The Government responds to the Parliamentary Commission on Banking Standards Report

The Government has published its response to the Parliamentary Commission on Banking Standards (the Commission) report ‘Changing banking for good’. The Government supports the Commission’s proposals to strengthen individual accountability among senior employees in the banking sector and plans to implement many of the Commission’s recommendations including a new criminal offence for reckless misconduct for senior bankers and a new Senior Persons regime.

The Government’s response is available here.

Click here to read our Law Now on the Commission’s report.

The Government’s response to the key recommendations of the Commission is as follows:

- The Government will provide for a new criminal offence of reckless misconduct in the management of a bank, through amendments to the Banking Reform Bill in the autumn. The offence will be limited to individuals covered by the new Senior Persons Regime and the Government has acknowledged that the offence will need to comply with ECHR. A time limit may be introduced for initiating proceedings. The Government will also consider how it is possible to implement the recovery of remuneration received by an individual as a consequence of reckless misconduct.

- The new Senior Persons Regime proposed by the Commission will replace the current significant influence functions in the Approved Persons regime for individuals within banking. Significantly, the Government will take forward the Commission’s proposal for reversing the burden of proof away from regulators and onto Senior Persons to demonstrate that they took all reasonable steps to prevent a contravention of regulatory requirements occurring. The time limit for commencing disciplinary action against Senior Persons will be extended and regulators given the power to approve Senior Persons subject to conditions or time limits. These measures will be implemented through legislation.

- The new banking standards rules proposed by the Commission will replace the existing statements of principle and codes of practice for Approved Persons. In a striking proposal, the Government appears to intend to extend the application of the new rules to bank employees who are not “approved persons”, and to enable regulators to take disciplinary action against any employees who breach the rules, regardless of their status. The reversal of the burden of proof will not apply to individuals who are not subject to the Senior Persons Regime. Nonetheless, the application of rules and sanctions to potentially all UK banking staff, including those who have not made promises to the regulators or been approved to hold controlled functions, is a concerning development.

- The prescriptive new rules proposed by the Commission for the deferral of senior employees’ remuneration for up to ten years under a statutory Remuneration Code will not be introduced. The Government believes firms should retain flexibility to set deferral periods in accordance with business characteristics. However, the Government supports reforms to the structure and deferral of remuneration for Senior Persons at UK banks being implemented through the regulators’ existing powers and, in addition, will ask regulators to consider the case for extending high-level principles on remuneration to all UK regulated staff.

- The Government supports the Commission’s recommendation that directors of banks over the ring-fence threshold (i.e. those banks which will be required to ring-fence their retail and small business deposit taking activities from their investment banking operations) must ensure the financial safety and soundness of the bank ahead of the interests of its shareholders. This may be implemented through provisions such as specific duties for directors under the proposed Senior Persons Regime and the Prudential Regulation Authority’s Principles for Businesses. The Government will also seek alternative options to strengthen the enforcement regime in respect of directors’ duties in the banking sector, including in a discussion paper on Trust and Transparency to be published before summer recess.
In line with the Commission’s recommendation for the Government to immediately examine the options for the future of the Royal Bank of Scotland (“RBS”), HM Treasury will review the case for splitting RBS into a “good bank” and a “bad bank”. A decision on the creation of a “bad bank” will be taken in the autumn.

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