EXPLANATORY MEMORANDUM TO

THE SCOTTISH BANKNOTE (DESIGNATION OF AUTHORISED BANK) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to transfer the existing legal authority for The Royal Bank of Scotland plc (RBS) to issue commercial banknotes in Scotland from the current legal entity (which is to be renamed NatWest Markets plc) to a different legal entity (Adam & Company plc which is to be renamed The Royal Bank of Scotland plc) all within the same banking group. The change is necessary to enable banknotes to be issued from the banking group's Scottish ring-fenced bank following the structural changes to implement the government's policy of ring-fencing, whereby from 1 January 2019, the largest UK banks must separate core retail banking from investment banking.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This is the first use of this power. Section 38 of the Bank of England and Financial Services Act 2016 made amendments to Part 6 of the Banking Act 2009 that in effect enable the statutory authority to issue commercial banknotes to be transferred between legal entities within the same banking group, subject to an affirmative SI.

4.2 This SI can only be made following the consent of the Bank of England. This is because the Bank of England has a regulatory role with respect to the issuance of commercial banknotes, the primary objective of which is to ensure that note holders of commercial banknotes are protected by equivalent means to holders of Bank of England banknotes. This consent has been granted by the Bank of England and is confirmed in an exchange of letters. The Bank of England's letter granting consent has been published on the HM Treasury website.

4.3 As part of its preparation for ring-fencing, the RBS group will apply to the Court of Session for agreement to a ring-fencing transfer scheme (RFTS) by which business is transferred between different legal entities.

4.4 This SI includes a provision for a designation date to be established through publication of a notice by the Treasury in the London Gazette and the Edinburgh Gazette. This is because the change in designation of authorised bank needs to be aligned with the effective date of the RFTS (when the transfers of business between legal entities and certain legal entity name changes will occur), which will only be established once the court has agreed the RFTS.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 The territorial application of this instrument is Scotland.

6. European Convention on Human Rights

6.1 The Exchequer Secretary, Andrew Jones MP has made the following statement regarding Human Rights:

"In my view the provisions of the Scottish Banknote (Designation of Authorised Bank) Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 In the UK, seven banks have the authority to issue commercial banknotes. Four of these banks have authority to issue commercial banknotes in Northern Ireland and three in Scotland. Part 6 of the Banking Act 2009 provides these banks (known as the 'authorised banks') with the statutory authority to issue commercial banknotes.

7.2 From 1 January 2019, the largest UK banks, including RBS, must separate core retail banking from investment banking. This is known as ring-fencing. Ring-fencing was the central recommendation of the Independent Commission on Banking chaired by Sir John Vickers and was introduced through the Financial Services (Banking Reform) Act 2013. Details of the regime are set out in further legislation passed in 2014 and 2016, and through rules set by the Prudential Regulation Authority and Financial Conduct Authority.

7.3 Ring-fencing will support financial stability by making banking groups simpler and easier to 'resolve'. This means that if either the ring-fenced or non ring-fenced part of the bank fails, it will be easier to manage the failure in an orderly way without the need for a government bail-out. As part of these structural changes RBS-branded retail banking activity will move from the current legal entity (The Royal Bank of Scotland plc) to a separate legal entity, currently the private bank Adam & Company plc. Adam & Company plc will become the new Scottish ring-fenced bank in the RBS group and will be renamed The Royal Bank of Scotland plc, while the 'old' The Royal Bank of Scotland plc will be renamed NatWest Markets plc and will be located outside the ring-fence.

7.4 The existing legislation only gives the existing The Royal Bank of Scotland plc legal entity the authority to issue commercial banknotes. However, note issuance is much better aligned with the activities of the Scottish ring-fenced bank given the importance within the legal framework of ensuring note holder protection and confidence in the currency. The Bank of England agrees with this assessment.

7.5 This SI allows for this change in the statutory authority to issue banknotes to take place at the same time as the wider ring-fencing changes come into effect within the RBS group. Its provisions also ensure that all the rights and liabilities associated with existing banknotes transfer over at the same time.

Consolidation

7.6 Not applicable.

8. Consultation outcome

8.1 HM Treasury has consulted closely with the RBS group and the Bank of England in advance of laying this instrument. They are both fully supportive of the instrument and its policy intent.

9. Guidance

9.1 As this instrument is limited in its effect to the RBS group and the Bank of England, both of whom have been closely involved in its development, HM Treasury is not planning to issue any additional guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies, other than supporting the RBS group and its plans to implement the new ring-fencing requirements. It does not introduce any new regulatory burdens.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. This is because the only impact is on the RBS group who have asked for this legislation to be put in place in order to facilitate the implementation of their ring-fencing plans.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 A review provision is not appropriate for this instrument as it is designed to support a structural and permanent change to the RBS group's business. It does not introduce any new regulatory burdens.

13. Contact

13.1 Katy Waller at HM Treasury. Telephone: 020 7270 1393 or email: kathryn.waller@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.