

# Financial Services Bulletin

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## Section one – news

### Insurance Industry Working Group (IIWG) report '*Vision for the UK insurance industry in 2020*'

The Insurance Industry Working Group (IIWG) has published its report into the medium and long-term challenges facing the insurance industry.

The group was set up in October 2008 to look at the challenges and opportunities facing the UK Insurance Industry. It is co-chaired by Chancellor of the Exchequer, Alistair Darling and Andrew Moss, Group Chief Executive of Aviva and includes leading figures from across the insurance sector. Its findings will be reported to the Chancellor's High-Level Group on City Competitiveness, which will meet later this year.

The report sets out a Vision for the UK insurance industry in 2020 as the leading global insurance centre with an unsurpassed reputation for excellence, a deep and constructive relationship with its customers and a close and effective partnership with Government. The report recommends:

- Action from the insurance industry, Government and the FSA to increase customer confidence and trust through improving financial education and considering further steps to improve transparency, simplicity and access for consumers.
- A partnership between the insurance industry and Government to better manage risk in society and to explore options to increase savings and protection provision. For example Government and industry should consider sharing data and research findings that can help efforts to reduce the likely impact of different risks, such as flood risk and crime.
- Work to help consumers manage financial distress, building on the Government's financial capability initiatives. The insurance industry should work with Government to assess the scope for a greater industry role, where it is commercially viable, such as helping people with the need for a retirement income and help with long term care.
- Encouraging capital flows into the UK insurance industry by ensuring its competitive position in the global marketplace is maintained and enhanced.



HM TREASURY

## Money Guidance and a new consumer education authority

In April the Government and the Financial Services Authority launched the £12m Money Guidance pathfinder service in the north-west and north-east of England. The service, known as *Moneymadeclear*, provides impartial information and guidance on a wide range of personal finance issues tailored to the individual's needs and circumstances. It is available through the web, over the phone or face to face across the north-west and north-east.

In the Reforming Financial Markets white paper published in July, the Government announced that it intends to roll-out the Money Guidance service across the UK from spring 2010 subject to interim evaluation findings from the pathfinder indicating that the service can be effective.

Alongside this the white paper sets out Government plans to bring forward primary legislation requiring the FSA to establish an independent consumer education and information authority. This new authority will take the lead on consumer education and information provision relating to personal finance including delivery of the Money Guidance service.

## Insolvency law regime updated

Some consequential changes to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 have been made to reflect changes in insolvency law. These are primarily technical amendments which have been made to strengthen protections to designated systems and central banks in the event of counterparty default.

HM Treasury made these regulations on 20 July 2009. They come into force on 1 October 2009.

More details can be found at:

[http://www.opsi.gov.uk/si/si2009/em/uksiem\\_20091972\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20091972_en.pdf)

## The UK implementation of the Payment Services Directive (PSD)

The EU Payment Services Directive (PSD) aims to harmonise conduct of business rules for all providers of electronic payment services across the EU, and creates a tiered prudential authorization regime for non-bank payment service providers – known as 'Payment Institutions'. The Council and European Parliament reached political agreement on the PSD on 24 April 2007.

The Directive was formally adopted on 13 November 2007, and was published in the Official Journal on 5 December 2007. The Directive must be transposed into the national law of all EU Member States by 1 November 2009.

On 9 February the Government laid before Parliament regulations to implement the PSD into UK legislation. These regulations came into force on 2 March for the purpose of allowing applications for authorisation as a payment institution to be made to the FSA and will come into force in full on 1 November 2009.

The Government committed to making the UK regulation early in order to help firms consider the incoming requirements and prepare for compliance. Further information can be found at:

[http://www.hm-treasury.gov.uk/fin\\_payment\\_index.htm](http://www.hm-treasury.gov.uk/fin_payment_index.htm)

## Review of the Capital Requirements Directive

The Capital Requirements Directive (CRD) came into force in January 2007, implementing across the EU an updated set of capital requirements for credit institutions and certain investment firms. The revised rules created a more risk-sensitive capital framework and sought to enhance risk management practices amongst financial institutions.

As the financial system evolves the legal framework needs to be regularly updated and refined. In April this year the European Parliament approved proposals to amend the CRD in several areas. This package of amendments is commonly referred to as “CRD 2” and will apply from 1 January 2011. HM Treasury will be publishing a consultation this Autumn on the implementation options and draft legislation needed to bring the package into force, while transposition will take place in the latter half of 2010.

The main changes proposed are as follows:

- **Improving the management of large exposures:** liabilities are considered for the first time while the number of exemptions from large exposure limits will be reduced and reporting will be simplified.
- **Improving supervision of cross-border banking groups:** ‘colleges of supervisors’ will be established for banking groups that operate in multiple EU countries. The rights and responsibilities of the respective national supervisory authorities will be made clearer and their cooperation will become more effective.
- **Improving the quality of banks’ capital:** there will be clear EU-wide criteria for assessing whether ‘hybrid’ capital is eligible to be counted as part of a bank’s overall capital.
- **Improving liquidity risk management:** reflecting the on-going work at the Basel Committee on Banking Supervision and CEBs. Liquidity risk management will also be discussed and coordinated within the new ‘colleges of supervisors’.

- **Improving risk management for securitised products:** rules on securitised debt will be tightened. Originators that re-package loans into tradable securities will be required to retain a 5 per cent exposure to these securities, while firms that invest in the securities will be required to conduct comprehensive due diligence. If they fail to do so, they will be subject to heavy capital penalties.

The global economic downturn has highlighted a number of areas that need to be strengthened within the current capital requirements framework. Consequently, another series of amendments to the CRD are being developed in direct response to recent events. These incremental reforms are split into separate packages referred to as “CRD 3” and “CRD4” and address several of the recommendations contained in the Turner Review.

### CRD3

The Commission adopted proposals in July this year which included changes to the level of capital held against risks in the trading book, tougher requirements on re-securitisations and a series of principles on remuneration practices at firms. HM Treasury are currently engaging in a series of working groups with the Commission and other Member States before final agreement is reached (expected to be later in the year). Implementation is expected to be 1 January 2011.

### CRD4

The Commission has now published a working document seeking views on further possible changes to the CRD. The development of through-the-cycle expected loss provisioning, the removal of many of the existing national options and discretions within the CRD and tougher requirements for residential mortgages denominated in a foreign currency are all included in the document. The Commission is expected to publish final proposals for consultation in October. Separate proposals to restrain excessive and unsustainable balance sheet growth through a leverage ratio measure are anticipated soon, though may be too late to be included in the CRD 4 package.

[http://ec.europa.eu/internal\\_market/consultations/docs/2009/capital\\_requirements\\_directive/CRD\\_consultation\\_document\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2009/capital_requirements_directive/CRD_consultation_document_en.pdf)

## The Banking Act 2009: an update on standing secondary legislation and commencement

On 21 February 2009 the Banking Act 2009 received Royal Assent. Part 1 (the special resolution regime), Part 2 (bank insolvency), Part 3 (bank administration) and various provisions of Part 4 (Financial Services Compensation Scheme), Part 7 and Part 8 (miscellaneous and general provisions) were commenced on 21 February 2009. Further provisions of Part 7 were commenced on 1 June 2009 and Part 5 was commenced in part on 4 August 2009.

The following table summarises the secondary legislation that has been made since February 2009 under delegated powers conferred on the Treasury by the Banking Act. Various orders have also been made in relation to the resolution of Dunfermline Building Society, which have not been included below.

| Description   | Date  | Order(s)  |
|---|---|---|
| Banking Act 2009 (Commencement No. 1) Order 2009  | Made 16 February 2009   | Banking Act 2009 (Commencement No. 1) Order 2009- (SI 2009/296)   |
| Insolvency rules for the BIP and BAP in Northern Ireland  | Made 18 February 2009 and coming into operation 25 February                                 | The Bank Administration Rules (Northern Ireland) 2009 (SR 2009/63)<br>The Bank Insolvency (Northern Ireland) Rules 2009 (SR 2009/64)  |
| Consequential amendments and necessary regulations for the BIP and BAP  | Made 19 February 2009, laid before Parliament 20 February and coming into force 21 February | The Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (SI 2009/312)<br>The Banking Act 2009 (Bank Administration) (Modification for Application to Multiple Transfers) Regulations 2009 (SI 2009/313)<br>The Bank Administration (Sharing Information) Regulations 2009 (SI 2009/314)<br>The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (SI 2009/317) |
| Safeguards and third party compensation arrangements for partial property transfers carried out under Part 1 of the Act   | Made 19 February 2009, laid before Parliament 20 February and coming into force 21 February | The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (SI 2009/319)<br>The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (SI 2009/322)   |
| Insolvency rules for the BIP and BAP in England, Scotland and Wales   | Made 23 February 2009, laid before Parliament 24 February and coming into force 25 February | The Bank Administration (Scotland) Rules 2009 (SI 2009/350)<br>The Bank Insolvency (Scotland) Rules 2009 (SI 2009/351)<br>The Bank Insolvency (England and Wales) Rules 2009 (SI 2009/356)<br>The Bank Administration (England and Wales) Rules 2009 (SI 2009/357)  |
| Insolvency rules for the BIP in Northern Ireland. These Rules revoke and replace equivalent rules made on 18 February 2009 to correct drafting errors in that instrument. | Made 18 March 2009, coming into operation 1 April   | The Bank Insolvency (No. 2) Rules (Northern Ireland) 2009 (SR 2009/122)   |
| Application of the BIP and the BAP to building societies, and for building society special administration rules in Scotland   | Made 29 March 2009, coming into force 29 March, laid before Parliament 30 March             | The Building Societies (Insolvency and Special Administration) Order 2009 (SI 2009/805)<br>The Building Society Special Administration (Scotland) Rules 2009 (SI 2009/806(S3))  |
| To enable the Treasury to require the Financial Services Compensation Scheme (FSCS) to make payments in connection with the exercise of SRR powers                        | Made 29 March 2009, coming into force 29 March, laid before Parliament 30 March             | The Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009 (SI 2009/807)   |
| Banking Act 2009 (Commencement No. 2) Order 2009  | Made on 20 May 2009   | Order 2009- (SI 2009/1296)  |
| To provide enhanced safeguards for banks and their counterparties affected by a partial transfer carried out under the special resolution regime (SRR)                    | Made 8 July 2009 coming into force 9 July   | Banking Act 2009 (Restriction of Partial Property Transfers) (Amendment) Order 2009 (SI 2009/1826)  |
| Banking Act 2009 (Commencement No. 3) Order 2009  | Made on 21 July 2009  | Banking Act 2009 (Commencement No. 2) Order 2009- (SI 2009/2038)  |

## Banking Liaison Panel

On 17 June 2009 the Banking Liaison Panel (BLP) published advice to the Treasury on the safeguards for partial property transfers under Part 1 of the Banking Act 2009. The BLP is an advisory panel with a statutory role to advise the Treasury under section 10 the Act. The panel's advice, and further information can be found on the Treasury website: [www.hm-treasury.gov.uk/consult\\_banking\\_liaison.htm](http://www.hm-treasury.gov.uk/consult_banking_liaison.htm). The Treasury made the Banking Act 2009 (Restriction of Partial Property Transfers) (Amendment) Order 2009 (SI 2009/1826) on the 8 July, incorporating most of the Panel's recommendations.

## Commencement of Part 5 of the Banking Act

On 4 August, sections 181 to 187 and sections 204 (in part) and 205 of Part 5 of the Act, which relate to HM Treasury's powers to recognise and de-recognise inter-bank payment systems, and confer information gathering and sharing powers on the Bank of England came into force. The remainder of Part 5 will be commenced by the end of 2009.

Part 5 of the Banking Act 2009 establishes a new formal regulatory framework for oversight of recognised inter-bank payment systems by conferring powers on HM Treasury to designate, by order, a system as a 'recognised inter-bank payment system', in the event HM Treasury is satisfied that any deficiencies in the design of the system or disruption of its operation would likely to have systemic or system-wide effects. The Act also confers powers on the Bank of England (the Bank) to formally oversee the recognised payment systems.

## Consultations currently underway on secondary legislation

On 21 July 2009 the Treasury released two consultation documents seeking views on secondary legislation related to the special resolution regime (SRR) established by the Banking Act 2009. The SRR provides the Authorities with options to deal with banks that are failing.

The first document consults on the new insolvency and special administration procedures for building societies, and on measures to permit building societies to grant floating charges. The document is available from [www.hm-treasury.gov.uk/bankingact09\\_buildingsocieties\\_order](http://www.hm-treasury.gov.uk/bankingact09_buildingsocieties_order) and the consultation will close on 30 October 2009.

The second consultation document seeks views on the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009, which were made on 29 March 2009 in order to enable the Treasury to require the Financial Services Compensation Scheme (FSCS) to make payments in connection with the exercise of SRR powers by the Bank of England in relation to the Dunfermline Building Society. The document is available from [www.hm-treasury.gov.uk/bankingact09\\_fsma\\_regs.htm](http://www.hm-treasury.gov.uk/bankingact09_fsma_regs.htm) and the consultation will close on 30 October 2009.

## Consultation ends: Scotland and Northern Ireland banknotes

On 17 June 2009 the Treasury issued a consultation document on the Scottish and Northern Ireland Banknotes Regulations, which will be made under Part 6 of the Banking Act. The consultation is available at [www.hm-treasury.gov.uk/consult\\_banknotes\\_regulations.htm](http://www.hm-treasury.gov.uk/consult_banknotes_regulations.htm) and closed on 9 September 2009.

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## Section two – live consultations

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### Reforming Financial Markets

On 8 July the Government published 'Reforming Financial Markets', which sets out the Government's analysis of the causes of the global financial crisis, the actions already taken to restore financial stability and further proposals for reforms to financial regulation to strengthen the financial system for the future. Allied to this, the Government remains committed to ensuring that the UK financial services market remains competitive and fair for consumers and the paper consults on measures to support consumers and bolster competition.

The deadline for responses to this consultation is 30 September 2009. The consultation paper is available from [http://www.hm-treasury.gov.uk/reforming\\_financial\\_markets.htm](http://www.hm-treasury.gov.uk/reforming_financial_markets.htm)

### Introducing a protected cell regime for Open-Ended Investment Companies

This consultation seeks views on FSA and HM Treasury proposals to introduce a protected cell regime for UK Open-Ended Investment Companies (OEICs). OEICs are investment funds structured as bodies corporate. Large fund managers generally operate a small number of OEIC umbrella companies with a large number of sub-funds within each umbrella. This helps them to operate a large range of funds more efficiently. Under current law, there is no segregation of liabilities between different sub-funds. Many investors may be unaware of this contagion risk, although in practice the probability of an OEIC collapse is small, as OEICs must comply with borrowing limits imposed by the FSA. The objective of the proposals is to protect investors from the risk of contagion within OEIC umbrellas and to increase the attractiveness of the UK OEIC as an investment vehicle to overseas investors. A viable protected cell regime would remove the contagion risk and bring the UK in line with other jurisdictions, improving the UK's ability to compete with those jurisdictions. These proposals have been developed following stakeholder responses to the consultation on better regulation measures for the asset management sector launched in May 2007. Once again, we would welcome feedback to our proposals. The deadline is 27 September 2009. The consultation document can be downloaded from the HM Treasury website at:

[http://www.hm-treasury.gov.uk/consult\\_protected\\_cell\\_regime.htm](http://www.hm-treasury.gov.uk/consult_protected_cell_regime.htm)

## The Walker Review

The Terms of Reference for the review are to examine corporate governance in relation to banks and other financial institutions and make recommendations, including in the following areas:

the effectiveness of risk management at board level, including the incentives in remuneration policy to manage risk effectively;

- the balance of skills, experience and independence required on the boards of UK banking institutions;
- the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees;
- the role of institutional shareholders in engaging effectively with companies and monitoring of boards; and
- whether the UK approach is consistent with international practice and how national and international best practice can be promulgated.

The review started in February 2009 and Sir David published a consultation paper on 16 July 2009 in which he made a number of preliminary recommendations. Sir David is inviting comments on his proposals by 1 October 2009 with a view to issuing final recommendations in November.

## Notifying trading suspensions in the market: a consultation

The consultation paper proposes to simplify the means by which the Financial Services Authority notifies the market that it has suspended trading, or removed a financial instrument from trading, by allowing the FSA to give notice of its decision via a Regulatory Information Service (RIS). The FSA is currently required to give written notice individually to each institution on whom it proposes to impose a requirement to suspend or remove a financial instrument from trading – this is rather unpractical.

The FSA has the power to require institutions to suspend or remove financial instruments from trading in various circumstances, including a broad power to suspend trading by investment firms. This may be exercised to protect investors, for example if the issuer is in severe financial difficulty, or to maintain market integrity if trading has become disorderly.

The proposed new procedure would also allow the FSA to require a specified class of institutions to suspend or remove a financial instrument from trading without having to identify each institution individually. However, the FSA will retain the right to notify institutions individually, where appropriate.

The deadline for comments on this consultation is 23 October 2009.

The consultation paper is available from:

[http://www.hm-treasury.gov.uk/consult\\_notifying\\_trading\\_suspensions.htm](http://www.hm-treasury.gov.uk/consult_notifying_trading_suspensions.htm)

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## Section 3 – closed consultations

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### Repeal and replacement of the Electronic Money Directive and Regulation 2560 on cross border payments in euro

In October 2008 the European Commission published proposals for revising two pieces of EU legislation in the payment service sphere.

The first proposal concerns the repeal of the E-Money Directive (EMD), which in 2001 introduced a prudential regulatory regime for e-money institutions and the introduction of a new directive on the prudential regime for e-money issuance. The EMD was implemented in the UK through the Financial Services and Markets Act (FSMA) in 2002, with e-money issuers in the UK subject to FSA rules.

The second proposal concerns the repeal of Regulation 2560, which addresses the charges levied on cross-border payment transactions, and legislating for a new regulation on cross-border payments. Adopted at EU level in 2001, the HM Treasury Regulations on Cross-Border Payments in Euro came into force in March 2003.

Significantly, both proposals seek to align these pieces of legislation with the Payment Services Directive (PSD), on which agreement was reached in 2007.

On 20 January 2009, HM Treasury published its consultation on both proposals with a view to informing the Government approach towards EU level negotiations on the EMD, and the implementation of a new Regulation into UK law. This consultation closed on 14 April 2009.

In June 2009, the Government published a summary of consultation responses. More information can be found at :

[http://www.hm-treasury.gov.uk/fin\\_payment\\_index.htm](http://www.hm-treasury.gov.uk/fin_payment_index.htm)

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## Web links

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### Walker Review website:

[http://www.hm-treasury.gov.uk/walker\\_review\\_information.htm](http://www.hm-treasury.gov.uk/walker_review_information.htm)

### Walker Review document:

[http://www.hm-treasury.gov.uk/d/walker\\_review\\_consultation\\_160709.pdf](http://www.hm-treasury.gov.uk/d/walker_review_consultation_160709.pdf)

### Vision for the UK insurance industry in 2020

[http://www.hm-treasury.gov.uk/d/fin\\_insuranceindustry270709.pdf](http://www.hm-treasury.gov.uk/d/fin_insuranceindustry270709.pdf)

Any comments on the bulletin, please email [fsma.bulletin@hm-treasury.x.gsi.gov.uk](mailto:fsma.bulletin@hm-treasury.x.gsi.gov.uk)

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