



# HM Treasury

## **Financial Services (Banking Reform) Bill**

### **Government Amendments: Senior Managers and Banking Standards**

Briefing for Peers

October 2013

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These amendments implement the recommendations of the Parliamentary Commission on Banking Standards (PCBS) in its final report *Changing banking for good* (published 19 June 2013) to reform the framework in the Financial Services and Markets Act 2000 (FSMA) for regulating the behaviour of individual bankers. The Government announced its intention to implement these recommendations in its response to the PCBS published on 8 July 2013.

#### **Background**

Under FSMA, the appointments of all individuals who are to perform certain roles in a bank or other financial services firm require the prior approval of the regulator (the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA)) which specified that role as a “controlled function” (for example, roles such as chief executive or money laundering reporting officer) in its rules. In deciding whether to give approval to perform a controlled function, the regulator will assess whether the individual is a fit and proper person to perform the function in question. Such an individual is referred to as an “approved person”.

The firm concerned (not the individual) must apply to the appropriate regulator for its approval of the individual (the “candidate”) to perform the controlled function which is the subject of the application. A new application is required not only when somebody joins a firm from outside to perform a controlled function but also when an individual takes up a controlled function in a firm through promotion or other job changes. If the regulator rejects the application, the firm and the candidate can appeal under the standard FSMA procedures.

Approved persons are subject to “statements of principle” which are binding high-level requirements set out in the regulators’ rules. The regulators may take enforcement action for breaches of the statements of principle or for being knowingly concerned in a breach of regulatory requirements that apply to the firm.

#### **The PCBS recommendations and the Government amendments**

The PCBS considered the approved persons regime to be complex and confused, acting too much as an initial gateway, while failing to ensure individual responsibilities of senior bankers were adequately defined or providing clear expectations for those holding key roles in banks. The PCBS also made a number of recommendations for reform of the approved persons regime as it applies to banks which the Government accepted.

The Government amendments will make the changes to the high-level legal framework for the approved persons regime in FSMA needed to implement PCBS recommendations (the regulators will be responsible for more detailed implementation in their rules and practices). The Government amendments will provide for a reformed approved persons regime with the following features:

- senior manager appointments in banks, building societies and credit unions will continue to be subject to prior regulatory approval, with mandatory statements of responsibility for the senior managers provided with the applications. The regulators will be able to grant conditional and time-limited approval;
- “reversal of the burden of proof” to ensure that senior managers in banks, building societies and credit unions can be held to account for contraventions of regulatory requirements in their areas of responsibility unless they can demonstrate they took all reasonable steps to prevent the contravention occurring or continuing;
- banking standards rules for employees of banks, building societies and credit unions who are not approved persons;
- regulatory enforcement action against employees and approved persons in banks, building societies and credit unions when they have breached these rules or are knowingly concerned in a breach of regulatory requirements by the bank, building society or credit union;
- a 6 year time limit for taking regulatory enforcement action against senior managers, other approved persons and employees (increased from 3 years);
- continued prior FCA approval of certain appointments to roles below senior management level in banks, building societies and credit unions, where appropriate. The existing approved persons regime will also continue to apply in other parts of the financial services industry.

Senior managers in banks and building societies (but not credit unions) will also be potentially liable for the new criminal offence of reckless misconduct in the management of a bank if the institution for which they work fails.

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## Further Enquiries

1. For further information, please contact the Bill Manager Tom Wiperman (020 7270 6180, [tom.wiperman@hmtreasury.gsi.gov.uk](mailto:tom.wiperman@hmtreasury.gsi.gov.uk)) or the Bill Team Leader Ian Ginsberg (020 7270 5967, [ian.ginsberg@hmtreasury.gsi.gov.uk](mailto:ian.ginsberg@hmtreasury.gsi.gov.uk))
2. For access to publications, please go to:  
<http://www.gov.uk/government/policies/creating-stronger-and-safer-banks> for general information about the Bill  
<http://www.gov.uk/government/publications/the-governments-response-to-the-parliamentary-commission-on-banking-standards> for the Government’s response (Cm 8661) to the PCBS report  
<http://www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/changing-banking-for-good-report/> for the PCBS report *Changing banking for good*.