
STATUTORY INSTRUMENTS

2016 No. 1032

**The Financial Services and Markets Act 2000
(Ring-fenced Bodies, Core Activities, Excluded
Activities and Prohibitions) (Amendment) Order 2016**

Amendments to the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

3.—(1) The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014⁽¹⁾ is amended as follows.

(2) In article 1—

(a) after the definition of “capital market arrangement” insert—

““charity” has the meaning given in section 1 of the Charities Act 2011⁽²⁾, section 1 of the Charities Act (Northern Ireland) 2008⁽³⁾ or section 106 of the Charities and Trustee Investment (Scotland) Act 2005⁽⁴⁾;

“CIO” means a body constituted and registered as a charitable incorporated organisation under Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, or as a Scottish charitable incorporated organisation under Part 1 of the Charities and Trustee Investment (Scotland) Act 2005;”;

(b) after the definition of “conduit vehicle” insert—

““core deposit” has the meaning given in article 2(2) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014;”;

(c) in the definition of “global systemically important insurer” at the end insert “, and any subsidiary undertaking of any such undertaking provided that the subsidiary undertaking is also an insurance undertaking, third country insurance undertaking, reinsurance undertaking or third country reinsurance undertaking”;

(d) in the definition of “liquidity risk” for “the ring-fenced body” substitute “the undertaking”;

(e) in the definition of “payment exposures”, in paragraph (d), omit “also”;

(f) after the definition of “Regulated Activities Order 2001” insert—

““related undertaking” means any subsidiary undertaking of a parent undertaking where the parent undertaking is subject to rules made by the appropriate regulator pursuant to section 192JA of the Act, but does not include a subsidiary undertaking that is a ring-fenced body;”;

(g) after the definition of “UCITS” insert—

““UK deposit-taker” means a body corporate incorporated in the United Kingdom which carries on the regulated activity of accepting deposits in relation to which it has a permission under Part 4A of the 2000 Act;”.

(1) S.I. 2014/2080.
(2) 2011 c.25.
(3) 2008 c.12 (N.I.).
(4) 2005 asp 10.

- (3) In article 3(2)—
- (a) in sub-paragraph (b)—
- (i) after “assets, created by,” omit “or otherwise originated by,”;
- (ii) in paragraph (ii)—
- (aa) omit “or otherwise originated”;
- (bb) after “any of its subsidiary undertakings” insert “(provided that the assets concerned are assets that the ring-fenced body itself could hold)”;
- (cc) at the end omit “or”;
- (iii) at the end of paragraph (iii) insert “, or”;
- (iv) after paragraph (iii) insert—
- “*(iv)* a member of the group of companies to which the ring-fenced body (“A”) belongs (other than one falling within paragraph (i), (ii) or (iii)) provided that—
- (aa) the assets concerned were created no later than two years before A became a ring-fenced body,
- (bb) the assets were transferred to the structured finance vehicle before A became a ring-fenced body, and
- (cc) the assets concerned are assets that A itself could hold;”;
- (b) in sub-paragraph (f) after “the provision of services to” insert “, or in connection with the transfer of assets to,”;
- (c) after sub-paragraph (g) insert—
- “(ga) assets, or an interest in assets, that—
- (i) were created by, or comprised of claims against, a company outside the group of companies to which the ring-fenced body (“B”) belongs,
- (ii) were transferred to the structured finance vehicle from—
- (aa) B,
- (bb) a subsidiary undertaking of B, or
- (cc) any other member of the group of companies to which B belongs,
- (iii) were acquired by the company from which the transfer was made no later than two years before B became a ring-fenced body,
- (iv) in the case of assets transferred by a company falling within paragraph (ii) (cc), were transferred to the structured finance vehicle before B became a ring-fenced body, and
- (v) are assets that B itself could hold;
- (gb) assets that—
- (i) have at any time been transferred to the ring-fenced body pursuant to a ring-fencing transfer scheme within the meaning of section 106B(5) of the Act, and
- (ii) are assets that the ring-fenced body itself could hold;
- (gc) assets, or an interest in assets, that were—
- (i) created or owned at any time by—

(5) Section 106B was inserted into the Financial Services and Markets Act 2000 by paragraph 5 of Schedule 1 to the Financial Services (Banking Reform) Act 2013 (c.33).

- (aa) a company (“C”) in respect of which an order has been made under the Banking (Special Provisions) Act 2008⁽⁶⁾, or
 - (bb) a subsidiary undertaking of C (“D”), and
 - (ii) transferred to the structured finance vehicle from C or D pursuant to any agreement for that purpose, whether directly or through an intermediary—
 - (aa) at a time when all of the shares in C were owned by a nominee of the Treasury or a company wholly owned by the Treasury,
 - (bb) in the case of assets created or owned by D, at a time when D was a subsidiary undertaking of C,
 - (cc) in connection with a capital market arrangement to which the structured finance vehicle was a party, and
 - (dd) where the capital market arrangement referred to in sub-paragraph (cc) was established to finance, wholly or in part, the consideration payable to C or D in connection with the transfer of the relevant assets;
 - (gd) assets, or an interest in assets, that—
 - (i) have at any time been subject to any transfer effected pursuant to Part 1 of the Banking Act 2009⁽⁷⁾, and
 - (ii) are assets that the ring-fenced body itself could hold;”;
 - (d) in sub-paragraph (h) for “(a) to (g)” substitute “(a) to (gd)”.
- (4) In article 6—
- (a) in paragraph (1)—
 - (i) after sub-paragraph (b) insert—
 - “(ba) another ring-fenced body within the same group as the ring-fenced body,
 - (bb) a related undertaking within the same group as the ring-fenced body;”;
 - (ii) in sub-paragraph (e) after “(b),” insert “(ba), (bb),”;
 - (b) after paragraph (4)(d) insert—
 - “(e) acquiring shares in—
 - (i) the operator of an inter-bank payment system within the meaning of section 182 of the Banking Act 2009 where ownership of such shares is a condition of participation in the inter-bank payment system operated by that operator;
 - (ii) a company whose principal business is the provision of electronically transmitted secure financial messaging services; or
 - (iii) a recognised clearing house⁽⁸⁾, an EEA central counterparty⁽⁹⁾ or a third country central counterparty⁽¹⁰⁾ where ownership of such shares is a condition of membership of any such body;

⁽⁶⁾ 2008 c.2.

⁽⁷⁾ 2009 c.1.

⁽⁸⁾ Defined in section 285(1)(b) of the Financial Services and Markets Act 2000. Paragraphs (b) to (d) of section 285(1) were substituted for the original paragraphs by [S.I.2013/504](#).

⁽⁹⁾ Defined in section 285(1)(c) of the Financial Services and Markets Act 2000.

⁽¹⁰⁾ Defined in section 285(1)(d) of the Financial Services and Markets Act 2000.

- (f) dealing in investments as principal in order to comply with an obligation imposed upon it by a recognised clearing house or an EEA central counterparty pursuant to Article 37 of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁽¹¹⁾.”;
- (c) in paragraph (5) for “(b) or (d)” substitute “(b), (d), (e) or (f)”;
- (d) after paragraph (6) insert—
- “(7) A ring-fenced body does not carry on an excluded activity by dealing in investments as principal when acting as trustee for or on behalf of any individual, minor, charity or CIO.”.
- (5) In article 7, after paragraph (2) insert—
- “(3) Subject to the condition in paragraph (4) being met, a ring-fenced body does not carry on an excluded activity by selling any legal or beneficial interest in—
- (a) investments acquired from a sponsored structured finance vehicle of the ring-fenced body, or
- (b) instruments creating or acknowledging indebtedness issued by a sponsored structured finance vehicle of the ring-fenced body.
- (4) The condition referred to in paragraph (3) is that the relevant investments or instruments must relate to assets that fall within the description set out in article 3(2)(gc).”.
- (6) In article 12—
- (a) in paragraph (1)—
- (i) for “position risk” in each place it appears, substitute “relevant risk”;
- (ii) in sub-paragraph (d) for “at the date on which the transaction is entered into” substitute “on the material date”;
- (iii) in sub-paragraph (e) for “at the time the transaction is entered into” substitute “on the material date”;
- (b) in paragraph (2)—
- (i) for sub-paragraph (a) substitute—
- “(a) subject to sub-paragraph (aa) the relevant risk requirement is the sum of the own funds requirements for—
- (i) position risk calculated in accordance with Chapter 2 of Title IV of Part Three of the prudential requirements regulation;
- (ii) foreign-exchange risk calculated in accordance with Chapter 3 of Title IV of Part Three of the prudential requirements regulation; and
- (iii) commodities risk calculated in accordance with Chapter 4 of Title IV of Part Three of the prudential requirements regulation;
- (aa) the calculations referred to in sub-paragraph (a) are to be carried out as if the positions associated with the investments referred to in the relevant Chapters are all held in the trading book of the ring-fenced body;”;
- (ii) for sub-paragraph (d) substitute—
- “(d) the material date is to be determined as follows—

(11) OJ No L 201, 27.7.2012, p1.

- (i) in the case of a transaction entered into by a ring-fenced body, the material date is the date upon which the transaction is entered into; and
 - (ii) in the case of a transaction entered into by a body (“A”) before A became a ring-fenced body, the material date is the date upon which A became a ring-fenced body.”.
- (7) In article 14—
 - (a) in paragraph (1) for “19” substitute “19B”;
 - (b) in paragraph (2)—
 - (i) after sub-paragraph (b) insert—
 - “(ba) another ring-fenced body within the same group as the ring-fenced body,
 - (bb) a related undertaking within the same group as the ring-fenced body,”;
 - (ii) in sub-paragraph (e) after “(b),” insert “(ba), (bb),”;
 - (c) after paragraph (3) insert—

“(3A) A ring-fenced body may incur a financial institution exposure if the purpose of the transaction giving rise to the exposure is to allow the ring-fenced body to hold liquid assets in order to meet the general requirement set out in Article 412 of the prudential requirements regulation and further specified in delegated acts adopted by the European Commission under Article 460 of that regulation.”;
 - (d) in paragraph (4)—
 - (i) omit “or” at the end of sub-paragraph (b)(i);
 - (ii) after sub-paragraph (b)(ii) insert—
 - “(iii) the relevant financial institution entering into any guarantee, bond, contract of indemnity or otherwise giving security or becoming responsible for any pension liability of the ring-fenced body, or
 - (iv) a shared liability arrangement within the meaning of regulation 1 of the Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015(12) provided that either—
 - (aa) the shared liability arrangement is permitted by virtue of regulation 2(8) or (9) of those Regulations, or
 - (bb) the exposure ceases to be incurred on or after the specified date referred to in regulation 2(10) of those Regulations.”.
- (8) For article 16 substitute—

“Financial institutions exposure: securitisation and covered bonds

- 16.** A ring-fenced body may incur a financial institution exposure to—

 - (a) a sponsored structured finance vehicle of that ring-fenced body; or
 - (b) a covered bond vehicle which is a subsidiary of a ring-fenced body or a building society.”.
- (9) In article 19—
 - (a) in paragraph (2)(b)(i) omit “or” at the end;

- (b) in paragraph (2)(b)(ii) omit “or” at the end;
 - (c) after paragraph (2)(b)(ii) insert—
 - “(iii) services as a trustee or agent in connection with a syndicated invoice discounting or factoring arrangement pursuant to which payment is advanced to any entity which is not a relevant financial institution, or
 - (iv) consultative services, including in particular the provision of business or financial advice; or”;
 - (d) after paragraph (2)(c)(iv) insert—
 - “(v) the participation by the ring-fenced body in any syndicated invoice discounting or factoring arrangement pursuant to which payment is advanced to any entity which is not a relevant financial institution.”;
 - (e) after paragraph (6) insert—
 - “(7) A ring-fenced body may incur a financial institution exposure that arises where the ring-fenced body is acting as trustee for or on behalf of any individual or charity.”.
- (10) After article 19 insert—

“Financial institution exposures: financing of infrastructure projects

19A.—(1) A ring-fenced body may incur a financial institution exposure to a relevant financial institution (“A”) where—

- (a) A is an infrastructure special purpose vehicle; and
 - (b) the exposure arises from financial assistance given by the ring-fenced body to A.
- (2) For the purposes of this article—
- (a) “financial assistance” means—
 - (i) loans,
 - (ii) guarantees or indemnities, or
 - (iii) the purchase of bonds or notes.
 - (b) “infrastructure special purpose vehicle” means an entity the only business of which (apart from incidental activities) is financing the acquisition, design, construction, conversion, improvement, operation and repair of infrastructure within the EEA.
 - (c) “infrastructure” means—
 - (i) housing,
 - (ii) water, electricity, gas, telecommunications, sewerage or other services,
 - (iii) railway facilities (including rolling stock), roads or other transport facilities,
 - (iv) health or educational facilities, and
 - (v) court or prison facilities.

Financial institution exposures: changes in status of counterparties

19B.—(1) Subject to paragraph (2), where a ring-fenced body incurs a financial institution exposure as a result of a counterparty to a transaction becoming a relevant financial institution at any time after the date upon which the transaction was entered into, that exposure is permitted for a period of twelve months commencing on the date upon which the counterparty became a relevant financial institution.

(2) A ring-fenced body is not permitted to incur the financial institution exposure by virtue of paragraph (1) where, at the time the transaction was entered into, the ring-fenced body knew, or could reasonably be expected to have known, that the counterparty would become a relevant financial institution.”.