Draft Order laid before Parliament under section 142Z of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XX

BANKS AND BANKING

The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014

Made - - - -	***
Coming into force - -	***

The Treasury, in exercise of the powers conferred by sections 142A(2)(b), 142B(2), 142F and 428(3) of the Financial Services and Markets Act 2000 (**1**), make the following Order.

In accordance with section 142Z of the Financial Services and Markets Act 2000, a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.

(2) This Order comes into force on 1st January 2015.

(3) In this Order—

"account holder" means any person who has an account with an institution which carries on the activity of accepting deposits;

"the 2000 Act" means the Financial Services and Markets Act 2000;

"the 2006 Act" means the Companies Act 2006(**2**);

(**1**) 2000 c. 8. Sections 142A to 142Z1 were inserted into the Act by the Financial Services (Banking Reform) Act 2013, section 4.
(**2**) 2006 c.46.

"charity" has the meaning given in section 1 of the Charities Act 2011(**3**), section 106 of the Charities and Trustee Investment (Scotland) Act 2005(**4**) or section 1 of the Charities (Northern Ireland) Act 2008(**5**);

"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 (Northern Ireland) Act 2008, or as a Scottish charitable incorporated organisation under Part 1 of the Charities and Trustee Investment (Scotland) Act 2005;

"company" has the meaning in section 1 of the 2006 Act;

"core deposit" has the meaning given in article 2(2);

"declaration of eligibility" has the meaning given in article 9(1);

"deposit" has the meaning given in article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**6**);

"eligible individual" has the meaning given in article 9(1);

"excluded activities and prohibitions order" means the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(**7**);

"financial year"—

(a) in relation to a company, has the meaning given in section 390 of the 2006 Act,

(b) in relation to a limited liability partnership has the meaning given in section 390 of the 2006 Act as modified by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**8**),

(c) in relation to an organisation which is—

(i) a charity or a CIO, and

(ii) is not a company,

has the meaning given in regulation 3 of the Charities (Accounts and Reports) Regulations 2008(**9**),

(d) in relation to a registered society—

(i) if that society was registered on or after 8th January 2012, means a year of account for that society as defined in section 77 of the Co-operative and Community Benefit Societies Act 2014(**10**),

(ii) if that society was registered on or before 7th January 2012 , means a year of account for that society as defined in section 78 of the Co-operative and Community Benefit Societies Act 2014,

(e) in relation to a Northern Ireland industrial and provident society, means a year of account as defined in section 101(1) of the Industrial and Provident Societies Act (Northern Ireland) 1969(**11**),

(f) in relation to a Northern Ireland credit union, means a year of account as defined in Article 2(2) of the Credit Unions (Northern Ireland) Order 1985(**12**),

(**3**) 2011 c. 25.
(**4**) 2005 asp 10.
(**5**) 2008 c. 12 (N.I.).
(**6**) S.I. 2001/544.This article was amended by S.I. 2002/682.
(**7**) S.I. 2014/[ ].
(**8**) S.I. 2008/1911.
(**9**) S.I. 2008/629.
(**10**) 2014 c.14.
(**11**) 1969 c. 24 (N.I.).
(**12**) S.I. 1985/1205 (N.I. 12).

(g) in relation to a society registered under the Friendly Societies Act 1974(**13**), means a year of account as defined in section 111 of that Act,

(h) in relation to a society incorporated in accordance with section 6(1) of the Friendly Societies Act 1992(**14**), has the meaning given in section 118 of that Act,

(i) in relation to any other organisation—

(i) if that organisation is required to prepare a profit and loss account by its constitution or by the law under which it is established, any period in respect of which it is required to prepare such a profit and loss account,

(ii) if that organisation is not required to prepare a profit and loss account, means any year commencing on the 1st January;

"limited liability partnership" means a body incorporated under the Limited Liability Partnerships Act 2000(**15**);

"Northern Ireland credit union" means a credit union as defined in Article 2(2) of the Credit Unions (Northern Ireland) Order 1985;

"Northern Ireland industrial and provident society" means a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969;

"public body" means any person certain of whose functions are functions of a public nature;

"qualifying organisation" has the meaning given in article 3(1);

"qualifying organisation declaration" has the meaning given in article 3(1);

"qualifying group member" has the meaning given in article 8(1);

"qualifying group member declaration" has the meaning given in article 8(1);

"quarter" means a period of three months;

"recognised accountant" means an accountant who is a member of—

(a) the Institute of Chartered Accountants in England and Wales,

(b) the Institute of Chartered Accountants of Scotland,

(c) the Institute of Chartered Accountants in Ireland,

(d) the Association of Chartered Certified Accountants,

(e) the Chartered Institute of Management Accountants,

(f) the Chartered Institute of Public Finance and Accountancy, or

(g) a professional body for accountants established in a jurisdiction outside the United Kingdom;

"registered society" has the meaning given in section 1 of the Co-operative and Community Benefit Societies Act 2014;

"securities" has the meaning given in section 14 of the Banking Act 2009(**16**);

"UK deposit-taker" means an institution which carries on the regulated activity of accepting deposits in relation to which it has a permission under Part 4A of the 2000 Act.

(**13**) 1974 c. 46. There are amendments to section 111, but none are relevant to this Order.
(**14**) 1992 c. 40.
(**15**) 2000 c. 12. There are amendments to the Act, but none are relevant to this Order.
(**16**) 2009 c. 1. Section 14 was amended by S.I. 2013/3115.

PART 2

Circumstances in which accepting a deposit is not a core activity

Circumstances in which accepting a deposit is not a core activity

2.—(1) In relation to a UK deposit-taker, accepting a deposit is not a core activity unless the deposit is a core deposit.

(2) A deposit is a core deposit if it is held with the UK deposit-taker in an EEA account except where one or more of the account holders is—

(a) a relevant financial institution;

(b) a qualifying organisation;

(c) a qualifying group member; or

(d) an eligible individual.

(3) In this article—

(a) a reference to an account held with a UK deposit-taker is to an account provided by the institution as part of its activity of accepting deposits;

(b) an account is an EEA account if it was opened at a branch of the UK deposit-taker located in an EEA state;

(c) "branch" means a place of business that forms a legally dependent part of the UK deposit-taker and conducts directly all or some of the operations inherent in its business;

(d) "relevant financial institution" has the meaning given in the excluded activities and prohibitions order.

Meaning of qualifying organisation

3.—(1) An organisation is a qualifying organisation in relation to a UK deposit-taker if it has given to that UK deposit-taker a declaration in accordance with paragraph (2) (a "qualifying organisation declaration").

(2) A qualifying organisation declaration must—

(a) contain a statement signed and dated by or on behalf of the organisation giving the declaration (the "declaring organisation") confirming that the organisation met the relevant qualifying condition in the relevant financial year; and

(b) be accompanied by either—

(i) a copy of the annual accounts prepared by that organisation for the relevant financial year, or

(ii) a statement signed and dated by a recognised accountant (a "confirming statement") in accordance with article 6.

(3) The relevant qualifying condition is set out—

(a) in the case of a body corporate(**17**) or a partnership, in article 4;

(b) in the case of an organisation which is not a body corporate or a partnership, in article 5.

(4) For the purpose of this article, in relation to an organisation giving a qualifying organisation declaration to a UK deposit-taker, the relevant financial year is—

(**17**) "Body corporate" is defined in section 417(1) of the 2000 Act. There are amendments to that section, but none are relevant to this Order.

(a) the last complete financial year of that organisation that ended before the beginning of the financial year of that organisation in which the qualifying organisation declaration is being given; or

(b) if the declaration is being given by that organisation during its first financial year, the period—

(i) beginning at midnight at the end of the day before the day on which the organisation was first established, and

(ii) ending at midnight on a day which is not more than three months before the date of the qualifying organisation declaration.

(5) The date of a qualifying organisation declaration is the date given by the organisation making the declaration when that organisation dates the statement referred to in paragraph (2)(a).

Qualifying condition for a body corporate or a partnership

4.—(1) The qualifying condition for a body corporate or a partnership is that during the relevant financial year that body or partnership met one or more of the criteria in table 1—

Table 1

Turnover	Not less than £6.5 million
Balance sheet total	Not less than £3.26 million
Number of employees	Not less than 50

(2) If the organisation has existed for less than one financial year, the maximum figure for turnover must be proportionately adjusted.

(3) The balance sheet total means—

(a) the aggregate of the amounts shown as assets in the organisation's balance sheet for the relevant financial year; or

(b) where the organisation is giving a qualifying organisation declaration during its first financial year and has not yet prepared a balance sheet, the aggregate of the amounts which would be shown as assets in a balance sheet prepared not more than six weeks before the date of that qualifying organisation declaration.

(4) The number of employees means the average number of persons employed (whether full-time or part-time) by the organisation in the relevant financial year, determined as follows—

(a) find for each month in the relevant financial year the number of persons employed under contracts of service by the organisation (whether throughout the month or not);

(b) add together the monthly totals; and

(c) divide by the number of months in the relevant financial year.

(5) In this article "turnover", in relation to a body corporate or a partnership, means the amounts derived from the provision of goods and services falling within the ordinary activities of the body corporate or partnership ("the gross receipts"), after deduction of—

(a) trade discounts;

(b) value added tax; and

(c) any other taxes based on the gross receipts.