Draft Regulations laid before Parliament under section 429(2) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No. 000

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Treasury, in exercise of the powers conferred by sections 142W and 428(3) of the Financial Services and Markets Act 2000(**a**), make the following Regulations.

In accordance with section 429(2) of the Financial Services and Markets Act 2000(**b**), a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations—

"existing pension scheme" means a multi-employer scheme in respect of which a ring-fenced body is an employer;

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

"multi-employer scheme" means a relevant pension scheme in respect of which there is more than one employer;

"segregated scheme" means a multi-employer scheme which is divided into two or more sections where—

(a) any contributions payable to the scheme by an employer in relation to the scheme or by a member of the scheme are allocated to that employer's or to that member's section; and

(b) a specified proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;

"shared liability arrangement" means an arrangement under which a ring-fenced body—

(**a**) 2000 c.8. Section 142W and all other provisions of Part 9B (sections 142A to 142Z1) was inserted in the Financial Services and Markets Act 2000 (c.8) by the Financial Services (Banking Reform) Act 2013 (c.33), section 4.

(**b**) Section 429(2) was amended by the Financial Services (Banking Reform) Act 2013, section 136(3). There are other amendments but none is relevant.

(a) provides a guarantee, indemnity or bond in respect of the pension liabilities of any company which, by virtue of regulation 2(2), is not permitted to be an employer with that body in respect of a multi-employer scheme or a section of a segregated scheme; or

(b) is otherwise, or may otherwise become, liable for the whole or part of the pension liabilities of such a company.

Arrangements relating to multi-employer schemes and shared liability arrangements

2.—(1) A ring-fenced body must make arrangements to ensure that on or after the specified date it meets the requirements in paragraphs (2), (5) and (6).

(2) A ring-fenced body must not be an employer in respect of a multi-employer scheme unless either of the conditions in paragraphs (3) or (4) is satisfied.

(3) Condition A is that the only other employers in respect of that scheme are—

(a) wholly-owned subsidiaries of the ring-fenced body;

(b) other ring-fenced bodies in the same group as the ring-fenced body; or

(c) wholly-owned subsidiaries of another ring-fenced body which is in the same group as the ring-fenced body and is an employer in respect of that scheme.

(4) Condition B is that the scheme is a segregated scheme, and—

(a) the ring-fenced body is the only employer in respect of its section of the scheme; or

(b) the only other employers in respect of that section are—

(i) wholly-owned subsidiaries of the ring-fenced body;

(ii) other ring-fenced bodies in the same group as the ring-fenced body; or

(iii) wholly-owned subsidiaries of another ring-fenced body which is in the same group as the ring-fenced body and is an employer in respect of that section.

(5) A ring-fenced body must not continue to be, or become, a party to an arrangement under which it is liable for the whole or any part of the pension liabilities of a wholly-owned subsidiary of another ring-fenced body in the same group, unless the liabilities in question relate to a multi-employer scheme in respect of which—

(a) both ring-fenced bodies are employers; and

(b) Condition A or Condition B is satisfied.

(6) A ring-fenced body must not continue to be, or become, a party to a shared liability arrangement.

(7) Where—

(a) a ring-fenced body, at the date section 142G of FSMA first applies to it, is party to a shared liability arrangement; and

(b) one or more of the other parties to that arrangement refuses to release the ring-fenced body from it, or will only grant release on terms which the ring-fenced body cannot reasonably be expected to meet,

the ring-fenced body may apply to the court for an order under regulation 5(1).

(8) A ring-fenced body which continues to be a party to a shared liability arrangement after the specified date is not to be taken to have contravened the requirement in paragraph (6) if—

(a) the ring-fenced body has made an application to the court under paragraph (7), and either—

(i) that application is still pending before the court; or

(ii) an order made under regulation 5(1) has not come into force; or

(b) the other party to the shared liability arrangement is a company incorporated outside the United Kingdom, and—

(i) the arrangement was entered into before the day on which these Regulations come into force; and

(ii) the ring-fenced body has used its best endeavours to obtain its release from the arrangement.

(9) Paragraph (6) does not apply in relation to any liability or obligation imposed by the Pensions Regulator in the exercise of its powers under section 38, 43 or 47 of the Pensions Act 2004(**a**) or Article 34, 39 or 43 of the Pensions (Northern Ireland) Order 2005(**b**).

(10) In this regulation "specified date", in relation to a ring-fenced body, means—

(a) 1st January 2026; or

(b) if later, the day immediately after the last day of the period of five years beginning with the day on which the body becomes a ring-fenced body.

Trustee and manager powers

3.—(1) For the purpose of enabling a ring-fenced body to meet the requirement in regulation 2(2) the trustees or managers of an existing pension scheme may, at the request of the ring-fenced body—

(a) make any modifications to that scheme permitted under the scheme rules; or

(b) to the extent that scheme rules do not permit such modifications, by resolution make any of the modifications set out in paragraph (2).

(2) The modifications which may be made under the power given to the trustees or managers mentioned in paragraph (1)(b) are—

(a) the restructuring of the existing pension scheme into a segregated scheme;

(b) the allocation of assets and liabilities of the scheme to separate sections of the scheme;

(c) provision for the transfer of assets and liabilities to a new pension scheme; or

(d) in relation to such a modification, a modification required for consequential or incidental purposes.

(3) A modification using the power mentioned in paragraph (1)(b) may not be made under this regulation without the consent of the employers in relation to the existing pension scheme.

(4) Nothing in this regulation gives the trustees or managers of an existing pension scheme power to make a regulated modification.

(5) Where following a request made under paragraph (1) one or more of the trustees or managers of an existing pension scheme unreasonably refuse to take the steps required to modify the scheme, or one or more of the employers in respect of that scheme unreasonably refuse to consent to the modification of the scheme, the ring-fenced body may apply to the court for an order under regulation 5(4).

(6) In this regulation "regulated modification" and "scheme rules" have the same meaning as in section 67A of the Pensions Act 1995(**c**) or Article 67A of the Pensions (Northern Ireland) Order 1995(**d**).

Applications for clearance

4.—(1) Where a ring-fenced body proposes to make the arrangements mentioned in paragraph (2) it must—

(a) apply for a clearance statement; and

(**a**) 2004 c.35. Section 38 was amended by the Pensions Act 2008 (c.30), paragraphs 2(1), 7 and 8(2) of Schedule 9 and Part 6 of Schedule 11 and the Pensions Act 2011 (c.19), section 26(1) to (3). Section 43 was amended by the Pensions Act 2011, section 26(4) to (6).

(**b**) S.I. 2005/255 (N.I. 1). Article 34 was amended by the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)), paragraphs 2(1), 7 and 8(1) of Schedule 8 and Part 5 of Schedule 10 and the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)), section 24(1) to (3). Article 39 was amended by the Pensions Act (Northern Ireland) 2012, section 24(4) to (6).

(**c**) 1995 c.26. Section 67A was substituted by the Pensions Act 2004 (c.35), section 262.

(**d**) S.I. 1995/3213 (N.I. 22). Article 67A was substituted by the Pensions (Northern Ireland) Order 2005, S.I. 2005/255 (N.I. 1), Article 239.

(b) comply with any request for information made by the Pensions Regulator which in its view is required in order for it to consider the application,

before entering into those arrangements where those arrangements, or a series of those arrangements, are likely to be materially detrimental to a relevant pension scheme in respect of which it is an employer.

(2) The arrangements referred to in paragraph (1) are—

(a) any corporate restructuring or other arrangement to which the ring-fenced body is a party which is proposed in order to enable the ring-fenced body to comply with the requirements set out by or under Part 9B of FSMA(**a**); and

(b) any arrangements which the ring-fenced body proposes to make in order to comply with the requirement in regulation 2(2).

(3) For the purposes of paragraph (1) "materially detrimental" in relation to a relevant pension scheme means materially detrimental to—

(a) the ability of the relevant pension scheme to meet its pension liabilities; or

(b) the benefits of the members of the relevant pension scheme.

Applications to court

5.—(1) The court may, on the application of a ring-fenced body, by order require any other party to a shared liability arrangement to enter into an arrangement releasing the ring-fenced body from liability under the shared liability arrangement ("release arrangement") on the terms offered by the ring-fenced body, provided that the court is satisfied that those terms—

(a) are commercial terms; and

(b) are fair and reasonable in all the circumstances.

(2) "Commercial terms" are terms on which, in the court's opinion, a release arrangement might be entered into if it was being entered into for commercial reasons between willing parties dealing at arms' length.

(3) The court may vary the terms of the release arrangement offered by the ring-fenced body where the court considers that this is necessary to satisfy the conditions set out in paragraph (1)(a) and (b) and may in particular require the payment of any sum by instalments.

(4) The court may, on the application of a ring-fenced body, provide that the steps required to be taken by of one or more of the trustees or managers of an existing pension scheme or the consent of one or more of the employers in relation to that scheme is not required to give effect to the modification which is the subject of the application.

(5) The court may only make an order under paragraph (4) where it is satisfied that the refusal of the trustee or manager in question to take the steps required to give effect, or the employer in question to give its consent, to the modification which is the subject of the application is unreasonable.

(6) In making an order under paragraph (4) the court may direct any person to take steps to give effect to the modification which is the subject of the order.

Contravention of any provision of these Regulations

6.—(1) A ring-fenced body which contravenes any provision of these Regulations is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under FSMA.

(2) The contravention does not—

(a) make a person guilty of an offence;

(b) make a transaction void or unenforceable; or

(**a**) Part 9B was inserted into the Financial Services and Markets Act 2000 (c.8) by the Financial Services (Banking Reform) Act 2013 (c.33), section 4.

(c) give rise to any right of action for breach of statutory duty.

(3) For the purpose of this regulation "the appropriate regulator" means—

(a) in relation to a ring-fenced body which is a PRA-authorised person, the PRA;

(b) in relation to any other ring-fenced body, the FCA.

Function of the PRA

7. The PRA must monitor the compliance of a ring-fenced body with these Regulations.

Transitional provision

8. Before the day on which section 142G of FSMA comes into force a reference to a ring-fenced body in regulations 3, 4 and 5 includes a reference to any member of a group which is making preparations to ensure that each ring-fenced body in the group will comply with that section.

Name
Name

Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 9B of the Financial Services and Markets Act 2000 (c.8) ("FSMA") which provides for the ring-fencing of core banking activities. Certain banks carrying on core banking activities will be required to be ring-fenced. These ring-fenced bodies will be subject to requirements 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. These Regulations impose requirements in relation to the pension liabilities of ring-fenced bodies.

Regulation 2 requires that a ring-fenced body make arrangements to ensure it does not participate in multi-employer pension schemes, or have shared pension liabilities, with parties other than certain members of its group. A ring-fenced body may seek a court order releasing it from a shared liability arrangement on commercial terms where terms for its release cannot be agreed by the parties to the arrangement.

Regulation 3 empowers the trustees or managers of a multi-employer pension scheme in respect of which a ring-fenced body is an employer to modify the scheme, with the consent of the employers of that scheme, in order for the ring-fenced body to meet the requirement under regulation 2(2). Where the trustees or managers of a scheme unreasonably refuse to modify it, or any employers unreasonably refuse to consent to the modifications, the ring-fenced body may apply to the court for an order that the modification may be made without any step a trustee or manager would otherwise have to take or the employers' consent.

Regulation 4 requires that where a ring-fenced body is party to a proposed corporate restructuring or other arrangement for the purposes of meeting its obligations as a ring-fenced body under FSMA, or proposes to make any arrangements in order to comply with the requirement in regulation 2(2), it must apply to the Pensions Regulator for a clearance statement in relation to its pension arrangements where the proposal is likely to be materially detrimental to them.

Regulation 5 provides for the applications which a ring-fenced body may make to the court in accordance with regulation 2(7) (release from a shared liability arrangement) and regulation 3(5) (modification of an existing pension scheme).

Regulation 6 provides that a breach of these Regulations is to be treated as a breach of a requirement imposed on the ring-fenced body by its regulator under FSMA.

Regulation 7 provides for the Prudential Regulation Authority to monitor compliance with these Regulations.

Regulation 8 makes transitional provision to apply regulations 3, 4 and 5 to any member of a group which is making preparations to ensure that a ring-fenced body in the group will meet ring-fencing requirements on and after 1st January 2019.

An Impact Assessment of the effect of these Regulations on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for these Regulations.

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