These notes refer to the Financial Services Act 2012 (c.21) which received Royal Assent on 19 December 2012

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 4 – Collaboration between Treasury and Bank of England, Fca Or Pra

Section 58: Duty of Bank to notify Treasury of possible need for public funds

511. *Subsection (1)* requires the Bank of England to notify the Treasury where it appears to the Bank that there is a material risk of circumstances arising in which public funds may be needed. *Section 65* provides for provision as to what the Treasury and the Bank regard as a "material risk" for these purposes to be included in a memorandum prepared by the Treasury, Bank and PRA.

512. The duty arises in three specified cases: where the Treasury or Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance to or in respect of a financial institution or institutions (*subsection (3)*); where it is reasonably to be expected that a power under Parts 1 to 3 of the Banking Act 2009 may be exercised and that the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of that power (*subsection (4)*); or where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request a loan from the National Loans Fund or other financial assistance from the Treasury in order to meet expenses of the Scheme (*subsection (5)*).

Section 59: Duty of Bank to notify Treasury of changes

513. Where the Bank has given a notification under *section 58* and there is a substantial change in the matters which gave rise to the notification, the Bank must notify the Treasury. The Bank must also notify the Treasury where the Bank is of the opinion that the risk to which the notification relates has ceased.

Section 60: Circumstances in which Treasury power of direction exercisable

514. *Section 61* confers a power of direction on the Treasury. *Section 60* sets out preconditions for the exercise of that power. First, *subsection (2)* provides that the power is exercisable by reference to a public funds notification unless the Bank has provided a notification that the risk to which the notification relates has ceased. Second, *subsection (3)* provides that the power is exercisable by reference to the provision by the Treasury or Secretary of State of qualifying financial assistance (as described in *subsection (5))* which has not been recovered. *Subsection (6)* sets out certain cases in which qualifying financial assistance is to be taken to have been recovered but it is not an exhaustive list and therefore does not address all possible kinds of assistance.

Section 61: Treasury power of direction

515. *Section 61*confers on the Treasury a power to give a direction to the Bank relating to the provision by the Bank of financial assistance to financial institutions, the exercise by the Bank of any of the stabilisation powers (as defined by section 1(4) of the Banking Act 2009) or the exercise of the Bank's powers under Part 3 of the Banking Act 2009 (the

bank administration regime). The power must have become exercisable as described in *section 60*. A direction may not be given in relation to the provision by the Bank of ordinary market assistance. In general, ordinary market assistance means the assistance provided by the Bank under its normal published frameworks. The Treasury may only give a direction if the direction is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom, or (where the power of direction is exercisable by virtue of qualifying financial assistance having been provided) if the direction is necessary to protect the public interest where the qualifying financial assistance was provided for the purpose of resolving or reducing a serious threat to the stability of the financial system in the United Kingdom.

Section 62: Directions under section 61: supplementary provisions

516. *Section 62*deals with supplementary matters. *Subsection (2)* requires the Treasury to consult the Bank before giving a direction. *Subsection (3)* provides that the Bank must give a report (or reports) to the Treasury on how it is complying or (where the direction relates to action to be taken in the future) intends to comply with the direction. *Subsection (6)* provides that a direction remains in force even if the public funds notification by reference to which it was made has been superseded. *Subsection (7)* provides that a direction can remain in force even if the qualifying financial assistance by reference to which it was made has been recovered.

Section 63: Duty to lay direction etc before Parliament

517. *Section 63* requires the Treasury to lay before Parliament a copy of a direction given under section 61 any report provided by the Bank under section 62 and any notice of the revocation of a direction before Parliament. The Treasury is not required to do so where the Treasury consider that the publication would be against the public interest. Where the Treasury reach such a view, they must from time to time review that decision and, if they decide that publication is no longer against the public interest, the Treasury must comply with the duty to publish.

Section 64: Duty of Treasury, Bank and PRA to coordinate discharge of functions

518. *Section 64* requires the Treasury (on the one hand) and the Bank of England and the PRA (on the other) to coordinate the discharge of their respective relevant functions so far as they relate to the stability of the UK financial system and affect the public interest. *Subsection (2)* requires the authorities to which the duty applies to have regard in particular to the importance of coordination where the Bank has given, or is considering whether to give, a public funds notification.

Section 65: Memorandum of understanding: crisis management

519. *Subsection (1)* requires the Treasury on the one hand and the Bank of England and the PRA on the other to prepare and maintain a memorandum describing how they will comply with their duties under section 64. *Subsection (2)* specifies that the memorandum must address: what the Treasury and the Bank regard as a material risk for the purposes of section 58(1); the steps to be taken when the Bank has given a public funds notification under section 58(1) or 59(2); the respective roles of the Treasury, the Bank and the PRA in relation to the taking of steps to resolve or reduce threats to the stability of the UK financial system how the Treasury, the Bank and the PRA will cooperate in fulfilling those roles; the use by the Treasury of their powers under *section 61*; matters connected with the Bank's compliance with a direction from the Treasury; and the obtaining and sharing of information. In addition, the Treasury, Bank and PRA may agree to include in the memorandum other matters relating to financial stability or the regulation of financial services and which affect the public interest. For example, the memorandum could include provisions about the regulation of a financial institution which might seriously affect diplomatic relations between the United Kingdom and a foreign country.

520. The memorandum is to relate to how the Treasury, the PRA and the Bank are to coordinate their functions. However, *subsection (4)* provides that the memorandum need not relate to the relationship between the PRA and the Bank and so need not contain provision relating to, for example, how the PRA and Bank will share information or keep each other informed about matters of common interest.

521. *Subsection (5)* enables the parties to the memorandum to include in the memorandum provisions which relate to the functions of certain other persons, where that person consents. *Subsection (6)* specifies the persons whose functions may be included in the memorandum (the FCA, the scheme manager of the FSCS and any other body exercising functions in relation to the regulation of financial services or the stability of the UK financial system). This means, for example, that if the situation being managed under the provisions of the memorandum involves the payment of compensation from the FSCS, the memorandum could set out how the scheme manager of the FSCS would coordinate with the PRA, the Bank and the Treasury in those circumstances.

522. *Subsection (7)* requires the Treasury to publish and to lay before Parliament a copy of the memorandum.

Section 66: Memorandum of understanding: international organisations

523. *Subsection (1)* requires the Treasury, the Bank of England, the FCA and the PRA to prepare and maintain a memorandum describing how they will coordinate the exercise of relevant functions so far as they relate to membership of, or relations with, international organisations. “Relevant functions” for these purposes are defined in section 66(3).

524. *Subsection (4)* sets out the purpose of the memorandum. *Subsection (5)* sets out the matters which must be included in the memorandum. These include the requirement that, to the extent appropriate, the UK authorities agree consistent objectives in relation to matters of common interest and the requirement that the memorandum must provide for a committee to coordinate to exercise by the UK authorities of the functions which are subject to the memorandum. A representative of the Treasury is to chair the Committee. *Subsection (8)* requires the Treasury to publish and to lay before Parliament a copy of the memorandum.

Section 67: Interpretation of Part 4

525. *Subsection (3)* defines “financial assistance” for the purposes of Part 4 of the Act.

526. *Subsection (4)* enables the Treasury by order to provide that a specified activity or transaction, or class of activity or transaction, is or is not to be treated as financial assistance. This will enable the Treasury to clarify how a particular activity or transaction, or class of activity or transaction, is to be treated.