

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (RING-FENCED BODIES
AND CORE ACTIVITIES) (AMENDMENT) ORDER 2018

2018 No. 897

1. Introduction

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

2. Purpose of the instrument

2.1 To align the requirements between the UK’s ring-fencing legislation and the financial sanctions regimes that would otherwise conflict. This will ensure that banking groups can maintain accounts held by sanctioned account holders in their existing locations whilst still complying with ring-fencing legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

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

4. Legislative Context

4.1 Section 4 of the Financial Services (Banking Reform) Act 2013 (“FSBRA”) inserts a new Part 9B into the Financial Services and Markets Act 2000 (“FSMA”) providing for ring-fencing. Section 142A of FSBRA defines a ring-fenced body as a UK institution which carries on one or more core activities. Section 142B of FSBRA provides for a single core activity: the regulated activity of accepting deposits. HM Treasury has power to exempt classes of UK institutions from the definition of ring-fenced body and also to provide for exemptions to what is a core activity. HM Treasury relied on this power to make the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (“the CAO”). Part 2 of the CAO provides for the circumstances in which accepting a deposit is not a core activity. This Order amends the definition of a “core deposit”.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

5.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

Context

- 7.1 Following the financial crisis of 2007-09 a central element of the Government’s programme of structural reform of the UK banking system has been the ring-fencing of retail from wholesale/investment banking. Ring-fencing was a key recommendation of the Independent Commission on Banking chaired by Sir John Vickers. Its final report was released in 2011.
- 7.2 The framework for ring-fencing was set out in FSBRA which provides for the separation of core activities (deposit taking) which must be carried out by ring-fenced bodies from excluded activities. The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 defines what activities ring-fenced bodies may not do. The CAO defines which banks are not ring-fenced bodies. It also defines “core deposit” and provides that if a deposit is not a core deposit, then the activity of accepting it is not a core activity.

The statutory instrument

- 7.3 As part of restructuring to comply with the ring-fencing regime, banking groups must move some accounts from one legal entity to another. For example, they may need to move a retail depositor’s account into a new ring-fenced bank. However, some of the holders of those bank accounts are subject to financial sanctions, which (amongst other matters) prohibit the movement of any funds that the said account holders own, hold or control. This conflict with financial sanctions regimes means that, at present, some banking groups are unable to comply fully with the ring-fencing legislation.
- 7.4 This Order resolves the otherwise conflicting requirements between the ring-fencing regime and financial sanctions regimes by amending the CAO. The Order amends the definition of a “core deposit” so that accounts whose account holders are or have been subject to financial sanctions legislation, as defined in section 143(4) of the Policing and Crime Act 2017, at any time in the last six months are no longer included in the definition. This means that banking groups will not be required to move retail accounts whose account holders are subject to financial sanctions into ring-fenced banks. Banking groups will have six months from the removal of financial sanctions to move retail accounts of those account holders previously subject to financial sanctions inside the ring-fence. The Order will ensure that banking groups which cannot otherwise comply fully with the ring-fencing regime, because they are unable to move accounts of account holders subject to financial sanctions, are not deemed non-compliant under the ring-fencing legislation.

Consolidation

- 7.5 There are no plans to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 No formal consultation exercise has been carried out in relation to this instrument, however, the instrument was subject to a short technical review with affected banking groups, the Prudential Regulation Authority and the Financial Conduct Authority.

9. Guidance

- 9.1 There are no plans to publish guidance. However, HM Treasury and the regulators referred to above are engaging with all the affected banks on an individual basis to review their implementation plans.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible, because this instrument does not impose substantive requirements itself.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 Section 8 of FSBRA requires HM Treasury to establish an independent review of the operation of ring-fencing legislation before 2021 (within two years of the ring-fencing rules fully coming into force). This instrument will be reviewed alongside the rest of the ring-fencing regime.

13. Contact

- 13.1 Adam Jarrold at HM Treasury (Telephone: 020 7270 1415 or email: Adam.Jarrold@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.