

Financial Services Bill

AMENDMENTS
TO BE MOVED
ON REPORT

After Clause 5

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Periodic independent review of regulators

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 1S (reviews) insert—

“1SA Periodic independent review of regulators

- (1) The Treasury must appoint a group of at least three independent persons to conduct a periodic general review of the effectiveness of—
 - (a) the Financial Conduct Authority,
 - (b) the Prudential Regulation Authority,
 - (c) the Bank of England in respect of its functions under Parts 1 and 5 of the Banking Act 2009 (bank resolution and payment systems) and Part 2 of the Financial Services Act 2012 (recognised clearing houses), and
 - (d) the Payment Systems Regulator.
- (2) The general review must take place every two to three years and must include a review of—
 - (a) internal operations and controls;
 - (b) systems for responding to whistleblowers, parliamentary correspondence and reports, and public concerns;
 - (c) regulatory perimeters;
 - (d) the effectiveness of rules and the regulatory burden;
 - (e) whether all statutory and public policy objectives have been met;
 - (f) the operation and effectiveness of engagement practices before and during rule making;
 - (g) the skills base of staff;
 - (h) any other matter the independent persons consider relevant;
 - (i) follow up from the previous review and any other intervening review under this Act;
 - (j) any other matter requested by the Treasury or a relevant Committee of the House of Commons or House of Lords.

After Clause 5 - continued

- (3) On completion of the review, the persons conducting it must make a written report to the Treasury –
 - (a) setting out the result of the review, and
 - (b) making such recommendations (if any) as the persons consider appropriate.
- (4) A copy of the report must be –
 - (a) laid before Parliament, and
 - (b) published in such manner as the Treasury considers appropriate.”
- (3) In section 1T (right to obtain documents and information) after “1S” insert “or 1SA”.”

LORD OATES
BARONESS ALTMANN

Insert the following new Clause –

“Review of capital adequacy requirements risk weights

- (1) Within six months of the day on which this Act is passed the Prudential Regulation Authority must complete a review of the risk weighting applied to investments in –
 - (a) existing fossil fuel exploitation and production, and
 - (b) new fossil fuel exploration, exploitation and production.
- (2) In conducting this review, the Prudential Regulation Authority must have regard to –
 - (a) the need to prevent the misallocation of investment to global warming accelerating activities as a result of artificially low risk weights;
 - (b) the full implications of climate change for the risk of investments including physical climate risks, transitional climate risks and climate liability risks;
 - (c) the likelihood of assets becoming wholly or partially stranded before the end of their normal exploitation cycle;
 - (d) the impact of global warming accelerating activities on financial stability, in particular as a result of climate change related disruption of the economy; and
 - (e) the advice of the Climate Change Committee.
- (3) The Treasury must lay before Parliament the outcome of this review within one month of the completion of the review.”

Member’s explanatory statement

The purpose of this amendment is to place a requirement on the PRA to review the adequacy of risk weights applied to fossil fuel exposures in capital requirements having regard to the implications of climate change.

After Clause 15

BARONESS NOAKES

Insert the following new Clause –

“Continuity of contract

If the FCA exercises one or more of the powers under Article 23D of the Benchmarks Regulation in respect of a benchmark, any reference to or description of that benchmark in a contract, security or instrument must be, with effect from the date of such exercise, interpreted as a reference to or description of the benchmark as modified by the FCA under its powers under Article 23D.”

Member’s explanatory statement

This amendment would ensure that if the FCA revised a benchmark under Article 23D (inserted by Clause 15) there would be continuity of contract by replacing references to the earlier benchmark with the revised one.

Insert the following new Clause –

“Safe harbour for use of benchmarks

The exercise by the FCA of one or more of its powers under paragraph 2 of Article 23D of the Benchmarks Regulation in respect of a benchmark (“the relevant benchmark”) shall not give rise to any claim or cause of action or liability in damages or otherwise in respect of either –

- (a) the determination or calculation of amounts by reference to the relevant benchmark in respect of any contract, security or instrument; or
- (b) the making of any consequential changes to any contract, security or instrument in respect of the relevant benchmark where such consequential changes are, in the opinion of any party to such contract, security or instrument, reasonably necessary for the use of the relevant benchmark or any determinations made in connection with it.”

Member’s explanatory statement

This amendment would ensure that where the FCA imposes changes on a benchmark under the Benchmark Regulation, paragraph 2 of Article 23D, the use of that benchmark for contracts cannot lead to legal actions.

Insert the following new Clause –

“Tough legacy contracts

- (1) The Treasury may make regulations which will apply if the FCA exercises one or more of the powers under Article 23D of the Benchmarks Regulation in respect of any benchmark (“the relevant benchmark”) to provide for the matters set out in this section.
- (2) The first matter is the interpretation of any reference to the relevant benchmark in any contract, security or instrument.
- (3) The second matter is whether and to what extent any claims, causes of action or liability in damages may arise in respect of the use of the relevant benchmark by any party in respect of a contract, security or instrument.

After Clause 15 - continued

- (4) Regulations may apply only to contracts, securities or instruments entered into before the FCA exercises its power.”

Member’s explanatory statement

This amendment is an alternative to the two other amendments in the name of Baroness Noakes inserting new Clauses after Clause 15. They require the Treasury to make regulations to deal with continuity of contract and safe harbour where the FCA imposes changes on a benchmark under paragraph 2 of Article 23D of the Benchmark Regulation.

Clause 34

EARL HOWE

Page 40, line 14, leave out subsection (2)

Member’s explanatory statement

This amendment and the Minister’s amendments at page 40, lines 16 and 31 make drafting changes in connection with the Minister’s first amendment at page 47, line 34.

Page 40, line 16, at beginning insert “In section 7 of that Act (debt respite scheme: regulations),”

Member’s explanatory statement

See the explanatory statement for the Minister’s first amendment at page 47, line 34.

Page 40, line 17, at end insert “so far as it applies in England and Wales”

Member’s explanatory statement

This amendment provides that subsection (4A) of section 7 of the Financial Guidance and Claims Act 2018 is relevant only to the debt respite scheme so far as it applies in England and Wales (see also the Minister’s first amendment at page 47, line 34).

Page 40, line 31, leave out “subsection (5)” and insert “section 7(5) of that Act”

Member’s explanatory statement

See the explanatory statement for the Minister’s first amendment at page 47, line 34.

After Clause 35

EARL HOWE

Insert the following new Clause –

“Regulated activities and application of Consumer Credit Act 1974

- (1) This section applies on or at any time after the making of an order under section 22 of the Financial Services and Markets Act 2000, after this section comes into force, which has the effect that a relevant credit activity becomes a regulated activity for the purposes of that Act.
- (2) Section 107(6) of the Financial Services Act 2012 (power to make provision about the application of the Consumer Credit Act 1974) has effect as if –

After Clause 35 - continued

- (a) the reference to an order of the kind mentioned in subsection (1) of that section included an order of the kind mentioned in subsection (1) of this section, and
 - (b) the references to a transferred activity included a relevant credit activity which is the subject of an order of the kind mentioned in subsection (1) of this section.
- (3) “Relevant credit activity” means the activity of –
- (a) entering into an agreement described in article 60F(2) or (3) of the Regulated Activities Order (certain borrower-lender-supplier agreements for fixed-sum credit or running-account credit) as lender, or
 - (b) exercising, or having the right to exercise, the lender’s rights and duties under such an agreement,
- so far as the activity is not a transferred activity (as defined in section 107(1) of the Financial Services Act 2012).
- (4) “The Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) as it has effect on the passing of this Act.”

Member’s explanatory statement

Section 107(6) of the Financial Services Act 2012 provides that the Treasury may disapply provisions of the Consumer Credit Act 1974 in relation to an activity previously licensed under the 1974 Act, or exempted under specified provisions of that Act, where the activity has become a regulated activity for the purposes of the Financial Services and Markets Act 2000. This amendment extends that power to certain other activities of lenders.

After Clause 40

BARONESS MEACHER
LORD STEVENSON OF BALMACARA
BARONESS MORGAN OF COTES

Insert the following new Clause –

“Regulation of bailiffs and bailiff firms for the purpose of taking control of goods

In section 22 of the Financial Services and Markets Act 2000 (regulated activities), after subsection (1B) insert –

- “(1C) An activity is a regulated activity for the purposes of this Act if it is an activity described by Part 3 of the Tribunal, Courts and Enforcement Act 2007 (enforcement by taking control of goods) performed as a service by way of business specified in an order that may include provisions in respect of –
- (a) defining the people, organisations and activities under Part 3 of the Tribunal, Courts and Enforcement Act 2007 which may or may not be regulated under this section;
 - (b) delegating some or all of the functions of the FCA in respect of this regulated activity to another person or body, either existing or established by an order under this section;
 - (c) setting out which parts of this Act may or may not apply in respect of activities regulated by this section;

After Clause 40 - continued

- (d) making such supplemental provisions as necessary to carry out the functions of the regulator.
- (1D) If an order under subsection (1C) has not commenced within 2 years of the passing of the Financial Services Act 2021, an activity of the type described in subsection (1C) is to be a regulated activity notwithstanding the lack of an order under subsection (1C).”

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Bills of Sale Act 1878 and Bills of Sale Act (1878) Amendment Act 1882

- (1) The Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 are repealed.
- (2) In consequence of the repeals made by subsection (1), the following are also repealed—
- (a) the Bills of Sale Act 1890;
 - (b) the Bills of Sale Act 1891;
 - (c) section 23 of the Administration of Justice Act 1925;
 - (d) in Schedule 11 to the Constitutional Reform Act 2005, in paragraph 4(3), the entry relating to the Bills of Sale Act 1878;
 - (e) in Schedule 13 to the Tribunals, Courts and Enforcement Act 2007, paragraphs 17 to 19;
 - (f) in Schedule 9 to the Crime and Courts Act 2013, paragraph 15.”

Member’s explanatory statement

Bills of Sale are mainly used for “log book loans”, one of the last sources of high cost credit. They are governed by two Victorian statutes which the Law Commission recommended in 2017 should be repealed. This amendment is to further probe the Government’s plans to review that recommendation.

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Undertakings from regulators

The FCA and the PRA must each give and publish the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.”

Member’s explanatory statement

This amendment would require the FCA and PRA to give undertakings about liaising with Parliament.

Insert the following new Clause—

“Undertakings from regulators (No. 2)

- (1) The FCA and the PRA must each give and publish an undertaking on the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.

After Clause 40 - continued

- (2) Each undertaking must establish that all consultation documents, rules, draft rules and impact assessments are provided to Parliament no later than publication or the beginning of public consultation procedures.
- (3) Each undertaking must include having due regard to recommendations made by committees or resolutions of Parliament.”

Insert the following new Clause –

“Undertakings from regulators (No. 3)

- (1) The FCA and the PRA must each give and publish an undertaking on the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.
- (2) Each undertaking must establish –
 - (a) a principle of openness and sincere cooperation in assisting a relevant select committee of either House in the conduct of any inquiry and providing detailed information when writing to, or questioned by, committees;
 - (b) a commitment to provide –
 - (i) policy documents,
 - (ii) consultation documents,
 - (iii) rules,
 - (iv) draft rules, and
 - (v) impact assessments
 no later than publication or when launching any consultation procedure (as applicable), and to have due regard to recommendations made by committees or resolutions of Parliament made in response;
 - (c) a commitment to provide regular updates on –
 - (i) principles, and
 - (ii) kinds of indicators or information
 that they use in developing rules and policies;
 - (d) a commitment to provide, on request, or on their own initiative, documents necessary for the scrutiny of their activities, where necessary with appropriate secrecy provisions;
 - (e) a commitment to arrange for their respective executive committee members, chairs, chief executive officers and panel members, to meet relevant committees, including confidential briefings where necessary.”

LORD SHARKEY

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Interest rates for mortgage prisoners

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FD insert –

“137FE FCA general rules: interest rate for mortgage prisoners

After Clause 40 - continued

- (1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration to introduce a cap on the Standard Variable Rates charged to mortgage prisoners and to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA.
- (2) In subsection (1) –
 - “mortgage prisoner” means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following type of firms –
 - (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending; and
 - (b) unregulated entities, or firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration;
 - “new fixed interest rate deals” means the ability for the consumer to fix the rate of interest payable on a regulated mortgage contract for periods of 2 years and 5 years.
 - “Standard Variable Rate” means the reversion rate which is a variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.
- (3) The general rules made under subsection (1) must set the level of the cap on the Standard Variable Rate at a level no more than 2 percentage points above the Bank of England base rate.
- (4) The general rules made under subsection (1) should make new fixed interest rate deals available to mortgage prisoners who meet the following criteria –
 - (a) are up to date with payments or have aggregate arrears of no more than one monthly payment in the past 12 months,
 - (b) have a remaining term of 2 years or more,
 - (c) have an outstanding loan amount of at least £10,000, and
 - (d) have not received consent to let the property.
- (5) When specifying the interest rates for new fixed interest rate deals required by subsection (1) the FCA should specify rates for a range of Loan-To-Valuation (LTV) ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
- (6) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made not later than 31 July 2021.””

Member’s explanatory statement

This new Clause would require the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners and, under specified circumstances, ensure their access to fixed rate interest deals.

Clause 44

EARL HOWE

Page 47, line 33, leave out “subsection (2)” and insert “subsections (2) and (2A)”.

Member’s explanatory statement

See the explanatory statement for the Minister’s second amendment at page 47, line 34.

Page 47, line 34, leave out subsection (2) and insert –

“(2) In section 34 –

- (a) subsections (1), (3) and (5) extend to England and Wales only, and
- (b) subsection (4) extends to England and Wales and Northern Ireland only.”

Member’s explanatory statement

This amendment provides that certain amendments of sections 6 and 7 of the Financial Guidance and Claims Act 2018 in Clause 34 extend only to England and Wales.

Page 47, line 34, at end insert –

“(2A) In Schedule 12, paragraph 14(3A) extends to Northern Ireland only.”

Member’s explanatory statement

This amendment and the Minister’s amendment at page 47, line 33 provide that subsection (5B) of section 303Z1 of the Proceeds of Crime Act 2002, inserted by Schedule 12 to the Bill (see the Minister’s amendment at page 182, line 26), extends to Northern Ireland only.

Clause 45

EARL HOWE

Page 48, line 21, leave out from “appoint” to end of line 22

Member’s explanatory statement

This amendment is consequential on the Minister’s amendment at page 182, line 26.

Page 48, line 34, leave out subsection (9)

Member’s explanatory statement

This amendment is consequential on the Minister’s amendment at page 48, line 21.

Schedule 2

EARL HOWE

Page 65, line 27, at end insert –

“(ba) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and”

Member's explanatory statement

This amendment requires the FCA to have regard to the carbon target for 2050 when making Part 9C rules (defined in section 143F of the Financial Services and Markets Act 2000, inserted by Schedule 2 to the Bill).

LORD EATWELL
BARONESS BOWLES OF BERKHAMSTED
BARONESS NOAKES

Page 66, line 17, at end insert –

“143HA Parliamentary engagement on rules

- (1) Before publishing a draft of proposed Part 9C rules under section 138I(1)(b), the FCA must make arrangements with the Treasury for the draft to be laid, as soon as practicable, before each House of Parliament.
- (2) The FCA may not make the rules contained in the draft unless –
 - (a) a relevant committee has, within the relevant period, published a report on the proposed rules, and –
 - (i) the relevant committee consents to proposed rules being made, or
 - (ii) the FCA has, having had due regard to any objections contained within the report, responded to those objections in writing, or
 - (b) the relevant period has elapsed without any report being published.
- (3) Subsections (1) and (2) do not apply in the event of rules being made using the exemption under section 138L.
- (4) In the event of rules being made using the exemption under section 138L, the FCA must, as soon as practicable –
 - (a) notify a person nominated by the relevant committee, and
 - (b) provide a written statement of the reasons for the rules being made under that procedure.
- (5) In this section –

“relevant committee” means a committee of each House of Parliament, or a joint committee of both, charged with scrutinising proposed Part 9C rules;

“the relevant period” means the period –

 - (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before each House as mentioned in subsection (1), and
 - (b) ending with –
 - (i) the end of the period for public consultation specified under section 138I(2)(e), or
 - (ii) in the event of this being less than 10 weeks, or Parliament being adjourned or prorogued during this period, the end of any period agreed in writing by the FCA and a person nominated by the relevant committee.
- (6) For the purposes of subsection (5), where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses.”

Member's explanatory statement

This amendment introduces a formal mechanism for Parliament to scrutinise those draft Part 9C rules which are published by the FCA for public consultation. These requirements are disapplied in the event of the FCA using their urgent rule-making powers.

EARL HOWE

Page 80, line 22, at end insert –

“Carbon target

21A In relation to the making of Part 9C rules that are made on or before 1 January 2022 –

- (a) paragraph (ba) of section 143G(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
- (b) section 143H(1)(b) of that Act does not require an explanation in respect of matters specified in that paragraph.”

Member's explanatory statement

This amendment disapplies the FCA's duty to have regard to the carbon target for 2050 (see the Minister's amendment at page 65, line 27) in relation to Part 9C rules made on or before 1 January 2022.

Schedule 3

EARL HOWE

Page 82, line 14, at end insert –

“(ca) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and”

Member's explanatory statement

This amendment requires the PRA to have regard to the carbon target for 2050 when making CRR rules (defined in section 144A of the Financial Services and Markets Act 2000, inserted by Part 1 of Schedule 3 to the Bill) and also when making section 192XA rules (see sections 192XA and 192XB, inserted by Part 2 of Schedule 3 to the Bill).

LORD EATWELL

BARONESS BOWLES OF BERKHAMSTED

BARONESS NOAKES

Page 83, line 2, at end insert –

“144DA Parliamentary engagement on rules

- (1) Before publishing a draft of proposed CRR rules under section 138J(1)(b), the PRA must make arrangements with the Treasury for the draft to be laid, as soon as practicable, before each House of Parliament.
- (2) The PRA may not make the rules contained in the draft unless –
 - (a) a relevant committee has, within the relevant period, published a report on the proposed rules, and –
 - (i) the relevant committee consents to proposed rules being made, or

Schedule 3 - continued

- (ii) the PRA has, having had due regard to any objections contained within the report, responded to those objections in writing, or
- (b) the relevant period has elapsed without any report being published.
- (3) Subsections (1) and (2) do not apply in the event of rules being made using the exemption under section 138L.
- (4) In the event of rules being made using the exemption under section 138L, the PRA must, as soon as practicable—
 - (a) notify a person nominated by the relevant committee, and
 - (b) provide a written statement of the reasons for the rules being made under that procedure.
- (5) In this section—
 - “relevant committee” means a committee of each House of Parliament, or a joint committee of both, charged with scrutinising proposed CRR rules;
 - “the relevant period” means the period—
 - (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before each House as mentioned in subsection (1), and
 - (b) ending with—
 - (i) the end of the period for public consultation specified under section 138J(2)(e), or
 - (ii) in the event of this being less than 10 weeks, or Parliament being adjourned or prorogued during this period, the end of any period agreed in writing by the PRA and a person nominated by the relevant committee.
- (6) For the purposes of subsection (5), where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses.”

Member’s explanatory statement

This amendment introduces a formal mechanism for Parliament to scrutinise those draft CRR rules which are published by the PRA for public consultation. These requirements are disapplied in the event of the PRA using their urgent rule-making powers.

EARL HOWE

Page 90, line 20, at end insert—

“Carbon target

- 24A In relation to the making of CRR rules or section 192XA rules that are made on or before 1 January 2022—
- (a) paragraph (ca) of section 144C(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
 - (b) section 144D(1) of that Act does not require an explanation in respect of matters specified in that paragraph.”

Member's explanatory statement

This amendment disapplies the PRA's duty to have regard to the carbon target for 2050 (see the Minister's amendment at page 82, line 14) in relation to CRR rules and section 192XA rules made on or before 1 January 2022.

Schedule 12

EARL HOWE

Page 182, line 26, leave out sub-paragraph (3) and insert –

“(3) After subsection (5) insert –

“(5A) In this Chapter as it extends to England and Wales and Scotland, “relevant financial institution” means –

- (a) a bank,
- (b) a building society,
- (c) an electronic money institution, or
- (d) a payment institution.”

(3A) After subsection (5A) insert –

“(5B) In this Chapter as it extends to Northern Ireland, “relevant financial institution” means –

- (a) a bank, or
- (b) a building society.”

Member's explanatory statement

This amendment provides that it is only Chapter 3B of Part 5 of the Proceeds of Crime Act 2002 as it extends to England and Wales and Scotland that is amended to provide for forfeiture of money in accounts maintained with electronic money institutions and payment institutions.

Page 183, line 24, leave out “303Z1(1A)” and insert “303Z1”

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 182, line 26.

Financial Services Bill

AMENDMENTS
TO BE MOVED
ON REPORT

17 March 2021
