

# Financial Services Bill

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## COMMONS DISAGREEMENT, AMENDMENT IN LIEU AND REASON

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*[The page and line references are to HL Bill 162, the bill as first printed for the Lords]*

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### Before Clause 1

#### LORDS AMENDMENT 1

**1** Insert the following new Clause –

**“Duty of care for financial service providers**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1C, after subsection (2)(e) insert –
  - “(ea) the general principle that firms should not profit from exploiting a consumer’s vulnerability, behavioural biases or constrained choices;”.

(3) After section 137C insert –

**“137CA FCA general rules: duty of care**

- (1) The power of the FCA to make general rules includes power to introduce a duty of care owed by authorised persons to consumers in carrying out regulated activities under this Act.
- (2) The FCA must make rules in accordance with subsection (1) which come into force no later than 6 April 2022.”

#### COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

*The Commons disagree to Lords Amendment 1 but propose Amendment 1A as an amendment in lieu –*

**1A** Page 36, line 13, at end insert the following new Clause –

**“FCA rules about level of care provided to consumers by authorised persons**

- (1) The Financial Conduct Authority must carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers.

- (2) The consultation must include consultation about—
  - (a) whether the Financial Conduct Authority should make other provision in general rules about the level of care that must be provided to consumers by authorised persons, either instead of or in addition to a duty of care,
  - (b) whether a duty of care should be owed, or other provision should apply, to all consumers or to particular classes of consumer, and
  - (c) the extent to which a duty of care, or other provision, would advance the Financial Conduct Authority’s consumer protection objective (see section 1C of the Financial Services and Markets Act 2000).
- (3) The Financial Conduct Authority—
  - (a) must carry out the consultation, and publish its analysis of the responses, before 1 January 2022, and
  - (b) must, before 1 August 2022, make such general rules about the level of care that must be provided to consumers, or particular classes of consumer, by authorised persons as it considers appropriate, having regard to that analysis.
- (4) The duties to consult under this section may be satisfied by consultation carried out after 1 January 2021 but before this section comes into force (as well as by consultation carried out after this section comes into force).
- (5) In this section—
  - “authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31 of that Act);
  - “consumer” has the meaning given in section 1G of that Act;
  - “general rules” means rules made under section 137A of that Act.”

#### After Clause 40

#### LORDS AMENDMENT 8

8 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**

- (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.”

#### COMMONS REASON

*The Commons disagree to Lords Amendment 8 for the following Reason –*

- 8A** *Because the Commons consider that it is not a proportionate or practical means of tackling the issues around consumers who have mortgages with inactive firms.*

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*26 April 2021*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS