bank of England in this Act.

165. *Paragraphs 25 and 26* make provision in relation to reporting requirements where the Bank of England makes one or more resolution instruments under *new section 12A(2)*. In particular, the Bank must to report to the Treasury about the matters referred to in subsection (2) of new section 80A. The Chancellor is required to lay before Parliament a copy of each report provided to the Treasury under subsection (2).

166. *Paragraphs 28 and 29* amend Part 3 of the 2009 Act (bank administration) so as to enable a bank subject to the exercise of powers described in *new section 152A(2)* to be placed into the bank administration procedure.

167. *Paragraph 30* amends section 220 of the 2009 Act (insolvency etc) so as to make clear that the transfer of ownership of a bank to a bail-in administrator has no effect as regards its permission to issue banknotes pursuant to Part 6 of the 2009 Act.

168. *Paragraph 31* makes minor amendments to section 259 of the 2009 Act (statutory instruments) to take account of new statutory instruments which may be made pursuant to amendments of the 2009 Act as provided for in this Act.

169. *Paragraph 32* makes minor amendments to section 261 of the 2009 Act (index of defined terms).

170. *Part 2 of the Schedule (paragraph 33)* modifies the Investment Bank Special Administration Regulations 2011 in their application to cases where a resolution instrument has been made with respect to an investment bank.

PART 4 – CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

Amendments of FSMA

Section 18: Functions for which approval is required

171. *Section 18* amends section 59 of FSMA. Under section 59, the appointments of all individuals who are to perform certain roles in a financial services firm require the prior approval of the regulator (the FCA or the PRA) that has specified that role as a "controlled function" in its rules. *Subsection (2)* omits section 59(5) of FSMA. This has the effect of enabling the FCA to designate any role in any authorised person as a controlled function. If the FCA specifies a role which meets the definition of a senior management function in new

section 59ZA, new section 59(6A) (inserted by subsection (4)) provides that the controlled function must be designated as a senior management function in the FCA's rules. "Relevant authorised person" is defined by section 71A of FSMA, which is inserted by *section 33*.

172. *Subsection (3)* inserts into FSMA a new section 59(6) providing for the PRA to have the power only to specify as controlled functions roles in PRA-authorised persons which meet the definition of a senior management function in new section 59ZA. If the PRA does so and the authorised person is a relevant authorised person, new section 59(6B) (inserted by subsection (4)) provides that the controlled function must be designated as a senior management function in the PRA's rules.

Section 19: Senior Management Functions

173. *Section 19* inserts into FSMA a new section 59ZA to provide the definition of "senior management function". Although the definition is of general application, it is only when the function is a designated senior management function in relation to a relevant authorised person that the new regime for senior managers and banking standards will apply (that is, mandatory statements of responsibility (see *section 20*), a reverse burden of proof (see *section 30*), and special register entries for senior managers (see *section 34*)).

174. *Section 59ZA(3)* gives a wide meaning to "managing one or more aspects of an authorised person's affairs". This includes participation in the taking of decisions as to how those affairs are to be carried on. The concept of a "senior manager" will therefore include non-executive directors of the firm itself and may also include, in relation to a firm, persons who are employed outside the firm – for example, directors of its parent undertaking – if they are involved in decisions that affect the business of the firm. It is not limited to those with responsibilities for managing people.

Section 20: Statements of responsibilities

175. *Section 20* amends section 60 of FSMA. Section 60 sets out the process for making applications for approval to perform a controlled function. The amendments to section 60 provide that, if an application is made for someone to perform a designated senior management function in relation to a relevant authorised person, it must be accompanied by a statement of responsibilities for that person, which sets out the aspects of the business of the firm which that person will be responsible for managing.

Section 21: Vetting by relevant authorised persons of candidates for approval

176. *Section 21* inserts section 60A into FSMA, requiring any relevant authorised person to be satisfied that anyone in relation to whom they propose to apply to the regulator for approval to carry on a controlled function is a "fit and proper" person to undertake that function before they make the application. It also sets out the considerations to which the authorised person in question must have regard in making that determination.

Section 22: Determination of applications for approval

177. *Section 22* amends section 61 of FSMA, to include the personal characteristics of candidates for approval in the factors to be considered by the regulator in determining whether or not to grant approval.

Section 23: Power to give approval subject to conditions or for a limited period

178. *Section 23* amends section 61 of FSMA. Section 61 provides for the circumstances in which a regulator may grant an application for approval made under section 60, and provides that the firm or the candidate may appeal under standard FSMA procedures if an application is rejected.

179. *Subsection (2)* inserts a new section 61(1) providing that, if a regulator receives an application for an individual to perform a designated senior management function in relation to a relevant authorised person, the regulator may only grant the approval in two cases. The first case restates the existing FSMA test which applies to all applications: the regulator can grant approval if it is satisfied the individual is fit and proper. The second case adds a new test: the regulator can grant approval if it is satisfied that the candidate will be fit and proper if the application is granted subject to conditions. This test would only apply in relation to applications to perform senior management functions in relevant authorised persons.

180. *Subsection (4)* inserts new subsections (2B), (2C) and (2D) into section 61. *Section 61(2B)* provides that, for an application to perform a senior management function in a relevant authorised person, the regulators may grant approval conditionally or subject to time limits. *Section 61(2C)* provides that a regulator may only exercise the new powers where it is desirable to do so to advance an appropriate regulatory objective.

Section 24: Changes in responsibilities of senior managers

181. *Section 24* inserts new section 62A into FSMA to provide for the updating of statements of responsibilities when there has been a significant change in the responsibilities of a senior manager. *Section 62A(2)* provides that the authorised person concerned (not the senior manager) must give the appropriate regulator a revised statement of responsibilities if there is a significant change in the senior manager's responsibilities. (Where the senior manager is taking up a new role performing a different controlled function, the firm will need to submit an application for approval to perform the new controlled function. If this function is a designated senior management function in a relevant authorised person, a new statement of responsibilities will be required under section 60(2A).)

182. *Section 62A(3)* provides that the regulators can require the firm to provide information in a form which the regulator directs, and to verify that information in a way which the regulator directs. This corresponds to the power the regulators have in section 60(4) over the form and verification of information supplied in an initial application for approval to perform a controlled function.

Section 25: Duty to notify regulator of grounds for withdrwal of approval

183. *Section 25* amends section 63 of FSMA to require relevant authorised persons to consider at least once a year for each of the people who have been approved by the regulator whether any grounds have arisen which might cause the regulator to withdraw that approval, and to notify the regulator if this is the case.

Section 26: Variation of approval

184. *Section 26* inserts new sections 63ZA, 63ZB and 63ZC into FSMA. These sections provide for the variation of a senior manager's approval at the request of a relevant authorised person or on the regulator's own initiative, and deal with the procedure to be followed in those cases.

185. *Section 63ZA* provides that, if an approval to perform a designated senior management function in relation to a relevant authorised person has been granted subject to conditions, the firm that made the application may apply for the permission to be varied by adding, removing or varying the conditions. *Subsections (4) and (5)* provides that the regulators have a fixed 3-month period within which to grant the application or, if they propose to refuse it, to give a warning notice. *Subsections (6) and (7)* provide that the regulators may refuse such an application if desirable to advance their regulatory objectives. *Subsection (8)* applies procedural provisions about an application for approval to perform a controlled function, about how the regulators must determine an application and about the giving of warning and decision notices.

186. *Section 63ZB* allows a regulator to vary an approval where it considers this is desirable in order to advance its operational objectives (in the case of the FCA), and any of its objectives (in the case of the PRA). *Subsection (1)* provides that the FCA may vary an approval it, or the PRA, has given in relation to a designated senior management function being performed in relation to a relevant authorised person. *Subsection (2)* provides that the PRA may vary an approval it gave itself, or an approval given by the FCA in relation to a PRA-authorised person. *Subsection (3)* provides that an approval can be varied by imposing, varying or removing a condition, or by the imposition of time limits on an approval.

187. *Section 63ZC* sets out the procedure a regulator must follow when varying an approval. *Subsections (2) and (3)* provide that a proposed variation will take effect on the date specified in the first notice sent by the regulator to the interested parties or when the matter is no longer open for review, but that, if a regulator reasonably considers it is necessary, the variation may take immediate effect. *Subsections (4) and (5)* require a regulator proposing to vary an approval to give a written notice setting out prescribed information to the interested parties listed in subsection (6). *Subsections (8) and (9)* require a regulator to give written notices to the interested parties when, after considering their representations, it has decided whether or not to proceed with a proposed variation, or to vary an approval in a different way from that initially proposed. *Subsection (10)* provide that a notice confirming that a variation will be made, or maintained, must let the interested parties know about their right to refer the matter to the Tribunal. *Subsection (11)* provide that, if a regulator proposes to vary an approval in a different way, it must set out in the written notice the information required to be set out for the initially proposed variation (so the process of entertaining representations is repeated for the new proposal to vary). *Subsection (13)* provides that whether a matter is open to review is be determined in accordance with the standard FSMA provisions in section 391(8). (A matter remains open to review until either it is too late to refer it to the Tribunal, or it has been referred to the Tribunal and dealt with, and the period for an appeal against the Tribunal's decision has elapsed.)

Section 27: Statement of policy

188. *Section 27* inserts new sections 63ZD and 63ZE into FSMA. These sections require the regulators to prepare and issue statements of policy about the giving of approvals subject to conditions or time limits.

189. *Section 63ZD* requires both regulators to prepare and issue a policy about how they will use the power to give conditional or time-limited approval for performance of a designated senior management function in relation to a relevant authorised person, and how they will vary such approvals after they have been given (whether on application by a firm or

on their own initiative). The regulators will be free to update their policy at any time, but they must always ensure the most recent policy has been published (so that it is accessible to those whom it may affect).

190. *Section 63ZE* sets out the procedure to be followed before issuing a statement of policy. *Subsection (1)* requires the regulators to consult each other before publishing a statement of policy (or revising a previously published statement). However, the FCA only has to consult the PRA where the policy relates to FCA-designated senior management functions in PRA-authorised persons. *Subsection (1)* also requires a regulator to publish a draft of a statement of policy. The draft policy must be accompanied by a notice inviting representations within a specified time (*subsection (3)*). The issuing regulator must have regard to any representations made (*(subsection (4)*) and, if it goes ahead and issues the statement, it must also publish a general account of the representations made to it and its response to them (*subsection (5)*). The process must be repeated if the regulator decides to proceed with a significantly different policy and it must also publish details of the differences (*subsection (6)*). If a regulator proposes to alter or replace an existing statement it must also follow the procedural requirements set out in this section.

Section 28: Extension of limitation periods for imposing sanctions

191. *Section 28* amends sections 63A and 66 of FSMA to extend the limitation periods for imposing sanctions for misconduct. Section 63A allows the regulators to impose penalties on persons who perform a controlled function without the appropriate regulator's approval. Section 66 provides for the regulators to impose penalties, suspensions or restrictions on an approved person, or to publicly censure that person when the approved person is guilty of misconduct.

192. In each case, the period within which the regulator may commence proceedings (that is, issue a warning notice) is increased from three years to six years after the regulator knew of the contravention, provided the contravention occurs after the new provisions come into force. The existing three-year limitation periods are retained for action in respect of contraventions occurring before that date.

Section 29: Certification of employees by relevant authorised persons

193. *Section 29* inserts new sections 63E and 63F in FSMA. Under *new section 63E* the regulator may specify in its rules functions which, although not controlled functions requiring approval, are "significant-harm functions" (that is, functions which may give rise to a risk of significant harm either to the firm or to its customers). A relevant authorised person may not employ a person to perform a function that has been specified under this power unless the relevant authorised person has been able to certify under *new section 63F* that the person concerned is a fit and proper person to exercise the function. The regulators are required to keep the power to specify functions under review, with a view to minimising the risk that anyone would be employed to perform a significant-influence function which they are not a fit and proper person to perform.

194. *New section 63F* sets out the rules under which a relevant authorised person ("RAP") may issue a certificate to one of its employees. The RAP must be satisfied that the person concerned is a fit and proper person to perform the function covered by the certificate, having considered whether they have the qualifications, training, level of competence and personal characteristics required by rules made by the regulators in relation to the function in question.

The certificate will describe the role to which the person concerned is being appointed, and will confirm that the person is fit and proper to act in that role. It will be valid for twelve months. Where the RAP decides not to issue such a certificate, it must give the person concerned written notice of that fact, including details of the steps the RAP proposes to take in consequence and the reasons for them.

Section 30: Rules of conduct

195. *Section 30* repeals sections 64 and 65 of FSMA, and insert new sections 64A and 64B into FSMA. *Subsection (1)* of section 64A gives the FCA the power to make rules about the conduct of persons it has approved to perform a controlled function and of anyone employed in the relevant authorised person, at whatever level. *Subsections (2) and (3)* give the PRA a power to make rules about the conduct of persons it has approved to perform senior management functions in PRA-authorised firms and of anyone employed in a relevant authorised person that is PRA-authorised. (The FCA can approve people to perform controlled functions in relation to PRA-authorised firms and the PRA can make rules of conduct applying to such people, if they are performing a senior management function.) *Subsections (4) and (5)* make clear that the rules can only relate to the conduct of individuals while working for the authorised person who applied for their approval to perform controlled functions, or, if the individual is not an approved person, his or her employer. *Subsection (6)* ensures that the definition of "employee" will be broad enough to capture someone who, although they are formally self-employed or employed by some other person, are in practice in a position equivalent to an employee, e.g. sub-contractors, employees of sub-contractors or employees of a company in the same group as the firm which is responsible for employing the staff who work for group companies.

196. *New section 64B* imposes an obligation on RAPs to notify all their employees, and approved persons, of any rules which the regulators have made under section 64A of FSMA which relate to them, and to ensure that the persons concerned understand how the rules apply to them. Where the RAP becomes aware (or suspects) that any of their employees, or approved persons, has breached the rules, the RAP must inform the regulator of this fact.

Section 31: Requirement to notify regulator of disciplinary action

197. *Section 31* inserts new section 64C into FSMA. Under this new section, RAPs are under a duty to inform the regulator in the event that they issue a formal written warning to any of their employees or approved persons, suspend or dismiss any of them, or take any clawback action in relation to the remuneration of any of them.

Section 32: Definition of misconduct

198. *Section 32* amends section 66 of FSMA and inserts new sections 66A and 66B into FSMA. *Subsection (1)(a)* inserts a new subsection (1A) in section 66. Subsection (1A) defines misconduct by reference to section 66A (for the purposes of action by the FCA) and section 66B (for the purposes of action by the PRA). *Subsection (1)(b)* omits subsections (2), (2A), (6) and (7) of section 66, which contain the existing definitions of misconduct for the purpose of action by the regulators.

199. *Subsection (2)* inserts sections 66A and 66B into FSMA. *Section 66A* provides that the FCA may take enforcement action (following standard FSMA procedures) against a person if any of conditions A, B and C apply. *Subsection (2)* sets out condition A which allows the FCA to take enforcement action against an approved person or an employee of a

relevant authorised person who has failed to comply with rules of conduct made by the FCA under section 64A. *Subsection (3)* sets out condition B which allows the FCA to take enforcement action against an approved person or an employee of a relevant authorised person, if they were knowingly concerned in a breach of a relevant requirement (defined in *subsection (4)*) by the authorised person for whom they work. *Subsection (5)* sets out condition C which allows the FCA to take enforcement action against senior managers in a relevant authorised person if a regulatory contravention occurs in a part of the business for which they are responsible. This is subject to *subsection (6)*, which provides that a senior manager will not be guilty of misconduct if he or she can show they took such steps to prevent the contravention as could reasonably be expected of a person in their position. *Subsections (7) and (8)* provide the definitions of "senior manager", "approved person" and "employee" (which has the wide meaning given in section 64A, so including persons who are in an equivalent position to an employee).

200. *Section 66B* makes equivalent provision allowing the PRA to take enforcement action (following standard FSMA procedures) against a person if the same conditions apply.

Section 33: Meaning of "relevant authorised person"

201. *Section 33* inserts new section 71A, which defines "relevant authorised person". Under new section 71A, "relevant authorised person" for the purposes of Part 5 of FSMA includes all deposit-takers, including building societies and credit unions, and those investment firms which are authorised by the PRA. It does not include any insurers which have a deposit-taking permission under FSMA. The term "relevant authorised person" for the purposes of Part 5 is also restricted to institutions that are incorporated in the UK (in the case of bodies corporate such as companies), or formed under the law of any part of the UK (in the case of other classes of institution such as a partnership). However, *new section 71A(4)* gives the Treasury power by order to extend the definition of "relevant authorised person" to include branches of non-UK credit institutions and investment firms of a specified description. Under section 429 of FSMA, as amended by section 136 of this Act, this power is subject to draft affirmative procedure.

Section 34: Recording information about senior managers

202. *Section 34* amends section 347 of FSMA. Section 347 requires the FCA to maintain a publicly available record of financial services firms and approved persons and sets out the information that must be included in the record.

203. *Subsection (2)* amends section 347(2) to require the FCA to record whether an approved person in relation to a relevant authorised person is a senior manager, whether the senior manager has been sent any final notice, and any published information about the matter to which the final notice relates. (A 'final notice' is a final notice of actions that a regulator can take, such as the imposition of a penalty for misconduct.) *Subsection (3)* inserts section 347(8A) which provides definitions of "senior manager", "relevant authorised person" and "designated senior management function".

Section 35 and Schedule 3: Consequential amendments relating to Part 4

204. *Section 35 and Schedule 3* make various minor and consequential amendments to FSMA and the Financial Services Act 2012 which are necessary in connection with *sections 21 to 33*.

205. *Paragraph 1 and 4* of Schedule 3 make consequential amendments to sections 59 and 63A of FSMA respectively, arising from the introduction of the power for the regulators to give conditional approval to an application to perform a senior management function in relation to a relevant authorised person.

206. *Paragraph 2* of the Schedule amends section 59A of FSMA, which requires the FCA and the PRA to co-ordinate how they specify controlled functions. It removes references in section 59A to the concept of a "significant-influence function" and replaces them with references to a "senior management function".

207. *Paragraph 3* of the Schedule amends section 63 of FSMA, replacing references to a significant-influence function with references to a senior management function. The effect is that the PRA can withdraw a person's approval if they were approved by the FCA but the function is a senior management function performed in relation to a PRA-authorised person.

208. *Paragraph 5* of the Schedule makes consequential amendments to section 66 of FSMA, which sets out the disciplinary powers of the regulators in relation to approved persons. It give regulators the power to impose conditions rather than 'restrictions', reflecting the regulators' power to grant conditional approvals.

209. *Paragraph 6* of the Schedule makes consequential changes to section 67 of FSMA, which sets out the procedure the regulators must follow when taking disciplinary action against approved persons. The changes are consequential on the changes to section 66 of FSMA. It also requires the regulators, if they propose to limit the time for which an approval has effect, to state in a warning notice how long the approval would have effect for (*paragraph 6(4))*. The same information would also have to be provided in a decision notice about limiting the period of an approval (*paragraph 6(7))*.

210. *Paragraph 7* of the Schedule makes consequential changes to section 69 of FSMA, which requires the regulators to issue statements of policy about the imposition of penalties on approved persons. These changes also reflect the grant to the regulators of the power to give conditional approvals.

211. *Paragraphs 8 and 9* of the Schedule make changes necessary to reflect the power for the regulators to make rules of conduct under new section 64A. *Paragraph 8* ensures that the regulators may not modify or waive rules of conduct made under section 64A in relation to a particular person. *Paragraph 9* ensures that a private person cannot bring an action for damages if they suffer loss as the result of a contravention by an approved person of a rule of conduct made under section 64A.

212. *Paragraph 10* of the Schedule removes references to section 64 from section 140A, a consequential change required by the repeal of section 64.

213. *Paragraph 11* of the Schedule makes a consequential amendment to section 347 of FSMA (which makes provision about the record of authorised persons to be kept by the FCA), by replacing references to a "relevant authorised person" in that section with references to an "authorised person concerned" (defined in subsection (9), as inserted by *section 34*), to avoid confusion with the definition in section 71A.

214. *Paragraphs 12 to 14* of the Schedule make consequential changes to the provisions of FSMA setting out what must be included in a decision notice and a warning notice, and to the provisions of FSMA requiring the regulators to determine their procedure for making decisions which would require them to issue a supervisory notice.

215. *Paragraph 15* of the Schedule makes consequential changes to section 415B of FSMA, which makes provision about consultation between the regulators about the taking of certain enforcement action.

216. *Paragraphs 16 and 17* of the Schedule make consequential changes to Schedules 1ZA and 1ZB to FSMA to ensure that the issuing of a policy about the grant and variation of conditional approvals by the PRA or the FCA is treated as a legislative function which must be done through their governing bodies.

217. *Paragraphs 18 and 19* of the Schedule make consequential changes to the Financial Services Act 2012 to ensure that issuing a policy statement about the grant and variation of conditional approvals by the PRA or the FCA is a legislative function for the purposes of a complaints scheme under section 85 of that Act. This means that the regulators do not have to make arrangements for the investigation by an independent person of complaints relating to the issuing of policy statements about the exercise of the new powers. (Complaints about the granting or variation of conditional approvals in individual cases will be considered under the complaints scheme).

Section 36: Offence relating to a decision causing a financial institution to fail

218. *Section 36* creates a new criminal offence of taking a decision that results in the failure of certain types of financial institution. These are: a UK incorporated bank or building society or a UK investment firm that is regulated by the PRA (a "relevant financial institution"). This section defines the offence and specifies the penalties applicable to those found guilty of it.

219. *Subsection (1)(a)* provides that only those individuals who are senior managers in relation to a relevant financial institution ("F") can commit the offence. Senior management functions will be designated by the PRA or the FCA under the powers in section 59 of FSMA as amended by *section 18.* The conduct for which an individual can be prosecuted is taking a decision on behalf of F, or failing to prevent a decision being taken on behalf of F, where the decision leads to the failure of F or another relevant financial institution in the same group as F. *Subsection (1)(b)* provides that in either case the person concerned must be aware that the decision may cause the failure.

220. *Subsection (1)(c)* provides that the individual's behaviour in taking the decision in question must be far below that which could reasonably be expected of a person performing the senior management function that the individual performs.

221. *Subsection (1)(d)* makes it an essential element of the offence that the implementation of the decision for which the person is being prosecuted causes the relevant financial institution to fail. ('Failure' is defined in subsections (9) and (10) of *section 37*.)

222. *Subsection (2)* defines "group institution". It has the effect that a senior manager can be prosecuted for causing the failure not only of F (the relevant financial institution which they manage), but also of any other relevant financial institution in the same group as F.

223. *Subsection (4)* sets out the maximum penalties for the offence. The maximum penalties on summary conviction vary according to the different powers of the lower courts in different parts of the United Kingdom. The maximum penalty on conviction on indictment (in all parts of the United Kingdom) is 7 years imprisonment or an unlimited fine (or both).

Section 37: Section 36: interpretation

224. *Section 37* provides for the interpretation of the terms used in the offence. The effect of *subsections (1) to (6)* is that that the offence applies to senior managers in UK institutions which have permission to carry on the regulated activity of accepting deposits (other than insurers and credit unions) and to senior managers in UK investment firms that are authorised by the PRA. This means that the offence covers only the failure of banks, building societies and PRA-authorised investment firms which are incorporated in the UK or formed under the law of part of the UK.

225. *Subsection (7)* defines "senior manager" for the purpose of the offence, limiting it to individuals performing a function which has been designated as a senior management function by the FCA or the PRA. The FCA and the PRA are given power to designate senior management functions by section 59 of FSMA as amended by *section 18*.

226. *Subsections (9)* and *(10)* define when a relevant financial institution is to be regarded as having failed for the purposes of the offence.

Section 38: Institution of proceedings

227. *Section 38* sets out who may bring proceedings for the offence. *Subsections (2) and (3)* provide that in England, Wales and Northern Ireland, prosecutions could be brought by the FCA, the PRA, the Secretary of State or the Director of Public Prosecutions (in Northern Ireland this is the Director of Public Prosecutions for Northern Ireland). Others may bring prosecutions with the consent of the Director of Public Prosecutions. In Scotland, prosecutions could (in any event) only be brought by the Procurator Fiscal.

228. *Subsections (4) and (5)* allow the Treasury to restrict the regulators' powers to prosecute, both generally and with regard to specific proceedings or categories of proceedings, providing it does so in writing.

PART 5 – REGULATION OF PAYMENT SYSTEMS

Overview

Section 39: Overview

229. *Section 39* introduces Part 5 of the Act, which establishes a regulatory regime for payment systems in the United Kingdom.

The Payment Systems Regulator

Section 40 and Schedule 4: The Payment Systems Regulator
230. *Section 40* requires the FCA to establish the Payment Systems Regulator and to take such steps as are necessary to ensure that the Payment Systems Regulator can exercise its functions. *Subsection (4)* allows the FCA to provide staff and services to the Payment Systems Regulator. *Schedule 4*, amongst other things, includes provision for the constitution of, appointment to and removal from the board of the Payment Systems Regulator; provides for how it is to be funded; and provides for arrangements for the delegation of its functions, including to the FCA.

"Payment system" etc

Section 41: Meaning of "payment system"
231. *Section 41* defines a payment system, and gives the Treasury power by order to add, vary or remove descriptions of arrangements which are excluded from the definition.

Section 42: Participants in payment systems etc
232. *Section 42* defines three classes of persons to be regarded as "participants" in a payment system: "operators", "infrastructure providers" and "payment service providers". *Subsection (6)* describes what it means for a payment service provider to have "direct access" to a payment system. *Subsection (7)* makes provision for what the term "participation" may include in relation to operators of, and payment service providers with direct access to, payment systems. *Subsection (8)* ensures that the Bank of England would not be regarded as any category of participant.

Designation as a regulated payment system

Sections 43 to 48: Designation orders
233. *Section 43* gives the Treasury a power to issue a "designation order" to designate a payment system, to bring that system into the scope of regulation by the Payment Systems Regulator. *Sections 44 to 48* set out the procedural requirements for making, amending and revoking such orders. Orders can only be made where the Treasury are satisfied that certain criteria are met in respect of the system, and the Treasury are required to take into account the matters set out in *subsection (2)* of *section 44* when assessing whether the criteria were met, and they must consult the Payment Systems Regulator and the operator before making, amending or revoking any designation order (see *sections 45, 46 and 47)*. The Treasury have a duty to consider any request by the operator of a regulated payment system for the amendment or revocation of its designation order (*sections 46(3) and 47(4))*. The Treasury is also required to publish any designation order, any amended designation order and any revocation of a designation order (*section 48)*.

General duties of Regulator

Sections 49 to 53: Duties of Regulator
234. *Section 49* establishes the general duties and objectives of the Payment Systems Regulator, which is required, so far as is reasonably possible, to act in a way that advances one or more of its "payment systems objectives": the "competition objective", the "innovation objective" and the "service-user objective". *Subsection (3)* sets out the matters

which the Payment Systems Regulator is required to take into account in discharging its "general functions". *Sections 50, 51 and 52* provide definitions for the "competition objective", the "innovation objective" and the "service-user objective". *Section 53* sets out the regulatory principles to which the Payment Systems Regulator is required to have regard.

Regulatory and competition functions

Sections 54 to 58: Powers of Regulator

235. *Sections 54* to *58* set out the regulatory powers of the Payment Systems Regulator. The Payment Systems Regulator has the following powers: to give directions to participants in regulated payment systems (*section 54*); to impose certain requirements on the operator of a regulated payment system concerning the rules of the system (*section 55)*; to order the provision of access to a regulated payment system (*section 56)*; to vary the fees and charges payable under, and other terms and conditions of, an agreement concerning access to a regulated payment system (*section 57)*; and to require the disposal of an interest in the operator of a regulated payment system (*section 58*). The powers to order the provision of access to a payment system and to vary agreements can only be exercised where an application has been received by the Payment Systems Regulator. The power to order the disposal of an interest in a regulated payment system can only be exercised if the Payment Systems Regulator is satisfied that, if the power were not exercised, it is likely that there would be a restriction or distortion of competition in the market for payment systems or for services they provide (*section 58(2))*. The exercise of this power is subject to the consent of the Treasury *(section 58(3))*.

Sections 59: The Regulator's functions under Part 4 of the Enterprise Act 2002

236. *Section 59* confers on the Payment Systems Regulator certain of the competition functions of the CMA under Part 4 of EA02, so far as those functions relate to participation in payment systems. The Payment Systems Regulator will only have a market study function concurrently exercisable with the CMA (whose Board exercises this function); the Payment Systems Regulator does not have the concurrent function of conducting market investigations, which remains solely that of the CMA (which convenes a group to conduct such investigations). The Payment Systems Regulator will be able to conduct a market study the purpose of which is, amongst other things, to consider the extent to which a matter in relation to participation in payment systems used to provide services in the United Kingdom has or may have effects adverse on the interests of consumers. Having conducted a market study, the Payment Systems Regulator can then refer the relevant market to the CMA which has the power to conduct a market investigation and, if necessary, use its powers in Part 4 of the EA02 to remedy any distortion or restriction of competition that it finds in the market. Certain functions of the CMA (relating to the maintenance of registers and publishing of guidance) contained in Part 4 of EA02 are excluded from those that the Payment Systems Regulator may exercise concurrently.

Section 60: Restrictions on exercise of functions under Part 4 of the Enterprise Act 2002

237. *Section 60* imposes a requirement on the CMA and the Payment Systems Regulator to consult each other before exercising any of their concurrently exercisable competition functions. *Subsection (2)* prevents one exercising functions in relation to a matter if the other had already exercised those functions in relation to that matter. *Subsections (4) and (5)* make similar provisions for co-ordination between the Payment Systems Regulator and the FCA,

which also have concurrent competition functions under Part 4 of EA02 as a consequence of *sections 129 and Schedule 8* (which are explained separately below).

Section 61: The Regulator's functions under the Competition Act 1998

238. *Section 61* confers on the Payment Systems Regulator certain competition functions under Part 1 of CA98. Such functions are exercisable concurrently by the Payment Systems Regulator and the CMA. Those functions concern investigations of, and powers to address, restrictions and distortions of competition, so far as the agreements, decisions, concerted practices or conduct in question relate to participation in payment systems. *Subsection (3)*, in conjunction with *subsection (5)*, excludes certain functions of the CMA contained in Part 1 of CA98 from those that the Payment Systems Regulator can exercise concurrently.

Section 62: Duty to consider exercise of powers under Competition Act 1998

239. *Section 62* imposes a requirement on the Payment Systems Regulator, before exercising any of the powers mentioned in *subsection (2),* to consider whether it would be more appropriate to take action under its new powers in CA98. *Subsection (3)* prohibits the Payment Systems Regulator from exercising a power mentioned in subsection (2) if it considers that it would be more appropriate to proceed under CA98.

Sections 63 to 67: The Regulator's competition powers

240. *Sections 63* to *67* make further provision concerning the Payment Systems Regulator's competition powers, including requiring it to provide relevant information and assistance to a CMA group carrying out a market investigation in response to a market investigation reference made by the Payment Systems Regulator. It is also required to keep under review the market for payment systems and the markets for services provided by payment systems. *Subsection (1)* of s*ection 67* gives the Payment Systems Regulator the power to apply to the court to make a disqualification order against a person who is a director of a company which has committed a breach of competition law. *Subsection (2)* has the effect of ensuring that the Payment Systems Regulator is a National Competition Authority for the purposes of EU competition law. *Subsection (3)* amends section 136 of EA02, to ensure that the Payment Systems Regulator would receive a copy of a CMA report where the CMA Board had made a market investigation reference, for consideration by a CMA group, concerning participation in payment systems. *Subsection (4)* amends section 52 of the Enterprise and Regulatory Reform Act 2013 so that the power for the Secretary of State to remove from a regulator any of its concurrent competition functions would extend to the Payment Systems Regulator's concurrent competition functions. *Subsection (5)* ensures that the CMA is required to report on the exercise by the Payment Systems Regulator of its concurrent competition powers.

Complaints

Sections 68 to 70: Complaints

241. *Sections 68 to 70* make provision for complaints to be made to the Payment Systems Regulator by representative bodies designated by the Treasury, where it appears that a matter concerning payment systems is significantly damaging the interests of payments system service users.

Sections 71 to 79 and Schedule 5: Enforcement and appeals

242. *Sections 71 to 75* include provision for the enforcement of decisions made by the Payment Systems Regulator. The Payment Systems Regulator has the power to require a participant in a regulated payment system to pay a penalty in respect of a compliance failure (as defined in *section 71*) and can publish details of compliance failures and penalties it imposes. Before imposing a penalty or publishing details of a compliance failure, the Payment Systems Regulator must issue a warning notice to the person concerned, provide at least 21 days for representations to be made, consider any representations received and give notice in writing stating whether or not it intends to impose the sanction (*section 74)*. The Payment Systems Regulator can apply to the court to issue injunctions to prevent the occurrence or continuation of a compliance failure or to order a participant who has committed a compliance failure to take steps to remedy it (*section 75)*.

243. *Sections 76 to 79 and Schedule 5* make provision about appeals against decisions of the Payment Systems Regulator. *Section 76* provides that certain decisions are classed as "CAT-appealable decisions" and have to be appealed to the CAT along with appeals concerning penalties. Other decisions qualify as "CMA-appealable decisions" and have to be appealed to the CMA. Appeals to the CMA are only possible where the CMA has granted permission. *Section 77 and 78* make provision about the procedure for appeals to the CAT, and *Section 79 and Schedule 5* make provision about the procedure for appeals to the CMA, including the power of the CMA to suspend the decision in question pending the outcome of the appeal, and the CMA's powers to obtain information relevant to the determination of the appeal. Appeals of CAT-appealable decisions are heard to a judicial review standard. Appeals against a CMA-appealable decision can result, if the CMA decided to quash whole or part of a decision, in the CMA substituting its own decision for that of the Payment Systems Regulator.

Section 80: Enforcement of requirement to dispose of interest in payment system

244. *Section 80* provides for the enforcement of decisions of the Payment Systems Regulator to require a disposal of an interest in the operator of a payment system.

Sections 81 to 90: Information and investigation powers

245. *Sections 81 to 83* confer information and investigation powers. The Payment Systems Regulator has the power to require the provision of information or documents which it thinks would help the Treasury in determining whether to designate a payment system, or which the Payment Systems Regulator requires in performing its functions under Part 5 of the Act (*section 81)*. The Payment Systems Regulator also has the power to require a participant in a regulated payment system to provide a report on any matter relating to the person's participation in the system, or to appoint a person other than a participant to provide this report (*section 82*). The Payment Systems Regulator can appoint one or more competent persons to investigate any aspect of the business of any participant in a regulated payment system, if the Payment Systems Regulator thinks that it is desirable to do so to advance any of its payment systems objectives. The Payment Systems Regulator can also appoint one or more competent persons to investigate circumstances that suggest a compliance failure may have taken place (*section 83*).

246. *Sections 84 to 87* make general provision regarding notification requirements when a person is appointed to conduct an investigation, as well as provision conferring on investigators the power to require certain persons to give evidence, and provision concerning the admissibility as evidence of information provided pursuant to information requirements imposed by an investigator under the powers contained in *sections 85 and 86.*

247. *Sections 88 to 90* provide for the enforcement of requirements to provide information or documents to the Payment Systems Regulator or any investigator. Under these provisions, a justice of the peace, if satisfied that certain conditions are met, may issue a warrant to permit the entry onto premises of a person who has failed to provide information required by the Payment Systems Regulator or an investigator (*section 88)*. *Section 88* sets out the powers of a constable under a warrant and provides that the warrant may authorise persons accompanying a constable to exercise these powers under the supervision of a constable. *Section 90* provides that the court may in certain circumstances treat failures to comply with information requirements as contempt of court. Certain activities are criminalised, including the intentional falsification, concealment or destruction of relevant information, the intentional provision of false or misleading information and the obstruction of a person acting under a warrant.

Sections 91 to 95: Disclosure of information

248. *Sections 91 to 95* make provision about the treatment of confidential information by the Payment Systems Regulator and others. *Section 91* imposes a restriction on the disclosure of confidential information without the consent of the person who provided it, or the person to whom it related, by the Payment Systems Regulator, the FCA, their employees and service providers and certain others (each a "primary recipient"), as well as any person who had obtained the confidential information directly or indirectly from a primary recipient. Provision is made for what is and is not to be considered "confidential information" and to ensure that the restriction does not apply to information received by a primary recipient in connection with the discharge of the Payment Systems Regulator's concurrent competition functions. Instead, the provisions contained in Part 9 of the Enterprise Act 2002, which deals with the disclosure of specified information, apply.

249. *Section 92* provides that disclosure of confidential information is permitted if it is for the purpose of facilitating the carrying out of a public function and is permitted by regulations made by the Treasury. A definition of "public functions" is included, and *subsections (3) to (4)* set out the matters for which Treasury regulations made under this power could make provision.

250. The restrictions on disclosing confidential information are enforced by making it a criminal offence by *section 93* to disclose confidential information in contravention of the restriction and, where information has been disclosed to a person in accordance with regulations made by the Treasury, for that person to use the information in contravention of any provision of those regulations.

251. *Section 94* restricts the disclosure by the Payment Systems Regulator or the the FCA to any person of "specially protected information" (defined in *subsection (3))* received from the Bank of England. *Section 94* also sets out the circumstances in which disclosure of such information is not subject to the restriction.

252. *Section 95* amends section 246 of the Banking Act 2009 to allow the Bank of England to disclose restricted information to the Payment Systems Regulator.

Section 96: Guidance
253. *Section 96* enables the Payment Systems Regulator to issue guidance consisting of such information and advice as it considers appropriate with respect to the matters set out in the section.

Section 97: Reports
254. *Section 97* gives the Payment Systems Regulator the power to prepare and publish a report into any matter relevant to the exercise of its functions under Part 5 of the Act where it considers that it is desirable to do so in order to advance any of its payment systems objectives.

Sections 98 to 102: Relationships between the regulators
255. *Sections 98 to 102* make provision concerning the relationship between the Payment Systems Regulator and other regulators. Under *section 98* the Payment Systems Regulator, the Bank of England, the FCA and the PRA are required to co-ordinate the exercise of their relevant functions (as defined by *subsection (5)* of *section 98)*. The duty to co-ordinate only applies to the extent that compliance is compatible with the advancement by each regulator of any of its objectives and does not impose a burden on the regulators that is disproportionate to the benefits of compliance. Under *section 99,* the Payment Systems Regulator, the Bank of England, the FCA and the PRA are obliged to draw up a memorandum of understanding which describes their respective roles and how they intend to comply with the duty to co-ordinate the exercise of their functions. The Bank, the FCA and the PRA each have a power (set out in *sections 100, 101 and 102* respectively), where certain conditions are satisfied, to give the Payment Systems Regulator a direction not to exercise a power or not to exercise it in a specified manner.

Sections 103 to 107: Consultation and accountability
256. *Sections 103 to 107* impose consultation obligations on the Payment Systems Regulator, as well as providing for its accountability and oversight of its activities. Under *section 103* the Payment Systems Regulator is required to make and maintain effective arrangements for consulting relevant persons (that is, participants in regulated payment systems and those who use or are likely to use services provided by those systems) about the extent to which the Payment Systems Regulator's general policies and practices are consistent with its general duties and how its payment systems objectives may be best achieved. Under *section 104,* where the Payment Systems Regulator is considering imposing a generally applicable requirement (that is, a general direction under *section 54* or a generally-imposed requirement under *section 55*) the Payment Systems Regulator is under a duty to consult the Bank of England, the FCA and the PRA. After doing so, the Payments Systems Regulator has to publish a draft of the proposed requirement, publish a cost-benefit analysis together with an explanation of the purpose of the proposed requirement, and have regard to any representations made. *Subsection (6)* provides for the steps the Payment Systems Regulator has to take if the direction or requirement it intends to impose differs significantly from the draft it published.

257. *Section 105* amends the Financial Services Act 2012 to establish a further set of circumstances in which the Treasury may arrange independent inquiries: to inquire into a failure in the system of regulation of payment systems by the Payment Systems Regulator. *Section 106* further amends that Act to impose a duty on the Payment Systems Regulator to investigate possible regulatory failures and report to the Treasury accordingly. It is also provided that the Payment Systems Regulator is required to carry out such an investigation where it appears to the Treasury that the conditions for initiating an investigation are satisfied.

258. *Section 107* ensures that the CMA could advise the Payment Systems Regulator if the CMA is of the opinion that the Payment Systems Regulator's regulatory activities (or regulatory omissions) may cause or contribute to the prevention, restriction or distortion of competition in connection with the supply or acquisition of goods or services in the UK or in part of the UK.

Sections 108 to 110: Miscellaneous and supplemental

259. *Sections 108 to 110* contain miscellaneous and supplemental provision. The purpose of *section 108* is to ensure that the Payment Systems Regulator's powers could not be exercised incompatibly with EU law and to avoid the powers themselves consequently being held to be incompatible with EU law.

260. The Payment Services Regulations 2009 (the "2009 Regulations") implement Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market (the "Directive"). Under Article 28(1) of the Directive, Member States are required to ensure that "the rules on access of authorised or registered payment service providers to payment systems are objective, non-discriminatory and proportionate...". There is also a prohibition on payment systems imposing on payment service providers, on payment service users or on other payment systems certain restrictive rules governing access to and participation in payment systems. The references in Article 28(1) to "payment systems" do not, however, include all payment systems. For example, those systems designated under Directive 98/26/EC of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems are excluded from the scope of Article 28(1).

261. Part 8 of the 2009 Regulations implements Article 28 of the Directive. Regulation 97 of the 2009 Regulations prohibits restrictive rules or conditions governing access to, or participation in, a payment system (other than those to which Article 28(1) does not apply) by "authorised payment institutions", "EEA authorised payment institutions" and "small payment institutions", as defined in the 2009 Regulations.

262. The Directive is a "maximum harmonisation" measure: Member States are not permitted under EU law to adopt any measures which go beyond the measures contained in the Directive. If the Payment Systems Regulator were able to exercise any power for the purposes of enabling a "relevant person" (that is, authorised payment institutions, EEA authorised payment institutions and small payment institutions) to obtain access to, or otherwise participate in, a payment system to which Part 8 of the 2009 Regulations does not apply, that would mean that the maximum harmonisation principle would be contravened. *Section 108* serves to prevent the possibility of such a contravention and therefore to ensure the powers themselves are compatible with the maximum harmonisation principle.

263. *Section 109* ensures that the provisions in Schedules 1ZA and 1ZB to FSMA which exempt from liability in damages the FCA, PRA and their employees for anything done or omitted in the discharge, or purported discharge, of the FCA's and the PRA's functions extend to the FCA's and PRA's functions under Part 5 of the Act.

264. *Section 110* contains the interpretative provisions for Part 5 of the Act.

PART 6 – SPECIAL ADMINISTRATION FOR OPERATORS OF CERTAIN INFRASTRUCTURE SYSTEMS

265. Part 6 of the Act (sections 111 to 128 and Schedules 6 and 7) establish a new special administration regime known as "FMI administration". This will apply to "infrastructure companies", as defined in *section 112,* that become insolvent. Part 6 also restricts powers of persons other than the Bank of England in the event of the insolvency of an infrastructure company.

266. *Section 112* defines the term "infrastructure company". The following companies are "infrastructure companies": recognised inter-bank payment systems and securities settlement systems. This amendment also allows the Treasury to designate a company as an "infrastructure company" where the company is a key service provider to a recognised inter-bank payment system or a securities settlement system.

267. *Section 113* defines certain terms for the purposes of the new Part 6.

268. *Section 114* defines the term "FMI administration order" for the purposes of Part 6. FMI administration orders will be made by the court and have the effect of appointing an "FMI administrator" to manage the affairs of the infrastructure company.

Section 115: Objective of FMI administration

269. *Section 115* sets out the objective of FMI administration. The objective is (1) to ensure that the relevant recognised inter–bank payment system or securities settlement system is maintained and operated as an efficient and effective system; (2) in instances where the operator of any such system is also a recognised clearing house which provides clearing services without doing so as a central counterparty, to ensure that certain services that it carries on in that capacity continue to be maintained, and (3) to ensure that either as a result of the rescue of the infrastructure company as a going concern or as a result of a transfer of all or part of the undertaking of the infrastructure company to another company or companies, it becomes unnecessary for the FMI administration to continue.

Section 116: Application for an FMI administration order

270. *Section 116* provides (1) that a FMI administration order can only be made upon the application of the Bank of England, (2) that when making the application, the Bank of England must nominate the FMI administrator and (3) that the infrastructure company must give notice of the application in accordance with rules that made for the purpose of FMI administration.

Section 117: Powers of court

271. *Section 117* specifies the three cases in which a court could make a FMI administration order: (1) where an infrastructure company is insolvent; (2) where an infrastructure company is likely to become insolvent or (3) the case is one where the Secretary of State could petition the court for the infrastructure company to be wound up on public interest grounds. It further specifies what action the court may take in relation to an application for an FMI administration order.

Section 118: FMI administrators

272. *Section 118* provides that FMI administrators are to be officers of the court and that when acting in relation to an infrastructure company they will act as the infrastructure company's agent. This section furthermore places FMI administrators under a duty to manage the infrastructure company so as to achieve the objective of FMI administration as quickly and efficiently as possible. It also provides that, insofar as it is possible to do so whilst acting consistently with the objective of FMI administration, FMI administrators should act in a way which best protects the company's creditors. This section also establishes a related and secondary requirement that the FMI administrator should also act where possible in the interests of the company's members as whole.

Section 119: Continuity of supply

273. *Section 119* provides that in instances where an infrastructure company has entered into arrangements with a supplier of certain specified goods and services prior to a FMI administration order being made, the supplier would only be able to terminate the supply (1) where charges in respect of supplies made after the date of the making of the FMI administration order have remained unpaid for more than 28 days; (2) with the consent of the FMI administrator or (3) with the court's permission. This section also operates to render void any provision in a relevant supplier's terms and conditions that purports to allow the supplier to terminate the supply agreement in the event of the infrastructure company entering into FMI administration.

Section 120: Power to direct FMI administrator

274. *Section 120* confers a power on the Bank of England to direct a FMI administrator to take, or to refrain from taking, specified action. When considering whether to make any such direction, the Bank of England will have to have regard to the public interest in the protection and enhancement of the stability of the financial system and the maintenance of public confidence in that system. This section also confers immunity from liability in damages upon certain specified persons arising from compliance with any such direction.

Sections 121 and Schedules 6 and 7: Conduct of administration, transfer schemes etc.

275. *Section 121* introduces *Schedules 6 and 7.* Schedule 6 applies to FMI administration specified provisions of Schedule B1 to the Insolvency Act 1986 and certain other enactments which apply to ordinary administration. Schedule 7 sets out the detail as to how transfer schemes to achieve the objective of FMI administration will operate. *Section 121(3)* provides that the rule-making power conferred by section 411(1B) of the Insolvency Act 1986, which allows rules to be made for the purposes of bank administration, can also be used for the purposes of giving effect to FMI administration.

Section 122: Restriction on winding-up orders and voluntary winding-up
276. *Section 122* restricts the circumstances in which any person other than the Bank of England may petition for the winding-up of an infrastructure company and to prevents the voluntary winding-up of an infrastructure company without prior notice to the Bank of England and the permission of the court.

Section 123: Restriction on making of ordinary administration orders
277. *Section 123* prevents ordinary administration orders being made in respect of an infrastructure company if a FMI administration order has already been made in respect of that company. It also provides that a court may not determine an application for an ordinary administration order in respect of an infrastructure company unless the Bank of England has had 14 days' notice of the application for the order.

Section 124: Restrictions on enforcement of security
278. *Section 124* requires any person seeking to enforce a security over an infrastructure company to give the Bank of England 14 days' prior notice of any step taken to enforce the security.

Section 125: Loans
279. *Section 125* allows the Treasury to make loans to an infrastructure company in respect of which a FMI administration order has been made. The loan must be made for the purposes of achieving the objective of FMI administration. The Treasury has discretion as to the terms upon which any such loan is made and any sums repaid would have to be paid into the Consolidated Fund.

Section 126: Indemnities
280. *Section 126* permits the Treasury to indemnify certain persons (e.g. employees of the FMI administrator) in respect of liabilities arising and losses or damages sustained as a result of action taken by a FMI administrator in the course of his or her duties, on whatever terms the Treasury considers to be appropriate. Any such indemnity agreement should be laid before Parliament, and the infrastructure company would be under a duty to pay to the Treasury the whole amount, or part of the amount (as directed by the Treasury), of any sum paid pursuant to any such indemnity.

Section 127: Interpretation of Part
281. *Section 127* contains interpretative provisions relating to FMI administration.

Section 128: Northern Ireland
282. *Section 128* makes provision about the application to Northern Ireland of the provisions on FMI administration.

PART 7 – MISCELLANEOUS

Competition

Section 129 and Schedule 8: Functions of FCA under competition legislation
283. *Section 129* introduces Schedule 8 to the Act, which gives the FCA new competition powers. *Paragraph 2* of the Schedule repeals section 234H of FSMA. This section gives the FCA a power to ask the Office of Fair Trading to consider whether a feature, or combination

of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom. These provisions are no longer necessary now that the FCA is to have concurrent competition functions.

284. *Paragraph 3* of the Schedule inserts sections 234I to 234O into FSMA. *New section 234I* makes some of the functions of the CMA under Part 4 of EA02 functions exercised concurrently by the FCA. *Subsection (2)* provides that the CMA's functions under Part 4 are exercised concurrently, so far as those functions relate to the provision of financial services. The effect of *subsection (2)* is that the FCA only has a market study function concurrently exercisable with the CMA (whose Board exercises this function); the FCA does not have the concurrent function of conducting market investigations, which remains solely that of the CMA (which convenes a group to conduct such investigations).

285. The effect of *subsections (2) and (4)* is to enable the FCA to conduct a market study the purpose of which is, amongst other things, to consider the extent to which a matter in relation to the provision of financial services provided or received in the United Kingdom has or may have effects adverse on the interests of consumers. Having conducted a market study, the FCA can then refer the relevant market to the CMA which has the power to conduct a market investigation and, if necessary, use its powers in Part 4 of the EA02 to remedy any distortion or restriction of competition that it finds in the market.

286. *Subsection (3)*, in conjunction with *subsection (5),* excludes certain functions of the CMA (relating to the maintenance of registers and publishing of guidance) contained in Part 4 of EA02 from those that the FCA may exercise concurrently.

287. *Subsection (6)* modifies section 130A of EA02 in its application to the FCA. This section requires the CMA to publish a market study notice when they are proposing to conduct a market study, which, among other things, sets the time frame within which the market study must be completed. The effect of *subsection (6)* is therefore to ensure that when the FCA exercises its concurrent market study function, the statutory time frame applies.

288. *Subsections (7) and (8)* impose a requirement on the CMA and the FCA to consult each other before exercising any of their concurrently-held functions and to ensure they do not both exercise the same functions in relation to the same matter.

289. *New section 234J* provides that the functions under Part 1 of CA98 specified in *subsection (2),* so far as they relate to the provision of financial services, are functions exercisable by the FCA concurrently with the CMA. This ensures that the FCA will have powers to address restrictions and distortions in competition so far as those arise in the context of financial sector activities. *Subsection (3)* excludes those functions of the CMA relating to the publishing of guidance and statements of policy from those that the FCA may exercise concurrently.

290. *New section 234K* ensures that the FCA is required to consider the use of its new powers in CA98 before exercising the powers in FSMA listed in *subsection (3)*. These powers are powers which the FCA could exercise in respect of particular firms rather than generally.

291. *New section 234L* ensures that for the purposes of assisting a CMA group to carry out a market investigation in response to a reference from the FCA under section 131, the FCA must provide the CMA with any information relevant to the investigation and with any other assistance that the CMA might reasonably require. It also ensures that the CMA group must take note of information provided by the FCA.

292. *New section 234M* confers on the FCA the function of keeping under review the market for financial services so that it may take informed decisions in the exercise of its concurrent competition functions and may exercise its other functions effectively.

293. *New section 234N* ensures that where the FCA exercises any of its concurrent competition functions, its general duties under section 1B of FSMA do not apply. This means that the FCA exercises its new competition functions in relation to the provision of financial services without being bound by general duties to which the CMA would not itself be subject when exercising those functions. However, this does not prevent the FCA taking account of the matters relevant to its general duties if the CMA would be able to take those matters into account.

294. *New section 234O* requires the Treasury to settle any questions that arise as to whether, by virtue of the FCA's concurrent competition functions, any functions may be exercised by the FCA in relation to a particular case. This provides a mechanism for determining whether the FCA or CMA should exercise competition powers in a particular case. It also ensures that no-one can object to the FCA taking action under its competition powers just because the CMA could have taken that action.

295. *Paragraph 4* of the Schedule amends section 3I of FSMA, to ensure that the PRA does not have the power to require the FCA to refrain from a specified action in relation to the exercise of its concurrent competition powers.

296. *Paragraph 5* of the Schedule ensures that the restriction contained in section 348 of FSMA on the FCA disclosing confidential information does not apply in respect of information received by the FCA when discharging its competition powers. Instead, the provisions contained in Part 9 of the Enterprise Act 2002, which deals with the disclosure of specified information obtained by those regulators with concurrent competition functions, will apply.

297. *Paragraph 6* of the Schedule amends the FCA's duty to co-operate with other regulators with similar functions under section 354A of FSMA, so that that duty does not apply where the FCA has made a competition reference under section 131 of EA02. This does not affect the FCA's duty to share information with the CMA under new section 234L of FSMA.

298. *Paragraph 7* of the Schedule amends paragraph 8 of Schedule 1ZA to FSMA, ensuring that sub-paragraph (1) of paragraph 8 which allows the FCA to delegate its functions to committees, officers or members of staff does not override any provisions relating to delegation contained in CMA rules made under section 51 of CA98. It also amends paragraph 23 of that Schedule to make it clear that the FCA may charge fees to cover the cost of exercising its new competition functions.

299. *Paragraphs 8 to 12* of the Schedule make consequential amendments to the Company Directors Disqualification Act 1986, the Competition Act 1998, the EA02 and the Enterprise and Regulatory Reform Act 2013. *Paragraph 8* makes the FCA a "specified regulator" for the purposes of section 9B of the Company Directors Disqualification Act 1986, and therefore able to bring actions for the disqualification of directors under that section. *Paragraph 9* makes the FCA a "regulator" for the purposes of Part 1 of the Competition Act 1998. *Paragraph 10* makes the FCA one of the "relevant sectoral regulators" for the purposes of section 136 of EA02. *Paragraph 11* adds the FCA to the list of sectoral regulators in section 52 of the Enterprise and Regulatory Reform Act 2013 from whom the Secretary of State may remove powers exercisable concurrently by the regulator concerned and the CMA and *paragraph 12* amends paragraph 16 of Schedule 4 to that Act to require the CMA to report on the arrangements for co-operation between the CMA and the FCA in relation to the FCA's concurrent competition powers.

Section 130: Competition as a secondary objective of the PRA

300. *Section 130(1)* provides the PRA with a new, secondary, competition objective, by substituting section 2H of FSMA. The new *section 2H* provides that, in exercising its general functions, such as making rules, in a way which advances its general objective (and where relevant, its insurance objective), the PRA must act in a way which, as far as is reasonably possible, facilitates effective competition in the markets in which PRA-authorised persons operate. It also restates the existing requirement that, in exercising its general functions, the PRA must also have regard to the regulatory principles in section 3B. *Subsection (2)* amends paragraphs 19 and 20 of Schedule 1ZB to FSMA to require the PRA to include information on its compliance with the new competition objective in its annual report, and to invite representations on whether it has facilitated effective competition.

Section 131: Duty of FCA to make rules restricting charges for high-cost short term credit

301. *Section 131* imposes a duty on the FCA to make rules under section 137C(1)(a)(ii) and (b) of FSMA to impose a cap on the charges which may be imposed in relation to high-cost short-term credit in order to give borrowers appropriate protection against excessive charges, and to consult the Treasury before doing so. The first rules have to be made no later than 2 January 2015, and apply to credit agreements which are entered into on or after that date (though if the FCA makes rules coming into force before that date, it will not be prevented from applying the rules to agreements entered into before that date). This section also requires the FCA to include information in its annual report on the rules it has made under section 137C, and the types of regulated credit agreements to which those rules apply.

Section 132: Role of FCA Consumer Panel in relation to PRA

302. *Section 132* amends section 1Q of FSMA to provide that the FCA Consumer Panel established under that section may make its views on any matter which it is considering which it believes may be relevant to the PRA known to that regulator. This ensures that the PRA may benefit from the expertise of the FCA Consumer Panel even though it is not under an obligation to consult the Panel. This section also enables the PRA to reimburse the FCA in respect of FCA expenditure relating to the FCA Consumer Panel, if the expenditure in question relates to communications between the FCA Consumer Panel and the PRA.

Parent undertakings

Section 133: Power of FCA and PRA to make rules applying to parent undertakings
303. *Section 133(1)* inserts new sections 192JA and 192JB into FSMA, giving the PRA and the FCA powers to make certain rules relating to parent undertakings which are not themselves authorised persons. Under *new section 192JA*, the regulators are able to make rules applying to any company incorporated in the UK which is a parent undertaking of a ring-fenced body. This will include not only the immediate holding company of the ring-fenced body, but also any ultimate holding company of the ring-fenced body. The regulators are given the power to subject such parent undertakings to any rules which the regulators consider are necessary or expedient in order to achieve the group ring-fencing purposes, set out in new section 142H(4), which are designed to ensure that the ring-fenced body is able to operate independently of the other companies in its group.

304. *New section 192JB* gives the regulators a further power to make rules in relation to "qualifying parent undertakings", as defined in section 192B of FSMA (which comprise the parent undertakings of UK companies authorised by the PRA, UK investment firms, or recognised investment exchanges where the parent undertaking is itself a UK company or has a place of business in the UK). The regulators are able to make rules requiring qualifying parent undertakings to make any arrangements if the regulators consider that those arrangements might facilitate the exercise of the resolution powers in Parts 1 to 3 of the Banking Act 2009 (or any similar powers exercisable by overseas authorities).

305. *Section 133(2)* amends section 192K of FSMA to ensure that the regulators' powers to impose a penalty or issue a statement of censure where a qualifying parent undertaking has contravened rules made by the regulators under section 192J also apply if the qualifying parent undertaking has breached rules made under new section 192JB, or if a parent undertaking of a ring-fenced body has breached rules made under new section 192JA.

Section 134: Duty to meet auditors of certain institutions
306. *Section 134* inserts two new sections into Part 22 of FSMA. *New section 339B* requires each of the regulators to meet with the auditors of certain authorised persons at least once a year. *New section 339C* defines the authorised persons to which this duty applies, namely UK banks and UK investment firms which are regulated by the PRA (but not insurers or credit unions), and which are, in the opinion of the PRA, important to the financial stability of the United Kingdom.

Fees to meet Treasury expenditure

Section 135: Fees to meet Treasury expenditure
307. *Section 135* inserts new sections 410A and 410B into FSMA.

308. *New section 410A(1)* gives the Treasury power to make regulations to give themselves a power to direct a regulator (the FCA, the PRA or the Bank of England) to impose fees on certain persons to meet relevant expenses, to make related provision as to the way in which the regulator must comply with any direction given by the Treasury under the regulations, and to require the regulator to pay any monies received through the levy to the Treasury. The PRA may be required to impose fees on PRA-authorised persons. The FCA may be required to impose fees on other authorised persons or recognised investment exchanges. The Bank of

England may be required to impose fees on recognised clearing houses provided they are not regulated by the PRA or the FCA. The definition of "relevant persons" (in *subsection (8))* has been designed to ensure that no person can be made liable to pay fees to more than one regulator.

309. *Subsection (2)* defines "relevant expenses" as those expenses incurred by the Treasury in connection with, or for the purposes of, United Kingdom membership of (or Treasury participation in) international organisations identified in the regulations, provided that the expenses represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and provided that Treasury considers that the expenses are connected to the organisation's work in relation to financial stability or financial services. "Relevant expenses" includes expenses of a capital nature (for example, the provision of an endowment). Other examples of expenses which may be relevant for this purpose are the payment of a membership fee or the secondment of staff to a relevant international organisation.

310. *Subsection (3)* ensures that the PRA and the FCA charge fees in pursuance of a direction by way of rules.

311. *Subsection (4)* applies Chapter 2 of Part 9A of FSMA to rules made by either the PRA or the FCA charging fees in order to comply with a direction from the Treasury under regulations made under section 410A, as it applies to any rules made by the regulators charging fees, so that all rules charging fees are subject to the same procedural requirements.

312. *Subsection (5)* applies paragraph 36 of Schedule 17A to FSMA to fees charged by the Bank of England in compliance with a direction from the Treasury under regulations made under section 410A so that such fees are subject to the same provisions as other fees the Bank charges to recognised clearing houses.

313. *Subsection (6)* makes further provision as to what may be included in regulations made by the Treasury. In particular, the Treasury may make provision about what is, or what is not, to be regarded as an expense for this purpose.

314. *Subsection (7)* ensures that each regulator is able to recover any amount payable to it for fees imposed in consequence of regulations made by the Treasury as a debt owed to it.

315. *New section 410B* sets out the requirements which the Treasury must satisfy in giving any direction to the regulators as a result of regulations made under new section 410A. Under *subsection (2),* the Treasury must first consult the regulator to which they propose to give a direction. *Subsection (3)* provides that the direction must be in writing and sets out what information it should contain. *Subsection (4)* requires the Treasury to lay a copy of any direction it gives to the regulator under regulations made under section 410A before Parliament.

Parliamentary control of statutory instruments under FSMA 2000

Section 136: Amendments of section 429 of FSMA 2000

316. *Section 136* amends section 429 of FSMA 2000 to provide for the parliamentary procedure applicable to statutory instruments made under new sections 71A, 142W (*subsection (2)),* and new section 410A (s*ubsection (4))*. Orders under section 410A are subject to draft affirmative resolution procedure, apart from regulations which only contain provision made under section 410A(2) (prescribing of international organisations), which will be subject to negative resolution procedure. The amendment made by *subsection (2)(b)* does not make any substantive change but adjusts the order of the sections referred to in section 429 of FSMA so they follow a logical sequence.

Bank of England

Section 137: Accounts of Bank of England and its wholly-owned subsidiaries

317. *Section 137* amends the Bank of England Act 1998 ("the 1998 Act").

318. The Bank of England is established by Royal Charter and so is not subject to the Companies Act 2006 ("the 2006 Act"). However section 7 of the 1998 Act provides that in preparing its accounts the Bank is subject to provisions corresponding to the requirements placed on directors of a banking company under the 2006 Act (in the 1998 Act called the "relevant Companies Act requirements"). Currently section 7(4) of the 1998 Act provides that the Bank may disregard a requirement to the extent it considers it appropriate, having regard to its functions. The amendments made by *section 137(2)* of the Act will mean that the Bank may only disregard a requirement where it considers it necessary to do so having regard to its financial stability objective under section 2A of the 1998 Act.

319. *Subsection (3)* inserts new section 7A of the 1998 Act. This makes provision similar to that made in section 7 in relation to certain wholly-owned subsidiaries of the Bank of England. Subsection (1) of new section 7A enables the Bank, by direction to a "qualifying company", to exclude the application to that company of any of the relevant Companies Act requirements. Such a direction may only be given where the Bank considers it necessary to do so, having regard to the Bank's financial stability objective. "Qualifying company" is defined by *subsection (9)* as a company which is wholly-owned by the Bank, other than the PRA or a company which is a bridge bank for the purposes of section 12(3) of the Banking Act 2009. "Relevant Companies Act requirements" is defined in *subsection (2).*

320. *Subsections (4)* to *(7)* of new section 7A of the 1998 Act relate to the role of the Treasury. *Subsection (4)* requires the Bank to consult the Treasury before giving a direction under subsection (1). *Subsection (5)* enables the Treasury, by notice in writing, to require the Bank to publish information about the accounts of a qualifying company. *Subsection (6)* makes it clear that such information may include information which, as a result of a direction issued by the Bank under subsection (1), was not included in the accounts of the qualifying company. The Treasury must consult the Bank before giving such a notice.

Building Societies

Section 138: Building Societies

321. *Section 138 and Schedule 9* to the Act make amendments to the Building Societies Act 1986 ("the BS Act").

322. *Paragraph 2* of Schedule 9 amends section 7 of the BS Act, which sets out the funding limit for building societies. The funding limit, in effect, requires that the value of shares in the society held by individuals (known as retail funds) is at least 50% of the value of the total funds of the society's group (or total group funds).

323. *Sub-paragraphs (2) and (3) of paragraph 2* insert new section 7(3)(aa) and (3A) to alter the calculation of the funding limit so that a limited amount of the value of deposits by small businesses does not count towards the value of total group funds. New section 7(3A) sets the limit, so that no more than 10% of the value of total group funds can be disregarded in calculating the funding limit. For the purposes of this calculation, the value of total group funds will be the value it would have been without the modification made by new subsection (3)(aa), i.e. after all the other modifications required by or under section 7 had been made.

324. *Sub-paragraph (4) of paragraph 2* inserts new section 7(6ZA) to provide that a small business is assumed to be a small business if it has declared itself to be so, unless it is shown not to be the case. *Paragraph 2(5)* inserts new subsections (10) and (11) to define a small business as any person carrying on a business with an annual turnover of less than £1 million, but not including individuals acting as sole traders. For example, a small business could be a company, partnership, mutual association or other unincorporated body. Under new subsections (12) and (13) the Treasury has power to make an order to vary the amount of £1 million.

325. *Paragraph 3* makes a consequential amendment to the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (SI 2007/860) ("the 2007 Order"). The 2007 Order provides that a limited amount of deposits held in a society's EEA subsidiaries are to be disregarded in calculating the funding limit. The amendment in *paragraph 3* ensures that, for the purposes of calculating the amount to be disregarded under the 2007 Order, the value of total group funds is the value it would have been without the modification made by the 2007 Order and the modification made by new section 7(3)(aa).

326. *Paragraph 4* repeals section 9B of the BS Act which restricts a building society's power to create floating charges. Consequently, a building society will be permitted to create floating charges over its assets. Such floating charges however will not give the holder the right to appoint an administrator or an administrative receiver (unless appointed under the Building Societies (Financial Assistance) Order 2010). An administrator cannot be appointed because Schedule B1 to the Insolvency Act 1986 (under which companies can create floating charges which enable the holder to appoint an administrator) does not apply to building societies, because societies are subject to the version of Part 2 of the Insolvency Act 1986 as it had effect before the Enterprise Act 2002 (section 249(1) and (2) of the Enterprise Act 2002). An administrative receiver cannot be appointed because Schedules 15 and 15A to the BS Act (which apply companies winding up and insolvency legislation to building societies) would continue to provide that, in the provisions of the Insolvency Act 1986 which apply to

societies, a reference to an administrative receiver does not apply to a society (paragraph 3(2)(b) of Schedule 15 and paragraph 2(2)(b) of Schedule 15A to the BS Act).

327. *Sub-paragraph (2) of paragraph 4* amends Schedule 15A to the BS Act to ensure that an administration order of the court under Part 2 of the Insolvency Act 1986 applies to a floating charge. *Sub-paragraph (3)* of *paragraph 4* makes consequential amendments to remove references in various enactments to the restrictions in section 9B of the BS Act.

328. *Paragraph 5* amends section 74 of the BS Act so that regulations made under that section may no longer require the annual business statement published by a building society to include information about officers, past officers and persons connected with them. This will in consequence remove the duty on officers (who are not directors) of a building society to notify their interests to the society for the purposes of the annual business statement. Consequential amendments will need to be made by secondary legislation to the Building Societies (Accounts and Related Provisions) Regulations 1998.

329. *Paragraph 6* amends section 76 of the BS Act, which requires a building society to produce a summary financial statement (the "SFS") for each financial year. The existing obligation under subsection (8) to supply the SFS and (where that subsection is applied under section 78(6)) the auditor's report to new shareholding members will be replaced by a new requirement to publish the document(s) on a website and notify such new members of: (i) the online publication of the document(s); (ii) the website address; and (iii) where on the website, and how, the information may be accessed. The existing criminal offence in subsection (11) of section 76 is amended to reflect the amended provisions. It will be an offence to fail to publish the documents online or to notify new shareholders as required.

330. *Paragraph 7* makes consequential amendments to the BS Act to reflect the amendments to section 76.

331. *Paragraph 8* amends section 100 of the BS Act, which sets out distributions and share rights on a transfer of a society's business. *Sub-paragraph (2)* replaces section 100(8) with a new subsection to make it clear that the subsection applies to any right (i.e. not only a priority right) to acquire shares which is conferred on members. It also makes specific provision for holders of deferred shares, a form of capital instrument issued by building societies. The result of the new subsection is be that, if a right to acquire shares is given to members on a transfer of business, then the right must be restricted to members who have held shares for at least two years, or who hold deferred shares of a class described in the transfer agreement. *Sub-paragraph (3)* amends section 100(9) so that, if a right to receive a cash distribution is given to members on a transfer of business, then the right must be restricted to shareholders who have held shares for at least two years, or who hold deferred shares of a class described in the transfer agreement.

332. *Paragraph 9* inserts new sections 115A to 115C relating to website communication by a society. New section 115A provides that a person is deemed to have agreed to access a document, information or facility on a website if: (a) the person has been asked individually and has agreed to do so; or (b) the person has been asked and the society has not received a response within 28 days. The provision does not apply to every communication (section 115A(4)) and a person could revoke the agreement (section 115A(3)). New section 115B ensures that a person has a right to receive, free of charge and within 21 days of the request

being received, a hard copy of any document sent by electronic or other means. If a society fails to comply with new section 115B, then it will be treated as if it has breached rules made under section 137A of FSMA, the FCA's general rule-making power. The effect of this will be that the FCA can take disciplinary measures if a society fails to comply with this new section 115B. Under new section 115C, an intended recipient could agree with a society to receive a document in a way that is not by hard copy or by electronic means.

333. *Paragraphs 10 to 14* make related amendments to existing website communication provisions in the BS Act which require a person to agree how to receive notification that a document is available online. The amendments remove references to agreeing the manner of notification, so that there is simply a duty on the society to notify the person that a document is available online.

334. *Paragraph 15* effectively replaces section 117 of the BS Act relating to the financial year of a building society. New section 117 sets out the year-end date for all building societies as at the coming into force of the provisions. *Paragraph 16* inserts new section 117A to allow a society to alter its financial year to any date in the year by notifying the FCA. *Paragraph 17* makes a consequential amendment to the BS Act.

Claims Management Services

Section 139: Power to impose penalties on persons providing claims management services

335. *Section 139* enables the Secretary of State to make regulations which allow the Claims Management Regulator to impose a financial penalty, in addition to the Regulator's current powers in relation to imposing conditions on or suspending or cancelling an authorisation.

336. *Subsection (7)* provides that regulations made by the Secretary of State in relation to financial penalties must include provision about how the amount of the penalty is to be calculated and may specify a maximum and minimum amount. It also requires any such regulations to provide that the income received from the financial penalties be paid into the Consolidated Fund. The regulation-making power also allows for costs of enforcement or collection of the financial penalty to be deducted before the income is paid into the Consolidated Fund. Regulations may also provide that financial penalties may be enforced as a debt.

337. *Subsection (8)* extends the jurisdiction of the First-tier Tribunal to include consideration of appeals against a decision of the Claims Management Regulator to impose a financial penalty, the amount of a penalty or any date by which it is required to be paid. The Tribunal will be able to require an authorised person to pay a penalty and to vary the date by which any payment, or part of it, is due. This is in addition to the Tribunal's existing powers to impose or remove conditions, suspend or cancel an authorisation or to remit the matter to the Claims Management Regulator.

Section 140: Recovery of expenditure incurred by Office for Legal Complaints

338. *Section 140* relates to the provisions in section 161 of the Legal Services Act 2007 that give the Office for Legal Complaints jurisdiction over complaints about claims management services. Persons providing such services are regulated by the Claims

Management Regulator under the Compensation Act 2006. *Subsections (1) to (3)* amend paragraph 7 of the Schedule to the Compensation Act 2006 to make it clear that the Claims Management Regulator may charge fees in respect of the costs the Claims Management Regulator incurs in meeting the costs of the Office for Legal Complaints in dealing with complaints about claims management services.

339. *Subsection (5)* inserts in the Legal Services Act 2007 a new section 174A which is to have effect at any time when no one is designated as the Claims Management Regulator. Section 5(9) of the Compenseation Act 2006 provides that, when (as is the case at the end of 2013) no person is designated as the regulator the Secretary of State is to act as the Regulator. New section 174A(2) ensures that there is no cross-subsidisation by the legal profession of the costs incurred and income received by the Office for Legal Complaints in handling complaints about claims management services. It does this by providing that the costs incurred and income received by the Office for Legal Complaints in connection with the exercise of its functions in relation to complaints about claims management services is to be disregarded from the calculation of the expenditure of the Office for Legal Complaints that can be levied against the regulators of the legal profession.

340. New section 174A(3) enables the Lord Chancellor to make regulations charging fees for those providing regulated claims management services for the purpose of meeting the costs the Lord Chancellor incurs in respect of the expenditure of the Office for Legal Complaints related to claims management services.

341. New section 174A(5) provides that the regulations made by the Lord Chancellor under section 174A(3) may include, amongst other things, provision about how the fees are to be calculated and collected and provision specifying the consequences of failure to pay the fees.

342. *Subsection (6)* makes the regulations made by the Lord Chancellor under section 174A(3) subject to the affirmative procedure.

Minor Amendments

Section 141: Minor amendments

343. This section introduces Schedule 10, which makes a number of minor and technical amendments.

344. *Paragraph 1* of Schedule 10 repeals a redundant provision in the information disclosure provisions of the Companies Act 1985.

345. *Paragraph 2* amends section 376(11B) of the Financial Services and Markets Act 2000 (continuation of contracts of long-term insurance where insurer in liquidation) to change the references to "PRA-authorised person" to "PRA-regulated person".

346. *Paragraph 3* extends the definition of "relevant requirement" in sections 380, 382 and 384 of FSMA to include the offences created under Part 7 of the Financial Services Act 2012, which deal with misleading statements, misleading impressions, and misleading statements in relation to benchmarks such as LIBOR. This enables the regulators to exercise the powers

conferred by sections 380, 382 and 384 to seek an injunction or restitution in relation to these offences.

347. *Paragraph 4* makes consequential amendments to Schedule 1ZA to FSMA to ensure that the costs the FCA incurs in enforcing the concurrent competition powers given to it in the new Schedule are "enforcement costs" for the purposes of Part 3 of Schedule 1ZA, and may therefore be deducted from the penalty receipts the FCA is required to pay to the Treasury.

348. *Paragraph 5* amends paragraph 10(1)(j) of Schedule 17A to FSMA (application of provisions of FSMA in relation to the Bank of England) so that the reference to "subsections (1) and (3)" is replaced with a reference to "subsection (1)".

349. *Paragraph 6* amends section 991 of the Income Tax Act 2007 so that it refers to "Part 4A" of FSMA instead of "Part 4" of that Act.

350. *Paragraph 7* amends section 81B(2) of the Banking Act 2009 as applied to recognised central counterparties by section 89B of that Act, so that it refers to the Bank of England instead of the PRA.

351. *Paragraph 8* amends section 191 of the Banking Act 2009 to add the word "payment" after "inter-bank".

352. *Paragraph 9* makes minor changes to the scope of section 73(1)(b)(i) of the Financial Services Act 2012 which covers the duty of the FCA to investigate and report on possible regulatory failure.

353. *Paragraph 10* amends section 85 of the Financial Services Act 2012, which sets out which functions of the PRA and the FCA (in subsection (2)) and of the Bank of England (in subsection (3)) come within the scope of the complaints scheme established by Part 6 of the Financial Services Act 2012 (in that Act referred to as "relevant functions"). The effect of the amendments is that the relevant functions of the FCA and PRA are confined to functions under FSMA. However, the Treasury is given power to extend the complaints scheme by providing, by order, that other functions of the FCA, PRA and the Bank of England are to be relevant functions.

Final Provisions

Section 142: Orders and regulations: general

354. *Section 142* provides that any power of the Treasury, the Secretary of State or the Lord Chancellor to make an order or regulations under the Act is exercisable by statutory instrument. The only exception is that an order under section 43 designating a payment system as a regulated payment system is not to be a statutory instrument (*subsection (2)). Subsection (3)* ensures that statutory instruments made under the Act may contain incidental and transitional provision where this is considered to be appropriate, and may make different provision in different cases.

Section 143: Orders and regulations: parliamentary control

355. *Section 143* provides for the parliamentary procedure which will apply to statutory instruments which are made under the Act. As a general rule, these statutory instruments will be subject to the negative resolution procedure (apart from commencement orders, which are not subject to any parliamentary procedure). However, under *subsection (2)* the affirmative resolution procedure will apply to:

(a) Regulations made under section 7 (applying ring-fencing provisions to building societies);

(b) Orders under section 41(4) (altering the list of things that are not to be regarded as payment systems);

(c) Orders under section 145 (power to make further consequential amendments) which amend primary legislation; and

(d) Orders under paragraph 6 of the Schedule 6 (power to make further modifications of primary legislation in connection with FMI administration).

Section 144: Interpretation

356. *Section 144* defines "enactment", "the FCA", "FSMA 2000" and "the PRA".

Section 145: Power to make further consequential amendments

357. *Section 145* enables the Treasury, the Secretary of State and the Lord Chancellor to make amendments to other primary and secondary legislation considered necessary or expedient in consequence of any provision made by or under the Bill.

Section 146: Transitional provisions and savings

358. *Section 146* enables the Treasury, the Secretary of State and the Lord Chancellor to make transitional and saving provisions which may be necessary or expedient on the commencement of any provision of the Act. An order made under this section may confer functions on the FCA or the PRA and may modify, exclude or apply enactments.

Section 147: Extent

359. *Section 147* provides that the Act extends to the whole of the United Kingdom (*subsection (1)),* except for section 13 (provisions relating to preferential debts) section 139 (penalties for claims management service providers) and section 140 (the recovery of the expenditure of the Office for Legal Complaints in connection with claims management services), which under *subsection (2)* have the same extent as the Acts which they amend (for example, the amendments relating to the expenditure of the Office for Legal Complaints extend only to England and Wales, as do the relevant parts of the Legal Services Act 2007 and the Compensation Act 2006).

Section 148: Commencement and short title

360. *Section 148* provides for the commencement of the Act (see below) and gives the Act its short title.

COMMENCEMENT

361. The only provisions of the Act that are to come into force on the day on which the Act receives Royal Assent (18 December 2013) are the provisions of Part 8 (which deal with orders and regulations, interpretation, extent, commencement and the short title to the Act).

362. The following provisions come into force 2 months after Royal Assent (that is, on 18 February 2014): section 131 (which relates to high-cost short-term credit) and section 138 and Schedule 9 (which relate to building societies), apart from paragraph 4 of Schedule 9.

363. The other provisions of this Act are to come into force on a day or days to be appointed by order. In general, commencement orders under the Act are made by the Treasury. But commencement orders relating to sections 139 and 140(1) to (3) are made by the Secretary of State and those relating to section 140(4) to (6) are made the Lord Chancellor.

HANSARD REFERENCES

364. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons (session 2012-2013)		
Introduction	4 February 2013	Vol. 558 Col. 48
Second Reading	11 March 2013	Vol. 560 Cols. 36-124
Committee	19, 21 and 26 March 2013, and 16 April 2013	Hansard Public Act Committee, Financial Services (Banking Reform Bill (session 2012-2013)
House of Commons (session 2013-2014)		
Introduction and Second Reading	9 May 2013	Vol. 563 Col. 163
Report	8 and 9 July 2013	Vol. 566 Cols. 48-139; 213-253
Third Reading	9 July 2013	Vo. 566 Cols 253-264
House of Lords		
Introduction	10 July 2013	Vol. 747 Col. 277

Stage	Date	Hansard Reference
Second Reading	24 July 2013	Vol. 747 Cols. 1337-1402
Committee	8 October 2013 15 October 2013 23 October 2013	Vol. 748 Cols. 12-53; 63-68 Vol. 748 Cols. 357-479; 492-532 Vol. 748 Cols. 1010-1061; 1075-1171
Report	26 November 2013 27 November 2013	Vol. 749 Cols. 1301-1372; Vol. 749 Cols. 1418-1483
Third Reading	9 December 2013	Vol. 750 Cols. 660-712
House of Commons		
Commons Consideration of Lords Amendments	11 December 2013	Vol. 572 Cols. 249-314
Lords Consideration of Commons Reason	16 December 2013	Vol. 750 Cols. 1101-1109
Royal Assent		
Royal Assent	18 December 2013	Commons Vol. 572 Col. 760 Lords Vol. 750 Col. 1255

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