

<b>Title:</b> Bank of England and Financial Services Bill Impact Assessment <b>IA No:</b>  <b>Lead department or agency:</b> HM Treasury <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> January 2016			
	<b>Stage:</b> Development/Options			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> BankofEnglandBillTeam@HMTreasury.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
--	--

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCb on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£m	£m	£m	No	NA
			No	NA

**What is the problem under consideration? Why is government intervention necessary?**  
As part of its commitment to put in place a new settlement for financial services, the Government has implemented a package of fundamental reforms to strengthen financial stability, protect taxpayers from firm failure, and restore trust in the financial system. This included putting the Bank of England at the centre of a reformed system of financial regulation, and tougher standards of prudential and conduct regulation. The Bank of England and Financial Services Bill builds on these reforms, to strengthen and develop this settlement.

**What are the policy objectives and the intended effects?**  
The measures in the Bill strengthen the governance, accountability and transparency of the Bank of England; legislate for remit letters for the regulators; update resolution planning and crisis management arrangements between the Bank of England and the Treasury; make changes to the Senior Manager's and Certification Regime; require the regulators to consider diversity between different kinds of business model; enable the Treasury to make regulations which facilitate Insurance Linked Securities business; enable the scope of the Pension Wise service to be extended; provide for a pensions advice requirement for those wishing to sell their rights to payments under annuities worth more than a threshold value; and makes changes to the legislation on bank note issuance.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
This impact assessment has been prepared to provide information to Parliament for the passage of the Bank of England and Financial Services Bill. As such, it considers the impacts of measures in the Bill against the baseline scenario where the Bill's measures are not enacted. It does not provide a full assessment of the impact of the measures for the purposes of the Small Business, Enterprise and Employment Act 2015, and has not been submitted for verification by the Regulatory Policy Committee. Many of the measures in the Bill do not require a full RPC impact assessment, as they impact the regulators rather than the relationship of regulators' with firms. Where a full impact assessment is required, this will be published in due course (subject to RPC approval).

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?				N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes	
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0	<b>Non-traded:</b> 0		

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: *H. It Bald* Date: 13 January 2016

# Summary: Analysis & Evidence

# Policy Option 1

Description: Bank of England and Financial Services Bill

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

N/A

### Other key non-monetised costs by 'main affected groups'

The Bank of England ("the Bank") and PRA will incur minimal transitional costs. Costs associated with the expansion of the Pension Wise service will be determined by what the expanded service looks like. Costs associated with extension of the SM&CR and the pensions advice requirement will be presented in a full impact assessment.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

N/A

### Other key non-monetised benefits by 'main affected groups'

The governance, accountability and transparency of the Bank and PRA will be improved, as will conduct and performance of staff in financial services sector firms. This will have benefits to users of financial markets, consumers of financial services and the wider UK economy. Amending the regulatory principles of the regulators will have indirect benefits for some types of firms. Those considering using expanded pensions freedoms will benefit from access to free and impartial guidance, as will members of the Pension Protection Fund.

### Key assumptions/sensitivities/risks

### Discount rate

Key assumptions are that (i) the improvements to quality of transparency, accountability and governance can further improve the Bank's decision making; (ii) changes in the internal relationships of UK authorities will not change the relationships of those authorities with firms; and that (iii) enabling appointed representatives to advise on the conversion or transfer of pensions with safeguarded benefits may encourage appointed representatives to enter this market.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	No	NA

# Contents

Impact Assessment (IA) .....	1
Summary: Intervention and Options .....	1
<b>RPC Opinion:</b> .....	1
Summary: Analysis & Evidence Policy Option 1 .....	2
Policy outline.....	4
Introduction to the impact assessment.....	10
Part 1: The Bank of England.....	12
Background: the functions of the Bank and the PRA.....	12
Governance.....	13
Financial Arrangements .....	18
Prudential Regulation.....	20
Diversity.....	22
Part 2: Financial Services.....	23
Conduct of persons working in financial services sector .....	23
Pensions Guidance .....	27
Information about resolution planning.....	31
Part 3: Miscellaneous and General .....	33
Repeal of the Financial Services and Markets Act consequential amendments order.....	33
Banknotes in Scotland and Northern Ireland.....	34
Summary .....	35
Wider impacts.....	37
Post legislative scrutiny .....	39

## Policy outline

1. As part of its commitment to deliver a new settlement for financial services, the Government put in place a series of reforms to strengthen financial stability, protect taxpayers from firm failure, and restore trust in the financial system. The Government has put the Bank of England at the centre of a reformed system of financial regulation and created a strong conduct regulator in the Financial Conduct Authority (FCA). It is putting in place a senior managers and certification regime (SM&CR) to ensure the highest standards of conduct among those who work in banks.
2. The Bank of England and Financial Services Bill builds on and develops these reforms to:
  - strengthen the governance, transparency and accountability of the Bank of England;
  - enable the Treasury to provide remit letters to the PRA and FCA;
  - require the regulators to consider diversity of business models, where appropriate, when developing regulation;
  - update resolution planning and crisis management arrangements between the Treasury and the Bank to reflect recent improvements to resolution planning for systemic financial institutions, and crisis management for institutions in distress;
  - extend the SM&CR to all FCA and PRA (Prudential Regulation Authority) authorised financial services firms, and to introduce a statutory 'duty of responsibility' for senior managers as a common and effective standard for the whole industry;
  - make technical changes to the regulation of consumer credit agreements;
  - enable the Treasury to make regulations which facilitate and regulate Insurance Linked Securities business, and in particular, to make regulations in respect of transformer vehicles which are central to Insurance Linked Securities transactions;
  - enable the Treasury to extend the Pension Wise service to those who will be eligible to sell their annuity income through the secondary market in annuities and those who were former members of a scheme which has transferred to the Pension Protection Fund (PPF);
  - allow appointed representatives of 'principal' authorised firms to advise on the conversion or transfer of pensions with safeguarded benefits;
  - require individuals with annuities above a threshold value to receive financial advice before selling that annuity;
  - make technical changes to cancel the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001; and
  - update the framework for authorising banks to issue Scottish or Northern Irish banknotes.

### *The Bank of England*

3. The Bank of England is tasked with delivering monetary and financial stability. Through the Financial Services Act 2012, the Government fundamentally reformed the UK's system of financial regulation and put the Bank at its centre, giving it significant new responsibilities and the powers it needs to deliver its financial stability mandate.
4. The Government and the Bank are committed to building on the success of these reforms and ensuring the Bank is on the best possible footing to oversee its expanded remit.

5. After more than two years operating within the new regulatory framework, it has been possible to identify opportunities to reinforce the transparency, accountability and good-governance of the Bank and the PRA. In particular, by bringing the PRA within the Bank, the legislation will strengthen and simplify the Bank's internal governance and allow it to benefit from having monetary policy, macro-prudential policy and micro-prudential policy under the aegis of one institution.
6. The measures in the Bill would also strengthen Parliament and the public's ability to hold the Bank to account by bringing the Bank within the purview of the National Audit Office for value for money studies.
7. Several of these evolutionary reforms to the Bank's governance require legislative change. The reforms are complementary to the Bank's 'One Mission, One Bank' strategic plan, which stresses openness and accountability, and build on the blueprint for reform that the Bank published in December 2014.<sup>1</sup>

#### *Remit Letters*

8. In July 2015, the government's Productivity Plan announced new remit letters for the PRA and FCA. The remit letters will enable the Treasury to highlight those aspects of government economic policy that are most relevant to the regulators' duties.

#### *Diversity*

9. The Building Society Association (BSA), the trade body for the building societies sector, has long called for it to be set out in statute that the regulators should fully consider diversity and mutual models of ownership when they are developing regulation. Mutuals have argued that the regulators often consider mutuality as an afterthought, and only realise afterwards that their proposals have a disproportionate or inappropriate effect on mutuals.
10. This amendment to the Financial Services and Markets Act 2000 (FSMA) amends the list of Regulatory Principles which apply to both the FCA and the PRA. The Regulatory Principles would be changed to ensure that the differences in the nature and objectives of those businesses to which the regulators are required to have regard, where appropriate, when exercising their functions include differences between different kinds of business organisation, including mutual societies.
11. In practice, this amendment makes it clear that both regulators have to take account, where appropriate, of the differences between different types of firm – such as mutual societies – whenever they are discharging their general objectives.

#### *Bank Resolution*

12. As part of its expanded remit, the Bank has primary operational responsibility for financial crisis management. It is the responsible authority for resolving UK banks (and certain other financial firms) under the special resolution regime in the event that they run into difficulty. The special resolution regime provides the Bank with a set of tools for this including a modified insolvency procedure and a number of stabilisation tools. The Chancellor of the Exchequer and the

---

<sup>1</sup> "Transparency and Accountability at the Bank of England"  
<http://www.bankofengland.co.uk/publications/Documents/news/2014/warshresponse.pdf>

Treasury have sole responsibility for any decision on whether and how to use public funds as a last resort option to stabilise a firm under extraordinary circumstances.<sup>2</sup>

13. The Bill will formalise and strengthen the framework for engagement between the Bank and the Treasury on resolution and crisis management where there are present or future risks to public funds. These legislative changes would ensure the UK's resolution planning and crisis management arrangements keep pace with international developments in best practice.

#### *Conduct of persons working in the financial services sector*

14. The Financial Services (Banking Reform) Act 2013 put in place the legislative framework for the Senior Managers and Certification Regime (SM&CR), implementing recommendations made by the Parliamentary Commission on Banking Standards on banking culture and standards. It is due to come into operation for banks, building societies, credit unions and PRA-regulated investment firms on 7 March 2016, replacing the existing Approved Persons Regime for these firms. In the absence of change, the SM&CR would not apply to any other authorised financial services firms. The SM&CR consists of three core components:
  - **Senior Managers Regime** – the regulatory pre-approval of key individuals at the top of the firm. This replaces the regulatory pre-approval of some persons performing 'significant influence functions' under the Approved Persons Regime (APR). Senior managers are those individuals who hold key roles and responsibilities. Senior Managers will be required to have statements of responsibilities setting out the areas of the firm's business for which they are responsible.
  - **Certification Regime** – the certification of other key individuals by the firm as fit and proper, both at hiring and annually thereafter. This replaces the regulatory pre-approval of other persons performing 'significant influence functions' and persons performing 'customer dealing functions' under the APR.
  - **Rules of conduct** – the regulators will be able to make rules of conduct for senior managers, certified persons and other employees. These replace the 'statements of principle' which only apply to approved persons under the APR.
15. The government is proposing to extend the Senior Managers and Certification Regime (SM&CR) regime to all sectors of the financial services industry, replacing the Approved Persons Regime. This will create a fairer, more consistent and rigorous regime for all sectors of the financial services industry, enhancing personal responsibility for senior managers as well as providing a more effective and proportionate means to raise standards of conduct of key staff more broadly, supported by robust enforcement powers for the regulators.
16. The extension of the SM&CR was called for in a statement of former PCBS members published in November 2014 and recommended in the Fair and Effective Markets Review, which reported in summer 2015.
17. The Bill will also update the newly extended SM&CR with a 'duty of responsibility' for all senior managers, superseding the 'reverse burden of proof'. (The government will also ensure that the

---

<sup>2</sup> The Bank Recovery and Resolution Directive requires that 8% of a bank's liabilities are used to absorb losses and recapitalise a failing bank before public funds can be used to absorb losses.

'reverse burden of proof' does not apply when the SM&CR comes into operation for banking sector firms on 7 March 2016.)

18. Under the duty of responsibility, the same underlying obligation will remain on the individual to ensure that they take reasonable steps to prevent regulatory breaches, but the burden will be on the regulators to prove that a senior manager has failed to do this, and not on the individual to satisfy the regulators that he or she has taken reasonable steps.

#### *Consumer Credit Regime*

19. On 1 April 2014, the Government fundamentally reformed consumer credit regulation, transferring responsibility from the Office of Fair Trading to the Financial Conduct Authority and bringing the regulation of consumer credit activities into the framework established by the Financial Services and Markets Act 2000 (FSMA).
20. The Bill introduces two technical amendments to FSMA relating to the regulation of consumer credit agreements in order to support the effective operation of the regime.
21. The amendments concern the application of provisions relating to the enforceability of credit agreements.

#### *Insurance Linked Securities*

22. This Bill gives Treasury ministers the power to make regulations which facilitate and regulate Insurance Linked Securities business, and in particular to make regulations in respect of transformer vehicles which are central to Insurance Linked Securities transactions.
23. As Lloyd's of London is a vital part of the London insurance market, the clause will enable ministers to make regulations which amend regulatory arrangements relating to Lloyd's which would enable the Lloyd's market to adapt to Insurance Linked Securities business or the use of transformer vehicles. In particular, ministers will be able to make regulations which enable the PRA or FCA to confer regulatory functions on Lloyd's. If this requires amendments to Lloyd's Private Acts or makes other provision unique to Lloyd's, the amending regulations will not be treated as a 'hybrid instrument' so that amendments would not be unnecessarily delayed by the extended procedure for such instruments.
24. This amendment follows a recommendation made by the Delegated Powers Committee in relation to the power for Treasury ministers to make regulations which enable the PRA or FCA to confer regulatory functions on Lloyd's. The amendment requires the consent of the Council of Lloyd's before any such regulations can be made.

#### *Pensions Guidance Extension*

25. In April 2015 the government introduced greater flexibility for pension products, abolishing the effective requirement to buy an annuity. Pension Wise was introduced to provide guidance to people approaching retirement, to help them understand the new pensions' freedoms.
26. Pension Wise can currently be accessed by those with defined contribution pension schemes who are approaching retirement. The guidance is available either face-to-face or via a telephone service. It provides tailored help and highlights the options available to retirees, but doesn't give

specific product or provider recommendations. It also stops short of providing advice, which must still be delivered by a regulated financial adviser.

27. From 2017, pensions' flexibilities will be extended by allowing people who have already bought an annuity to sell their annuity income to a third party. A consultation on creating a secondary market in annuities closed in June this year, and there was broad support for the extension of Pension Wise as part of the consumer protection package.
28. The measures in the Bill would change the definition of pensions' guidance to include people who hold a qualifying interest in a relevant annuity. What will amount to a relevant annuity, and what will amount to a qualifying interest, would be specified in regulations. This would enable the government to develop an extension of the Pension Wise service to provide guidance on assigning (or otherwise dealing with) an annuity on the secondary market.
29. Additionally, the Bill expands the definition of pensions guidance to allow Pension Wise to give guidance to someone who is a former member of a scheme, which has transferred to the Pension Protection Fund (PPF), a compensation fund established in 2005, if that person still has money purchase benefits accrued under the scheme.
30. At present, Pension Wise is only able to provide guidance in respect of flexible benefits to a member, or the survivor of a member, of a pension scheme. The PPF is a compensation fund, not a pension scheme, meaning that individuals whose schemes have transferred to the PPF are not able to obtain guidance from Pension Wise in respect of their money purchase benefits. This is an unintended gap in the provision of guidance which this Bill addresses.

#### *Mandatory Advice in the Secondary Market for Annuities*

31. As set out above, the government is creating a secondary market for annuities, enabling annuity holders to sell their annuity incomes in exchange for a lump sum.
32. The government is introducing a requirement for individuals with higher value annuities to receive appropriate financial advice before selling that annuity. This is because higher value annuities are more likely to represent the main or significant portion of an individual's retirement income. Therefore, it is more important that those individuals are aware of the value of their income stream, and informed about the options available to them. The requirement to take financial advice will ensure consumers are empowered with information and a recommendation tailored to their circumstances.

#### *Pensions Appointed Representatives*

33. In parallel with the government's reforms to enhance flexibility for pension products, it also introduced a legal requirement for those individuals that have pensions with safeguarded benefits – such as defined benefit pensions, and pensions with Guaranteed Annuity Rates – to seek independent financial advice before being able to convert or transfer their pension. Appointed representatives, who are individuals who have a specific contract under law to provide services on behalf of a 'principal' authorised firm but are not themselves authorised, were excluded from providing such advice, despite being able to advise on other types of pension transfer.



34. The measures in this Bill will amend the Pension Schemes Act 2015 to include appointed representatives of 'principal' authorised firms as eligible to advise on the conversion or transfer of safeguarded benefits. It will also make amendments to the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 to the same end.

*Repeal of the Financial Services and Markets Act consequential amendments order*

35. The Bill makes a technical amendment to cancel the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001. It is being made to restore legal certainty in relation to the legislation which was amended by that Order.

*Banknotes in Scotland and Northern Ireland*

36. There is a long-standing tradition of certain Scottish and Northern Ireland banks being able to issue their own banknotes. Part 6 of the Banking Act 2009 allows those banks who had that permission immediately before the Banking Act 2009 came into force to continue issuing their own notes, while not allowing new issuers to emerge. This can cause problems when a bank wants to restructure its operations, often for sound business reasons. In these circumstances, the legislation does not currently allow for permission to issue banknotes to be transferred to a different legal entity, even if they are within the same group structure.
37. The Bill would allow the Treasury to make regulations authorising a new bank to issue banknotes in Scotland and Northern Ireland in place of an existing issuer (subject to approval by the Bank of England) – so long as the new bank is in the same group as the existing issuer. This would remove the inflexibility in the current legislation, but not permit additional banks to be authorised to issue banknotes.

## Introduction to the impact assessment

38. This impact assessment has been prepared for the purpose of providing information to Parliament for the passage of the Bank of England and Financial Services Bill. This document does not provide a full assessment of the impact of the measures for the purposes of sections 21 to 27 of the Small Business, Enterprise and Employment Act 2015 and has not been submitted for verification by the Regulatory Policy Committee (RPC) under section 25 of that Act. Where a full impact assessment is required by legislation, this will be published in due course.
39. The costs and benefits of the Bill measures (“Option 1” in the summary sheets) are assessed against the baseline, (“do nothing option”) which is the expected scenario if the measures in the Bill do not come into effect. As such, the impact assessment captures the expected marginal impact of the measures in the Bill.
40. The changes made in this Bill to the Bank of England and to bank resolution only have direct impact on UK authorities, not on the UK authorities’ relationships with firms. As such, they are out of scope of the RPC process. The changes to UK authorities will have negligible impact on the Bank and PRA’s administration costs.
41. The requirement for FCA and PRA remit letters are also out of scope for the RPC process, as again, these impact the regulators and not firms themselves.
42. The requirement for the regulators to consider diversity, where appropriate, when they are developing regulation only directly impacts the regulators themselves, not firms, and therefore is out of scope for the RPC process.
43. Similarly, changes to the Treasury’s powers to govern banknote issuance have no costs and are also out of scope of the RPC process.
44. Changes which enable the government to extend the Pension Wise service impact consumers rather than firms, and so are out of scope for the RPC. The appointed representatives’ changes are also out of scope, as this measure will not add further monitoring and compliance costs beyond those already set out in the Financial Services and Markets Act 2000.
45. The measure in this Bill that, in effect, require individuals to receive financial advice before selling incomes from relevant annuities (intended to be above a threshold value) will directly impact individuals holding those annuities. It will also directly impact the authorised entities who will be required to check relevant annuity holders have received appropriate advice. The formal impact assessment concerning this measure has been submitted for verification by the Regulatory Policy Committee (RPC).
46. The changes made in this Bill to the SM&CR will have direct impacts on firms. The formal impact assessment concerning these measures has also been submitted for verification by the Regulatory Policy Committee (RPC).
47. The technical amendments to Consumer Credit regime are trivial and mechanical and are therefore outside the scope of the RPC process.
48. The enabling powers to regulate Insurance Linked Securities do not change the regulatory regime itself and so there is no impact to assess at this stage. In 2016 the Treasury plans to produce draft regulations which will be introduced under this power. When published for consultation, the draft regulations will be accompanied by an RPC impact assessment.

49. Other costs and benefits considered in this impact assessment have not been fully quantified. The Government's assessment of the impacts of Bank of England and bank resolution measures is that the transitional and ongoing costs are minimal, and that it would be disproportionate to attempt to quantify these. Impact assessments are expected to be proportionate to the scale of the impacts considered.
50. The Government's assessment of the impacts of Bank of England measures has been prepared in consultation with the Bank and the NAO. The Bank has concluded that transitional and ongoing costs from these measures will amount to no more than minimal changes in administrative burdens. This accords with the Treasury's assessment of the way these changes will impact on the Bank – in particular that they are evolutionary changes that build on rather than replace existing processes and governance structures. As these costs are minimal, it would not be appropriate to quantify them.
51. Potential costs of extending the Pension Wise service will be determined by the final design of the extended service, and therefore are yet to be determined.
52. Improvements in the accountability, transparency and governance of the Bank will support its central role of maintaining the monetary and financial stability of the UK, but these economic benefits are difficult to quantify without risking spurious accuracy.
53. Insurance linked securities power provided in the Bill does not itself change the regulatory regime and so there are no costs or benefits to assess at this stage. In 2016 the Treasury plans to produce draft regulations which will be introduced under this power. When published for consultation, the draft regulations will be accompanied by an impact assessment.
54. The provisions for remit letters, to require the regulators to consider diversity, and the changes to the consumer credit regime are administrative and are not expected to incur significant costs.
55. The impact assessment considers only measures included in the Bill. Reforms the Bank is taking forward without legislative change,<sup>3</sup> and revisions to the Memorandum of Understanding on Crisis Management between the Bank and the Treasury<sup>4</sup> are out of scope.

---

<sup>3</sup> See *Transparency and Accountability at the Bank of England*, <http://www.bankofengland.co.uk/publications/Documents/news/2014/warshresponse.pdf>

<sup>4</sup> The existing Memorandum of Understanding on Crisis Management is published at <http://www.bankofengland.co.uk/about/Documents/mous/moufincrisis.pdf>

## Part 1: The Bank of England

### Background: the functions of the Bank and the PRA

56. The Bank's governance model is determined by the Bank of England Act 1998 as amended by the Financial Services Act 2012, which established the current regulatory system for financial services.
57. The Court is the Bank's governing body, responsible for managing the affairs of the Bank (other than the formulation of monetary policy) and is accountable for the Bank's performance in relation to its objectives. It sets the Bank's strategy and budget, and takes key decisions on resourcing and appointments. It comprises the Governor, the statutory Deputy Governors, and nine non-executive directors (NEDs). The Oversight Committee, consisting of the NEDs, is responsible for reviewing the Bank's performance against its objectives and has powers to commission reviews into specific processes or issues.
58. A Committee of the Bank, the Monetary Policy Committee (MPC), sets monetary policy. It is required by statute to meet at least monthly, though further meetings can be called if needed.
59. The Bank exercises its responsibility for macro-prudential regulation through the Financial Policy Committee (FPC), a sub-committee of the Court.
60. The PRA, a subsidiary of the Bank, is responsible for the micro-prudential regulation of about 1,700 banks, building societies, credit unions, insurers and major investment firms. The PRA's most significant supervisory decisions are taken by its governing body, the PRA Board. An independent regulator, the Financial Conduct Authority (FCA) regulates the conduct of financial sector firms.
61. Other functions of the Bank are not given to particular committees through legislation. These include resolution of failing firms, notes issuance, oversight of Financial Market Infrastructure and the operation of the Sterling Monetary Framework. The day to day running of these functions is the responsibility of the Bank's executive, and the Court keeps their performance under review through means such as oversight of risk management and business practices, and approval of the expenditure budget.
62. Where legislation names the 'Bank' as responsible for a certain function, in practice this means these functions are the ultimate responsibility of the Court of Directors. The Court may then delegate functions within the Bank.

# Governance

## Summary of measure

63. Clause 1 makes the Deputy Governor for Markets and Banking a member of the Court of Directors of the Bank. It also provides that the Treasury may, by order, alter the title of a Deputy Governor and/or add or remove Deputy Governors from the Court. The added or removed Deputy Governor may also be added or removed from the FPC, MPC or PRC. Such a change may be accompanied by a corresponding change in the number of members appointed to the relevant committee by the Chancellor (in the case of the FPC or the new Prudential Regulation Committee) or the Governor (in the case of the MPC).
64. Clause 2 enables the term of office of a NED to be extended once for a period of up to 6 months.
65. Clause 3 ends the delegation of certain oversight functions to a sub-committee of the Court but ensures a majority of non-executives can initiate performance reviews.
66. Clause 4 requires the remuneration of the Governor and Deputy Governors to be delegated to a sub-committee of 3 or more non-executive directors.
67. Clause 5 makes it clear that Court will continue to be responsible for determining the financial stability strategy; grants Court an express power to delegate production of the strategy within the Bank; and clarifies that the Court retains responsibility for any powers or duties that it delegates.
68. Clause 6 makes the FPC a committee of the Bank, instead of a sub-committee of the Court, makes clear which Deputy Governors are members of the FPC, and increases the number of external members from four to five.
69. Clause 7 adds the Deputy Governor for Markets and Banking as an ex officio member of the MPC. Consequently, it also reduces the number of members appointed by the Governor of the Bank of England after consultation with the Chancellor of the Exchequer from two to one, and clarifies the role and title of this member.
70. Clause 8 reduces the number of times the MPC has to meet each year, changing the requirement to meet "at least once a month" to a requirement to meet at least 8 times, and "at least once in every 10 week period". It amends the current statutory requirement to publish MPC minutes within 6 weeks of the occurrence of the meeting so that they must be published "as soon as reasonably practicable" following the meeting and makes a similar change to the timing of publication of decision statements and the quarterly Inflation Report. It also amends the quorum rules in line with changes to membership of the MPC and introduces provisions on conflicts of interest.

## Rationale

71. Following the expansion of the Bank's responsibilities, the Government and the Bank made a number of new appointments, including creating an additional Deputy Governor post, the Deputy Governor for Markets and Banking. The Deputy Governor for Markets and Banking has responsibility for managing risks to the Bank's balance sheet. This includes exit from Bank liquidity facilities, the Bank's operation of the Real Time Gross Settlement System, the Sterling Monetary Framework, and exit from quantitative easing. The Deputy Governor's responsibility

- for risks to the Bank's balance sheet means her expertise is relevant to the FPC, MPC and PRA as well as to the Court.
72. The current need to revise primary legislation in order to add, remove or change Deputy Governor posts limits the flexibility to adapt the size and shape of the Bank's senior management team to bring in new expertise. Clause 1 of the Bill would increase this flexibility, and make the Deputy Governor for Markets and Banking a member of the Bank's Court of Directors.
  73. Clause 7 of the Bill makes the Deputy Governor for Markets and Banking an *ex officio* member of the MPC (she is currently one of the two MPC members appointed by the Governor of the Bank after consultation with the Chancellor). This ensures that expertise for monetary policy operations is maintained on the Committee. The subsequent change in the number of members appointed by the Governor of the Bank of England ensures that the current balance of the Committee is preserved.
  74. The ability to extend a NED's term of office (clause 2) would bring the appointment of NEDs in line with members of the FPC and MPC, who can already have their term extended by up to six months. This will ensure staggered end dates, support transitions, and provide resilience in the case of resignation or retirement.
  75. In 2012, in recognition of the Bank's expanded responsibilities, a statutory Oversight Committee was established consisting exclusively of NEDs. The Oversight Committee has responsibility for keeping under review the Bank's performance against its objectives, and is given powers to commission reviews into specific issues or processes.
  76. These powers have been a successful innovation, but the creation of a new committee to exercise them has introduced an extra and unnecessary layer of governance. In practice, the Bank has found it necessary to hold Oversight Committee meetings concurrently with full Court meetings, with the executive withdrawing at appropriate points. Making oversight functions the responsibility of the whole Court will confirm all its members' responsibility for the Bank's performance, and bring the Bank's governance arrangements in line with normal best practice of a unitary board (clause 3). Clause 3 also provides that a majority of the non-executives on Court will have the power to commission a review, without needing to secure the agreement of the Court as a whole. The non-executives will be able to initiate reviews either by an external reviewer or by Bank staff.
  77. Clause 4 ensures responsibility to decide terms and conditions for the Governor and Deputy Governors will continue to be solely that of the NEDs. The NEDs will still be able to meet as a group whenever necessary.
  78. At present, the Bank's financial stability strategy is set by the Court after consultation with the FPC (a sub-committee of the Court) and HMT. Granting the Court a power to delegate production of the strategy within the Bank (clause 5) will ensure that the relevant expertise within the Bank can be utilised in the production of the strategy. Court will retain ultimate responsibility for setting the financial stability strategy.
  79. The FPC is currently a sub-committee of Court, whereas the MPC is a committee of the Bank. Making the FPC a committee of the Bank would ensure consistent governance structure across the Bank's policy making committees (clause 6).

80. Specifying which Deputy Governors are *ex officio* members of the FPC (clause 6) gives clarity as to the composition of the FPC (in line with the other policy committees and Court). Increasing the number of external members from four to five preserves the balance between non-executive and executive members of the FPC.
81. Together, these changes to the FPC would make for a more consistent and transparent governance structure within the Bank, and will provide clarity on roles and responsibilities.
82. The MPC sets monetary policy to meet the inflation target in the medium term. In his review of the MPC's transparency practices and procedures, Governor Warsh remarked that "rarely would a single four-week period be sufficient to change economic assessments".<sup>5</sup> In contrast, he observed that "effective policymaking requires time for reflection". Fewer meetings each year would allow more time between meetings for officials to conduct analysis and prepare materials for the next meeting. MPC members will also have more time between meetings to read briefing and to deliberate. As a result, the Warsh Review concluded that requiring the MPC to meet eight times per year, bringing the Bank's practice in line with other leading advanced-economy central banks, would support effective policy making. Clause 8 enables the Bank to implement the recommendations of the Warsh Review by changing the statutory requirements on the number of times the MPC must meet.
83. The Warsh Review also recommended that the MPC publish the rationale for its policy decision "as soon as is practicable upon the meeting's conclusion", noting that "[a]mong its peers, the Bank stands alone in not routinely offering a contemporaneous explanation of its policy decision". As the Warsh Review sets out, this would improve effective communication of the MPC's policy judgement, and publishing details of the vote contemporaneously would bolster individual members' independence and accountability. The MPC accepted this recommendation, and since August 2015, has published the minutes of its policy meeting at the same time as its policy decision. Requiring that MPC minutes are published (clause 8) as soon as reasonably practicable following the meeting (rather than with a delay of up to six weeks) formalises this arrangement, enhancing transparency and accountability of MPC practices.

### Costs

84. There will be an on-going cost in the form of an increase in salary costs as a result of expanding the FPC. The additional salary cost of expanding the FPC will be approximately £92,058 (based on the current annual fee for an FPC member). There may be minimal additional increases in ongoing administrative staffing burden. These costs will to some extent be offset by a non-legislative change to the Court – the Government has already announced its intention to reduce the number of NEDs in the court from 9 to 7<sup>6</sup>, though legislative change is not required to effect this.
85. No further transitional or ongoing costs are expected from changes to the Bank's governance. As the role of Deputy Governor for Markets and Banking already exists on a non-statutory basis, adding the role on a statutory basis will not impact the costs associated with the role.

---

<sup>5</sup> <http://www.bankofengland.co.uk/publications/Documents/news/2014/warsh.pdf>

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447140/bank\\_of\\_england\\_bill\\_v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447140/bank_of_england_bill_v3.pdf)

## Benefits

86. There would be greater flexibility in the Bank's senior management team, making it easier for the Government, in consultation with the Bank, to change the shape of the Bank's senior management to bring in additional expertise or reflect changing priorities. The process of requiring orders to make these changes will ensure Parliament retains the possibility of parliamentary scrutiny of the changes.
87. Abolishing the Oversight Committee would remove an unnecessary layer of governance and make clearer the responsibility of the Court for the Bank's performance in line with the best practices of a unitary board.
88. It is expected that, compared to the baseline, changing the status of the FPC and granting the Court a power to delegate production of the financial stability strategy, while clarifying that the Court retains responsibility for any powers or duties that it delegates, would make for a more consistent and transparent governance structure within the Bank.
89. The Bank will be able to move to a new cycle of eight meetings spread evenly throughout the year. It is expected that this will support effective decision-making, through enabling more time for analysis and preparation of materials, and for committee members to deliberate.
90. The Bank plays a critical role maintaining stable macro-economic conditions. Therefore, measures to further strengthen the Bank of England's governance, accountability and transparency, and support effective decision-making within the Bank could have a positive impact on the wider UK economy. There are significant sensitivities and dependencies here, which mean it would be inappropriate to quantify this potential benefit.

## Impact on firms

91. Many of the Bank governance measures will make changes to internal governance of the Bank, without changing the relationship of the Bank with firms. As a result, these measures will have no impact on firms.
92. However, monetary policy decisions can have important implications for firms – so changes to the minimum required frequency of MPC meetings (clause 8) might impact on firms. The Government expects that any impacts will be indirect. First, if the Bill were enacted, it would be open to the MPC, as now, to call additional meetings at any time it deems necessary – this means that the MPC would be no less able to respond to sudden shocks than it is at the moment. As the legislation stipulates only a *minimum* of 8 meetings per year, any impact would flow from the Bank's subsequent decision about reducing the number of meetings, not from the legislation itself. Second, while changes to the monetary policy stance can have implications for firms, these impacts are not, in general, related to the exact scheduling of MPC meetings.
93. Changes to the number and scheduling of MPC meetings could have indirect impacts on one specific category of financial contracts: SONIA (the Sterling Overnight Index Average) meeting-to-meeting swaps. SONIA is the weighted average rate on overnight unsecured money market transactions conducted via brokers – including both bank and non-bank transactions. This involves minimum risks for the lender and is therefore very close to the risk free rate, and hence to Bank Rate, the policy rate set by the MPC at each of its meetings.
94. SONIA swaps are contracts between two financial institutions, through which one institution swaps the variable overnight interest rate against a fixed interest rate for a pre-defined period, where the fixed rate represents the average overnight rate expected over the period. Such



contracts are often used by financial institutions to hedge themselves against interest rate risks. SONIA meeting-to-meeting swaps are specifically aligned with future MPC policy meeting dates, representing expectations for Bank Rate at the time of each MPC meeting. As these contracts are arranged 'over the counter', there is no data available on the volume or value of the contracts.

95. If some of the provisionally scheduled meetings are cancelled, any positions taken with regards to those or subsequent meetings could be impacted, because it would reduce the number of scheduled dates at which the MPC will make decisions on the level of Bank Rate prior to those positions maturing. It would greatly reduce the likelihood of a change in policy on that date (to close to zero) and possibly also alter expectations around changes at prior or subsequent meetings. Therefore, there may be indirect costs to market participants of changing the schedule of MPC meetings if they have entered positions on meetings that are subsequently cancelled.
96. Market intelligence suggests that a minority of those who have taken positions would be affected. The volume of activity settled on the meetings that might be cancelled is relatively limited, especially at longer horizons. In part this reflects market participants adapting to the fact that some meetings might be cancelled. Most of the activity is for meetings six to eight months ahead, and concentrated in MPC meetings which coincide with the publication of the Inflation Report, for which the dates would be unchanged under the revised schedule.
97. The Bank has already clearly communicated likely changes to the MPC schedule through its market notice published on 24 September 2015, which will probably reduce the likelihood of market participants entering positions for meetings that might subsequently be cancelled.
98. As a result, the Government expects limited indirect impact on financial institutions due to the Bank cancelling MPC meetings.

#### Risks and assumptions

99. The proposed changes to the frequency of MPC meetings will not limit the ability of the Governor or (in his absence) the Deputy Governor for Monetary Policy to call a meeting of the MPC at any time. This means that the MPC would be no less able to respond to sudden shocks than it is at the moment.

## Financial Arrangements

### Summary of measure

100. Clause 9 defines the role of the Comptroller and Auditor General (C&AG) in relation to the Bank's financial audit. The C&AG will be consulted by the Bank regarding the appointment of the Bank's external financial auditors, and the Bank's auditors must consult the C&AG on the scope, timing and direction of the audit and any audit plan.
101. Clause 10 provides for any activities indemnified or guaranteed by the Treasury to be subject to NAO scrutiny, including the potential for a full financial audit of activities which are carried out through a separate company structure.
102. Clause 11 brings the Bank within the purview of C&AG for value for money studies. To protect the Bank's policy-making independence, these cannot consider the merits of the Bank's objectives.
103. Together with changes to the status of the Prudential Regulation Authority (see clauses 12 to 15), this would mean the PRA continues to be within the purview of the National Audit Office (NAO) for value for money studies, but its financial audit would be included in the audit of the Bank by the Bank-appointed auditor rather than by the NAO.
104. Clause 11 also enables the Treasury to appoint an independent reviewer to examine the value for money achieved by the Bank in exercising its prudential regulation functions (with the same protections for policy-making independence).
105. Finally, this clause ensures that value for money reviewers can access documents and information required for the review.

### Rationale

106. Unlike other public bodies, including the PRA and the FCA, the Bank is not accountable to Parliament through NAO value for money studies.
107. Bringing the Bank within the purview of the NAO for value for money studies and defining a role for the C&AG within the Bank's overall audit process would strengthen parliamentary and public scrutiny of how the Bank carries out its functions, increasing its accountability, and bring the Bank's accountability arrangements in line with those of other public bodies. This change would also unify audit arrangements across the Bank following the integration of the PRA into the Bank.
108. Explicitly excluding the Bank's policy-making functions from the NAO's remit will safeguard the independence of the Bank's policy-making.

### Costs

109. Value for money audits of the whole Bank (rather than just the PRA) may require additional NAO resource. The charge for the NAO's programme of value for money studies is funded through resources voted to the NAO directly by Parliament. There will be no cost to the Bank for this work. However the Bank may incur some small costs in relation to the provision of information.
110. The financial audit of the PRA will transfer from the NAO to Bank-appointed external auditors. This may cause incremental changes in the Bank's financial audit costs.

## Benefits

111. The NAO may identify scope for further improvements that will help the Bank operate more efficiently and effectively. In any case, NAO audit will support parliamentary and public scrutiny of the Bank, strengthening its transparency and accountability.

## Impact on firms

112. As the PRA is levy-funded, the audit costs of the PRA will fall on the firms who pay the PRA-levy. Changes in audit costs that result from changes to the PRA's financial auditor are expected to be minimal, with no material impact on the PRA levy. As a result, it would not be proportionate to quantify these changes for the purpose of this impact assessment.

# Prudential Regulation

## Summary of measure

113. Clause 12 ends the subsidiary status of the Prudential Regulation Authority by making the Bank the Prudential Regulation Authority.
114. Clause 13 creates the Prudential Regulation Committee (PRC) and makes it responsible for the Bank's prudential regulation functions. It sets out the membership of the new PRC, provides the Treasury with power to make recommendations to the PRC by way of a remit letter and provides that the Bank must make arrangements for operational separation as required by EU law and publish a statement, in consultation with the Treasury, describing those arrangements.
115. This clause also introduces Schedule 1, which provides further details on appointments to, removals from and procedure of the new committee. It defines the role of the Chief Executive and makes provision for budgets and annual reports.
116. Clause 14 requires the Bank to produce a report on the finances of its prudential regulation functions.
117. Clause 15 transfers the property, rights and liabilities of the PRA to the Bank to effect the PRA's de-subsidiarisation, and maintains continuity after de-subsidiarisation.
118. Clause 16 and 17 make consequential and transitional provisions in relation to Part 1 of the Bill.
119. Clause 18 enables the Treasury to highlight those aspects of government economic policy that are most relevant to the Financial Conduct Authority's objectives, regulatory principles and duties.

## Rationale

120. The Bank is tasked with delivering monetary and financial stability. The PRA, a subsidiary of the Bank, is tasked with the prudential regulation and supervision of individual firms.
121. The PRA was established as part of the new regulatory framework introduced by the Financial Services Act 2012. Now this new framework has been in place for two years, it has been possible to identify opportunities to further simplify and strengthen the governance of the PRA and the Bank. In particular, there are opportunities to maximise the synergies between micro-prudential supervision and macro-prudential policy by ending the PRA's status as a subsidiary and bringing it fully within the Bank. This will continue the process of building a unified institution, better able to exploit internal efficiencies by sharing knowledge, expertise and analysis.
122. The creation of the new Prudential Regulation Committee (PRC) will provide consistency in governance structures across the Bank's policy making functions as well as enhancing clarity about roles and responsibilities of senior members of the Bank.
123. The PRC will retain the PRA board's current independence in making rules, policies and supervisory decisions, and the PRC will have a majority of external members and clear processes for decision making. The Bill will also ensure a strong statutory role for the PRA's Chief Executive and require the bank to ensure separation between resolution and supervisory functions (in line with European requirements).
124. The statutory objectives of the PRA, which underpin its forward looking, judgement based approach to supervision, will remain unchanged. The Bank will be given a duty to ensure

appropriate structural separation and independence between the Bank's resolution functions and new prudential supervision functions. This will ensure that the strong and distinctive brand the PRA has built up is maintained.

125. The PRA will continue to be financed by a levy, which may not be used for other Bank functions. The legislation includes a requirement for the Bank to produce a separate statement of accounts for the PRA's finances to ensure there is no reduction in transparency and accountability for the use of the levy.

#### Costs

126. There will be some transitional legal and administrative costs from de-subsidiarising the PRA and moving the functions of the PRA board to the new PRC. These costs will be shared by the PRA and the Bank. However, because the PRA will retain its operational independence, and where appropriate the Bank and PRA already share systems (e.g. IT support), these transitional costs are expected to be minimal, with no material impact on the PRA levy. Hence, it would be disproportionate to attempt to quantify these impacts.
127. The PRA board's policy-making functions will transfer to the PRC. It is not expected that there will be any cost implications of prudential regulation functions being the responsibility of the PRC rather than the PRA board, and the cost of these functions will continue to be met by levy-payers.

#### Benefits

128. Bringing the PRA within the Bank will enable the Bank to further exploit synergies from bringing micro-prudential, macro-prudential and monetary policy into a single organisation. For example, the MPC, FPC and PRC all have an interest in the functioning of the housing market. The new arrangements are designed to make it easier for the PRA and the rest of the Bank to work closely together on areas of mutual interest, while maintaining the independence of the PRA.
129. Additionally, placing the PRC on the same footing as the MPC and, with our changes, the FPC, means elevating the micro-prudential role to the same level as monetary policy and macro-prudential policy, reinforcing, to Bank staff and the public, its core role in the Bank's mission.
130. Ending the PRA's subsidiary status will also enable PRC members to devote more time to micro-prudential policy and operations. For example, the PRC will no longer have to spend so much time discussing issues such as IT provision since this will be a concern for the Court.

#### Impact on firms

131. The minimal transitional costs discussed above are not expected to have a material impact on the PRA-levy and hence on the firms that pay the PRA-levy.
132. The PRA will maintain its current brand, and processes for engaging with firms. As a result, there will not be any additional burden on industry from e.g. having to change their marketing materials or systems for engaging with the PRA.
133. It is not anticipated that the remit letters will lead to any costs to business.

## Diversity

### Summary of measure

134. Clause 19 amends the Financial Services and Markets Act 2000 (FSMA). Specifically it amends the list of Regulatory Principles, which apply to both the FCA and the PRA. The Regulatory Principles will be amended to include a reference to mutuals as an example of a type of business to which the regulators should, where appropriate, exercise their functions in a way that recognises the differences in the nature and objectives of those businesses.

### Rationale

135. This amendment makes it clear that both the FCA and the PRA have to take account of the differences between mutual societies and other types of firm (where appropriate) whenever they are discharging their general objectives.

### Costs

136. No additional costs are expected to be incurred by mutuals or regulators as result of these amendments.

### Benefits

137. This amendment will clarify to the regulators that the differences they are required to take account of include differences in the kinds of business organisations adopted by firms, such as mutual societies, whenever they are discharging their general objectives. The Building Society Association (BSA), the trade body for the building societies sector, have long called for it to be set out in statute that the regulators should fully consider diversity and mutual models of ownership when they are developing regulation. Mutuals have found that the regulators often consider mutuality as an afterthought, and only realise afterwards that their proposals have a disproportionate or inappropriate effect on mutuals. The Government considers this amendment will help to clarify the extent to which regulators should take account of mutuals.

### Impact on firms

138. There will not be any direct costs or benefits on firms as a result of these changes. Mutuals and some other firms will, however, indirectly benefit as regulators will now give further consideration to the impact on these types of business when developing regulation, where appropriate.

### Risks and Assumptions

139. The amendment amends the existing list of regulatory principles and asks the regulators to take account of the differences in the nature of different kinds of business organisations, such as mutual societies when exercising their functions, where appropriate. The regulators retain the flexibility to determine how to apply this principle. The Government believes this option strikes the right balance between clarifying to the regulators' their regulatory principles in this regard, whilst also giving the regulators the discretion to apply this principle when appropriate.

## Part 2: Financial Services

### Conduct of persons working in financial services sector

#### *Senior Managers and Certification Regime*

##### Summary of measure

140. Clauses 20 to 25 and Schedule 4 will make amendments to Part 5 of the Financial Services and Markets Act 2000 (FSMA), including to the provisions inserted or amended by Part 4 of the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”), and to the 2013 Act.
141. The 2013 Act amended FSMA to provide for the introduction of the Senior Managers and Certification Regime (SM&CR) for banks, building societies, credit unions and certain investment firms which are regulated by the PRA (as well as by the Financial Conduct Authority (FCA) for conduct of business). The 2013 Act also gave the Treasury the power to extend the SM&CR to overseas banks and investment firms that operate through branches in the UK.<sup>7</sup> The SM&CR will come into operation in March 2016.
142. These clauses amend FSMA 2000 to provide for the extension of the SM&CR to other types of financial services firms – so the SM&CR will apply to all firms authorised under FSMA.
143. In addition, the clauses:
- update the newly extended SM&CR with a ‘duty of responsibility’ for all senior managers, superseding the ‘reverse burden of proof’.
  - apply rules of conduct to non-executive directors who are not senior managers; and
  - remove an SM&CR obligation to report breaches of rules of conduct to the regulator.
144. The clauses also make certain technical changes to the way the SM&CR operates:
- giving regulators greater powers to make transitional and grandfathering provision in rules;
  - allowing for variation of time limits already imposed on senior manager appointments;
  - allowing separate statements of responsibility to be sent to the PRA and FCA; and
  - correcting some technical errors in the way failure of a financial institution is defined for the purposes of the criminal offence relating to decisions causing a financial institution to fail in the Financial Services (Banking Reform) Act 2013.

##### Rationale

145. Extending the Senior Managers and Certification (SM&CR) regime to all sectors of the financial services industry will create a fairer, more consistent and rigorous regime for all sectors of the industry, enhancing personal responsibility for senior managers as well as providing a more effective and proportionate means to raise standards of conduct of key staff more broadly, supported by robust enforcement powers for the regulators. The ‘duty of responsibility’ will

---

<sup>7</sup> The necessary secondary legislation (the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015) was laid before Parliament in draft on 20 July 2015.

maintain the same tough underlying obligation on the individual to ensure that they take reasonable steps to prevent regulatory breaches.

### Impacts

146. A full, quantified impact assessment concerning these measures will be made available, subject to the verification of the Regulatory Policy Committee (RPC).

## *Consumer Credit Regime*

### Summary of measure

147. Clause 26 makes a technical change to section 26A of the Financial Services and Markets Act 2000 (FSMA) in relation to appointed representatives and persons exempt from the FSMA regime.
148. Clause 27 makes a technical change to section 27 FSMA, to ensure it is proportionate on consumer credit and consumer hire providers. Section 27 FSMA provides that an agreement made by an authorised person carrying on a regulated activity is unenforceable where it is made in consequence of something said or done by a third party in circumstances where that third party should have been, but was not authorised by the FCA.

### Rationale

149. The first clause makes it clear that a consumer credit agreement may be enforced by anyone who is able to carry on a credit related regulated activity lawfully under the Financial Services and Markets Act 2000. This includes firms that are exempt from the need to have FCA authorisation to carry out these activities (either because the firm has an individual exemption, or because it is entitled to an exemption as a member of a designated professional body). It also includes appointed representatives of authorised persons; in line with the Government's policy intent when reforming the regulation of consumer credit.
150. The second clause provides that a regulated consumer credit agreement or a regulated hire purchase agreement is only unenforceable under this section where the lender is aware that the third party, such as a credit broker, had some involvement in its creation.

### Costs

151. We do not expect firms or the FCA to incur additional costs as a result of the amendment to section 26A of FSMA.
152. The amendment to section 27 makes a technical change to this section to ensure that it is proportionate on consumer hire and consumer credit providers; we do not expect them to incur additional costs as a result of this amendment.

### Benefits

153. These measures support the effective operation of the consumer credit regime. Clause 26, which amends section 26A of FSMA, will make this section clearer for firms and the courts to interpret.
154. Clause 27 will ensure that that a consumer credit agreement is not rendered unenforceable, under section 27 as consequence of an unauthorised third party, such as credit broker, being involved in the making of a credit agreement, where the lender was not aware of the third



party's involvement. In this scenario the lender will be able to enforce their rights under the agreement and the borrower will have to meet their obligations under the agreement.

#### Impact on firms

155. We do not expect firms to incur additional costs as a result of these two clauses.
156. Firms will experience a slight benefit from the amendment to section 26A of FSMA as this will make this section clearer for firms to interpret.

#### Risks and Assumptions

157. These amendments relate specifically to the enforceability of credit agreements and consumer hire agreements under Section 26A and Section 27 of FSMA.
158. Regarding the amendment to section 26A, existing consumer protections in relation to exempt persons carrying out credit related activities are retained.
159. With regards to section 27, as before in situations where the credit broker was unauthorised and the provider was aware of the involvement of the broker the credit agreement and consumer hire agreement will be unenforceable.
160. In addition consumer protections will continue to be provided by the FCA's rules. FCA rules will continue to apply to both authorised brokers involved in the chain and the authorised lender, including the requirement to treat customers fairly and the specific requirements in the Consumer Credit Sourcebook. Firms remain under a regulatory duty – imposed by the FCA – to take reasonable steps to satisfy themselves that firms that they deal with are authorised where appropriate.
161. The Government believes this strikes the right balance between protecting consumers and placing a proportionate burden on firms who are lending to consumers.

### *Insurance Linked Securities*

#### Summary of measure

162. Clause 28 of the Bill is an enabling power for Treasury ministers to make regulations which facilitate or regulate Insurance Linked Securities (ILS) business. In particular, the power will be used to regulate the transformer vehicles which are essential to Insurance Linked Securities transactions.

#### Rationale

163. Insurance Linked Securities are an important and growing part of the global specialist reinsurance market. By enabling insurers to access the capital markets as an alternative way of reinsuring risk, this business has brought much needed additional capacity to parts of the reinsurance market. Currently, the UK does not have a regulatory framework which supports this innovation. In order for London to maintain its position as a major global insurance hub, the Government is working closely with the PRA, FCA and the London market to design and implement a competitive framework which can support ILS business in the UK.

## Impacts

164. The power provided in the Bill does not itself change the regulatory regime and so there is no impact to assess at this stage. In 2016 the Treasury plans to produce draft regulations which will be introduced under this power. When published for consultation, the draft regulations will be accompanied by an impact assessment.

# Pensions Guidance

## *Expansion of Pension Wise*

### Summary of measure

165. Clause 29 amends section 333A of Part 20A of the Financial Services and Markets Act 2000 (FSMA), which sets out the legislative framework for guidance on pensions. It inserts language extending the scope of 'pensions guidance' to include people who hold a qualifying interest in a relevant annuity. Those concepts will be specified in detail in regulations.
166. Additionally, this clause expands the definition of pensions guidance in existing section 333A(2) of the FSMA to allow Pension Wise to give guidance to someone who is a member of a scheme, which has transferred to the Pension Protection Fund (PPF), a compensation fund established in 2005, if that person still has money purchase benefits accrued under the scheme.

### Rationale

167. In April 2015 the Government introduced greater flexibility for pensions products, abolishing the effective requirement to buy an annuity. The Government established Pension Wise to ensure that those individuals who are able to access the reforms have the information and guidance they need to make considered decisions regarding their pension pot. The launch of the service has been a success, and satisfaction levels remain high.
168. The Government wants to ensure that annuity holders who are considering selling their annuity income streams also have access to information and guidance to help them make a considered decision on whether or not to assign their right to an income stream under their annuity on the secondary market. Without extending the scope of the Pension Wise service, participants in the secondary annuity market (such as annuity providers) might be able to deliver guidance but this could lead to an inconsistent level of service for consumers and it is likely that consumers would have to pay. There would also be less certainty that the guidance was impartial. As such, and because of the success of the existing Pension Wise service, the Government believes that Pension Wise should be extended to this group of people.
169. Furthermore, the current scope of Pension Wise is only able to provide guidance in respect of flexible benefits to a member, or the survivor of a member, of a pension scheme. The PPF is a compensation fund, not a pension scheme, meaning that individuals whose schemes have transferred to the PPF are not able to obtain guidance from Pension Wise in respect of their money purchase benefits. This is an unintended gap in the provision of guidance.

### Costs

170. There will be additional ongoing costs associated with operating an expanded Pension Wise service. It is expected that ongoing costs will be passed on to firms through the FCA levy. In 2015/16, the levy collected for the Pension Wise service was £39.1m.
171. The key driver for additional ongoing costs will be an increase in the number of consumers accessing the service to obtain information and guidance relevant to the secondary market in annuities. Costs associated with offering guidance to eligible Pension Protection Fund members is estimated to be negligible due to the small numbers affected.
172. In addition, there may be some transitional set-up costs for the expanded service. Set-up costs for Pension Wise have, in the past, been met from public funds.

173. There are a number of significant uncertainties that make it difficult to predict set up and ongoing costs at this early stage of development. The cost of the service will depend in part on the Government's decisions on what qualifies as a relevant annuity and what amounts to a qualifying interest. These concepts will be specified in regulations.
174. In addition, the expanded Pension Wise service will be similar in nature to the existing service, but will need to be adapted to ensure that the content and service delivery are appropriate for annuity holders. The government is doing more work to assess needs and design the expanded service, considering which channels consumers are likely to use, how long appointments should be, and the precise details of what should be discussed.
175. We anticipate that the Pension Guidance Levy would be included as part of the FCA's annual fees and levies consultation.
176. We do not envisage any significant costs to the Pensions Protection Fund as it will simply add an extra line in its broader communications to members to sign post Pension Wise. This will not incur additional administrative costs.

### Benefits

177. This measure will enable those who are interested in assigning or otherwise surrendering the right to receive regular payments under an annuity contract, their dependants and beneficiaries, to access free and impartial guidance to assist them in relation to the decision about whether to assign the rights or not. This will be a core part of a robust consumer protection package and will ensure that information and guidance is accessible to all those who need it.
178. This measure will also benefit Pension Protection Fund members who will be able to access the benefits of the Pension Wise service.

### Impact on firms

179. As noted above, any ongoing costs associated with running the expanded Pension Wise service are expected to be passed on to authorised firms through the FCA levy, though it is yet to be determined what those costs are.
180. The levy collected for the Pension Wise Service in 2015/16 was collected from those businesses that have the potential to gain from the original pensions flexibilities, namely:
  - deposit acceptors
  - insurers – life
  - portfolio managers
  - managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes
  - advisory arrangers, dealers or brokers
181. The government will be undertaking further work to establish which entities would pay for the extended service; however we expect that it will be based on a similar principle and that those entities who have the potential to benefit from the market in secondary annuities will cover the costs of the extended service. We anticipate that the FCA would include this issue as part of their fees consultation for 2017/18.

182. We do not envisage any additional costs on firms as a result of expanding Pension Wise to former members of a scheme as scheme members are in the Pension Protection Fund.

### *Mandatory Advice in the Secondary Market for Annuities*

#### Summary of measure

183. Clause 30 amends the Financial Services and Markets Act 2000 (FSMA) to require the Financial Conduct Authority (FCA) to make rules mandating certain authorised entities to check that holders of relevant annuities have received appropriate financial advice before processing the sale of the annuity income. The FCA rules will specify which authorised entities will be responsible for checking that appropriate advice has been received, and the checks that will be required.
184. The clause provides the government with delegated powers to specify in secondary legislation what a 'relevant annuity' is with respect to this requirement. This legislation is likely to include the specification of a threshold value for annuities above which the requirement to receive financial advice will apply, and the specification of how the threshold will be calculated for this purpose. The Treasury also has the power to make regulations exempting from the 'advice requirement' those individuals with relevant annuities whose financial circumstances meet certain criteria set by the Treasury.

#### Rationale

185. As set out above, the government is creating a secondary market for annuities, enabling annuity holders to sell their annuity incomes in exchange for a lump sum.
186. The government will be introducing a requirement, in effect, for individuals with higher value annuities to receive appropriate financial advice before selling that annuity income on the secondary market. This is because higher value annuities are more likely to represent the main or significant portion of an individual's retirement income. Therefore, it is more important that those individuals are aware of the value of their income stream, and informed about the options available to them. The requirement to take financial advice will ensure that those consumers are empowered with information and a recommendation tailored to their circumstances.
187. Currently, individuals considering converting or transferring a pension with safeguarded benefits are required to take independent financial advice if the value of the pension pot is above £30,000. Given the complexities that will be associated with the secondary market for annuities and the potential value of the guaranteed lifetime income individuals will be giving up, it follows that a similar advice requirement be introduced.
188. Most respondents to the government consultation, 'Creating a Secondary Annuities Market', supported mandating advice above a certain value, as higher value annuities are more likely to represent the main or significant portion of an individual's retirement income.

#### Impacts

189. The Treasury will set out in secondary legislation the threshold above which the advice requirement will apply (this will likely be based on the value of the annuity, but may also reflect the consumer's wide circumstances). Ahead of introducing secondary legislation, the government will conduct a detailed impact assessment around the costs of this requirement,

however an indicative analysis suggest it will have a total business cost of considerably less than £1m in the first years of the market.

190. A full, quantified impact assessment concerning these measures will be made available, subject to the verification of the Regulatory Policy Committee (RPC).

### *Pensions Appointed Representatives*

#### Summary of measure

191. Clause 31 amends the Pension Schemes Act 2015 to include appointed representatives of 'principal' authorised firms as eligible to advise on the conversion or transfer of safeguarded benefits, such as defined benefit pensions, and pensions with Guaranteed Annuity Rates. It will also make amendments to the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 to the same end.

#### Rationale

192. Appointed representatives make up two-thirds of the financial advice market; making this change may encourage appointed representatives to enter this market (advising on the conversion or transfer of safeguarded benefits) – boosting advisor capacity and improving choice for consumers. This change will also ensure that appointed representatives are not excluded from a growing advice market.

#### Costs

193. The measures in this Bill will not impact on costs to firms, but instead give these firms the option of entering this market should they choose to.

#### Benefits

194. As outlined above, these measures are permissive; although they could improve choice for consumers as they ensure that appointed representatives are not excluded from a growing advice market.

#### Impacts on firms

195. Making appointed representatives eligible to advise on the conversion or transfer of safeguarded benefits gives these firms the option of entering this market. As such, although it is a technical amendment, it will be welcomed by the advice community.

#### Risks and assumptions

196. It is assumed that making this change may encourage appointed representatives to enter this market (advising on the conversion or transfer of safeguarded benefits).

# Information about resolution planning

## Summary of measure

197. Clause 32 imposes a duty on the Bank to provide specified information to the Treasury for firms that the Bank considers it may need to resolve using the 'stabilisation powers' (as provided in the Banking Act 2009) in the event of their failure. This information is: the firm's resolution plan; an assessment of the systemic impact of the firm failing; an assessment of public funds implications of resolving the firm; and any other analysis the Bank considers material to these. The duty includes that the Bank should provide updated information to the Treasury if the information changes. The clause also provides the Treasury with a power to require the Bank to provide the Treasury with specific information – held by the Bank – which it considers necessary for understanding the Bank's assessment of public funds implications of a firm failing.

## Rationale

198. In the Financial Services Act 2012, the Government set out clearly the distinct roles of the Treasury and the Bank in responding to a financial crisis.
- The Bank has primary operational responsibility for financial crisis management. It is the responsible authority for resolving UK banks (and certain other financial firms) under the special resolution regime in the event they run into difficulty.
- The Chancellor and the Treasury have sole responsibility for any decision on whether and how to use public funds. This includes certain stabilisation tools that can be used as a last resort by the Chancellor and Treasury to stabilise a firm under extraordinary circumstances.
199. This division of responsibilities is working well. The Treasury and the Bank – with PRA and FCA involvement – have established strong working arrangements for coordinating where risks emerge to firms and financial stability, and ensuring adequate plans are in place to manage those risks in line with stated objectives.
200. Since the introduction of the Financial Services Act 2012, resolution policy has continued to advance domestically and internationally. The Bank Recovery and Resolution Directive has established a common approach within the EU to the recovery and resolution of banks and investment firms, and in 2014 the Financial Stability Board adopted additional guidance for effective resolution regimes, including relating to information sharing for resolution purposes. Domestic reforms that the Government has implemented since 2012 have also significantly reduced the potential public funds risks associated with firm failure.
201. There are opportunities to update and formalise the way the Bank and the Treasury share information to ensure it continues to reflect best practice managing firm failure, as well as the effective working practices employed by the Bank and the Treasury.
202. The measures proposed are in line with the recommendations of the Treasury Select Committee's 2011 report, *Accountability of the Bank of England*, which highlighted the importance of the Bank and the Treasury engaging early where public funds may be at risk from a possible financial crisis.<sup>8</sup> The measures in the Bill would require the Bank to provide

---

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/874/87402.htm>

information that is crucial to understanding and managing any public funds risk associated with the failure of a specific firm.

#### Costs

203. The Bank may incur some transitional costs adapting its information sharing processes to comply with the new legal obligations. It will also incur small additional ongoing costs, from sharing information more frequently, and ensuring it is collated in an appropriate format. These costs are expected to be negligible increases that it would not be proportionate to quantify.

#### Benefits

204. These changes will ensure that the Chancellor and the Treasury are able to better understand any risks to public funds from the failure of financial firms now and in future, supporting coordination between the Treasury and the Bank in resolution planning and during periods of heightened risk, and supporting the Chancellor and the Treasury in making decisions involving public funds.
205. The changes will also formalise and protect the strong working relationship that exists between the Bank and the Treasury. This will preserve these arrangements, with unquantifiable future benefit to financial stability and the wider economy.



## Part 3: Miscellaneous and General

### Repeal of the Financial Services and Markets Act consequential amendments order

#### Summary of measure

206. Clause 33 is a technical amendment which in effect cancels the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001.

#### Rationale

207. This amendment is being made to restore legal certainty in relation to the legislation which was amended by the 2001 Order.

#### Impact

208. There will be no impacts as a result of this measure.

# Banknotes in Scotland and Northern Ireland

## Summary of measure

209. Clause 34 allows the Treasury to make regulations authorising a new bank to issue banknotes in Scotland or Northern Ireland in place of an existing issuer, where both the new bank and the existing issuer are in the same group. The regulations must end the authorisation of the existing issuer to issue banknotes. Regulations may only be made with the consent of the Bank of England, as the body that provides regulatory oversight of this regime.

## Rationale

210. The inflexibility of the current legislation can cause problems when a bank wants to restructure its operations. Currently, the permission to issue banknotes cannot be moved to a different legal entity, even if they are in the same group structure.

## Costs

211. No additional costs are expected to be incurred by the Treasury, Bank of England or those banking groups who are currently authorised to issue banknotes as a result of this legislation.

## Benefits

212. Greater flexibility would enable the continuation of banknote issuance when a bank wants to restructure its operations.

## Impact on firms

213. In cases where the Treasury uses this power, it will allow banking groups to continue to issue banknotes in Scotland and Northern Ireland, in accordance with long standing tradition, in circumstances where they may need to restructure their operations.

## Summary

### Costs

214. Changes to the Bank of England and PRA, and to information about resolution planning, are expected to result in minimal transitional and ongoing costs, falling on the Bank of England and the PRA.
215. It is likely that there will be costs associated with the expansion of the Pension Wise service. More work is being done to design the extended service, and costs are to be determined. This cost will be passed on to certain firms via the FCA levy.
216. There will be no additional costs for the Pensions Protection Fund.
217. The requirement for remit letters, consideration of diversity by regulators, changes to the consumer credit regime, power to make regulations which facilitate Insurance Linked Securities business and changes to bank notes are not expected to result in additional costs.

### Benefits

218. Changes to the Bank of England and PRA are expected to further strengthen the governance, accountability and transparency of the Bank and PRA, and to support effective decision-making. As the Bank and PRA play a critical role maintaining stable macro-economic conditions, this could have an unquantified positive impact on the wider UK economy.
219. The amendment of the regulatory principles of the FCA and PRA will help clarify the extent to which regulators, in discharging their general objectives, should take account of differences in the kinds of business organisations adopted by firms, such as mutual societies.
220. The changes to the consumer credit regime will ensure an agreement is not unenforceable due to an unauthorised third party being involved in the credit agreement when the lender was not aware. Firms and courts will also experience a slight benefit from the changes as the measures will make the relevant section of existing legislation clearer and easier to interpret.
221. Extension of the Pension Wise service would benefit those interested in assigning the right to receive regular payments under an annuity contract, their dependents and beneficiaries, by enabling them to access free and impartial guidance to help them make a decision about whether to assign or not. It will also benefit members of the Pension Protection Fund who will be able to access the Pension Wise service.
222. The ability for appointed representatives to provide advice to individuals that have pensions with safeguarded benefits will increase consumer choice and ensure appointed representatives can access a growing market.
223. Changes to information on bank resolution will ensure that the Chancellor and the Treasury are better able to understand any risks to public funds from the failure of financial firms, and will preserve for the future the effective arrangements that exists between the Bank and the Treasury for managing bank resolution, for the unquantifiable future benefit to financial stability and the wider economy.
224. Changes to bank notes will increase the flexibility for banks to restructure their operations, whilst preserving the long-standing tradition of certain banks in Scotland and Northern Ireland issuing their own notes.

### Impacts on firms

225. Changes to the Bank of England are expected to result in no direct impacts on firms. Any subsequent changes to the MPC schedule may have indirect impact on firms that participate in the SONIA meeting-to-meeting swap market. Market intelligence suggests that a minority of those who have taken positions would be impacted.
226. Changes to the status of the PRA are expected to result in no direct impacts on firms. The PRA will retain its existing brand, objectives, and funding arrangements. Changes to information on bank resolution are expected to have no impact on firms.
227. The amendment of the regulatory principles of the FCA and PRA will benefit mutuals and some other types of businesses indirectly as regulators will now give further consideration to the impact on these types of business when developing regulation, where appropriate.
228. The amendments to the consumer credit regime make the relevant section of existing legislation clearer and easier to interpret, to the benefit of firms.
229. It is expected that costs for an expanded Pension Wise service would be incorporated into the existing framework for recovering the costs of pensions guidance through the FCA levy.
230. The ability for appointed representatives to provide advice to individuals that have pensions with safeguarded benefits will enable firms offering these services to access this market.
231. In cases where the Treasury uses power to make regulations authorising a new bank to issue banknotes, this would allow banking groups to continue to issue banknotes in circumstances where they may need to restructure their operations.

### Assumptions and risks

232. Key assumptions in this impact assessment are that (i) the improvements to quality of transparency, accountability and governance can further improve the Bank's decision making; (ii) changes in the internal relationships of UK authorities will not change the relationships of those authorities with firms; and that (iii) enabling appointed representatives to advise on the conversion or transfer of pensions with safeguarded benefits may encourage appointed representatives to enter this market.
233. Assessments of the potential for improvements in the quality of governance and decision-making that would result from the measures in the Bill have been informed by the experiences of the Bank, the PRA and the Treasury operating the new regulatory system. They have also been informed by the findings of Governor Warsh's review into the practices and procedures of the Monetary Policy Committee, and by considering international best practice. The assessments of transitional and ongoing costs and benefits to the Bank and PRA have been made in consultation with the Bank.

## Wider impacts

### Equality

234. The Government has considered its obligations under the Equality Act 2010 and does not believe these measures will impact upon discrimination or other prohibited acts, equality of opportunity or good relations towards people who share relevant protected characteristics and others under that Act.
235. All UK residents are affected to a greater or lesser extent by Bank of England governance, banknote issuance, misconduct in the financial services industry, consumer credit regime, Insurance Linked Securities, and bank resolution, and will benefit in the same way from the measures in the Bill.
236. The expansion to Pension Wise will impact on those who have already retired and receive income from an annuity. For this group, it will ensure all those who are interested in selling their annuity will have access to free and impartial guidance.

### SMEs

237. All UK firms are affected to a lesser or greater extent by the impact that monetary, macro-prudential and micro-prudential policy has on the wider economy.
238. Changes to Bank of England, to the consumer credit regime, to Insurance Linked Securities, to bank resolution and to banknotes are expected to have no disproportionate impact on SMEs.
239. The PRA's objectives, judgment-based approach to regulation and relationship with firms will not be affected by these reforms. As a result, there will be no impact on SMEs from the de-subsidiarisation of the PRA.

### Competition

240. The PRA has a secondary objective to facilitate effective competition. The PRA's statutory objectives will be unchanged and its relationship with firms is expected to be unaffected by these reforms, and as a result there will be no impact on competition from the de-subsidiarisation of the PRA. In addition, the government's Productivity Plan<sup>9</sup> announced that remit letters for the PRA and FCA will outline the government's priorities for increasing competition and innovation in financial services, for ensuring that the UK remains an attractive location for financial services businesses, and for securing London's role as the leading international financial centre. The PRA remit letter will be provided for in this Bill.
241. The powers to regulate Insurance Linked Securities should help to increase competition in the reinsurance sector.
242. By making appointed representatives eligible to advise on pension transactions involving safeguarded benefits, this measure could improve competition in this advice market – offering greater choice to consumers.
243. Expansion of Pension Wise is expected to have no disproportionate impact on competition.
244. Changes to the Bank of England, consumer credit regime, banknotes, and bank resolution are expected to have no impact on competition.

---

<sup>9</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443898/Productivity\\_Plan\\_web.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443898/Productivity_Plan_web.pdf)

Environmental, social and sustainable developmental impacts

245. The Government does not anticipate any impact upon greenhouse gases, wider environmental issues, health and well-being, human rights, the justice system, rural proofing and sustainable development.

## **Post legislative scrutiny**

246. If passed, the Bank of England and Financial Services Bill will be subject to post-legislative scrutiny, at which point the actual impact of the measures in the Bill will be considered against the expected impacts described in this impact assessment.
247. Post-legislative scrutiny will take place three to five years after the commencement of the legislation, in line with normal practice.