

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

LORD SHARKEY

Page 1, line 6, leave out subsection (1) and insert –

- “(1) The Treasury may by regulations revoke any legislation referred to in Schedule 1 provided that –
- (a) the regulators have drafted and, where necessary, consulted on rules that are ready to be enforced, where it is appropriate, to replace the legislation, and
 - (b) any such revocation or replacement which represents a significant divergence from current rules or practice has had the opportunity to be scrutinised by the relevant Parliamentary select committee and the views and recommendations of that committee or those committees have been taken into account.”

Member’s explanatory statement

This is a probing amendment to allow debate on possible means of Parliamentary scrutiny of the changes generated by the implementation of Clause 1 and Schedule 1.

Clause 24

LORD ALTRINCHAM

Page 38, line 27, at end insert –

- “(c) the financing of UK infrastructure.”

LORD TUNNICLIFFE

Page 39, line 7, at end insert –

- “(5) In performing their functions, where a regulator’s primary and secondary objectives are irreconcilable, the primary objectives take precedence.”

Member’s explanatory statement

This is a probing amendment to question what the mechanism is through which the Government will guarantee that the regulators’ new secondary objectives will not threaten their primary objectives, namely market integrity and firm stability.

After Clause 24

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Regulators’ duty to report on competitiveness and growth objective

- (1) The FCA and PRA must each lay before each House of Parliament a report as soon as practicable after the end of –
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on how they consider that they have facilitated the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term.
- (2) The reports must include analysis and data on the following –
 - (a) steps taken to simplify their respective regulatory rulebooks and frameworks;
 - (b) the number of new market entrants to the United Kingdom;
 - (c) new regulations introduced in the previous twelve months;
 - (d) an assessment of the impact of the new regulations on United Kingdom competitiveness;
 - (e) comparative analysis of the number of new authorisations in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (f) comparative analysis of product and service innovations introduced in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (g) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment would require both the FCA and PRA to each publish a report annually setting out how they have facilitated international competitiveness and growth against a range of data and analysis requirements.

After Clause 26

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Regulatory principles to be applied by both regulators: proportionality principle

In section 3B(1) of FSMA 2000 (regulatory principles to be applied by both regulators), in paragraph (b), for the words from “considered” to the end of that paragraph substitute “taking into consideration the nature of the service or product being delivered, the nature of risk to the consumer, whether the cost of implementation is proportionate to that level of risk and whether the burden or restriction enhances UK international competitiveness;”.

Member's explanatory statement

This would amend the existing regulatory principle for both regulators and require that the nature of and risk to the consumer, and the service or product being delivered, must be taken into account when imposing a new burden or restriction.

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD

Insert the following new Clause—

“FCA to have regard to financial inclusion within consumer protection objective

- (1) FSMA 2000 is amended as follows.
- (2) In section 1C (the consumer protection objective), after subsection (2)(c) insert—
 - “(ca) financial inclusion;”.

LORD SHARKEY

Insert the following new Clause—

“Duty of the FCA to make rules introducing a duty of care to replace the Consumer Duty

- (1) After section 137C of FSMA 2000, insert—
 - “137CA FCA general rules: duty of care and replacement of the consumer duty**
 - (1) The power of the FCA to make general rules includes the power to replace the consumer duty with a duty of care owed by authorised persons to consumers in carrying out regulated activities under this Act.
 - (2) In this section—
 - “consumer” has the meaning given in section 2(3) of the Consumer Rights Act 2015 (key definitions);
 - “consumer duty” means the rules and guidance contained in the FCA’s Policy Statement PS22/9 and in the FCA’s Final Guidance FG22/5 of July 2022;
 - “duty of care” means an obligation to act in consumers’ best interests and to exercise reasonable care and skill when providing a product or service.”
- (2) The FCA must make rules in accordance with section 137CA of FSMA 2000 which come into force no later than six months after the day on which this Act is passed.”

Member's explanatory statement

This is a probing amendment to allow debate on the FCA’s new Consumer Duty and a replacement Duty of Care.

After Clause 37

LORD HOLMES OF RICHMOND

Insert the following new Clause—

“Requirement to publish regulatory performance information on new authorisations

- (1) The FCA and PRA must each lay before each House of Parliament a report on their regulatory performance as soon as practicable after the end of—
 - (a) the period of six months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The reports must include analysis and data on the following—
 - (a) the total number of new applications for authorisation made to each regulator each year, and a breakdown by authorisation type;
 - (b) the rates of approval for applications for authorisation by each regulator and a breakdown by authorisation type;
 - (c) the average length of time taken from application to final authorisation decision by each regulator;
 - (d) an estimate of the time and costs required by an applicant to comply with information requirements for authorisation;
 - (e) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment requires both regulators to publish regular reports to Parliament on their regulatory performance for new applicants for regulation.

Insert the following new Clause—

“Requirement to publish regulatory performance information on authorised firms

- (1) The FCA must lay before each House of Parliament a report on its regulatory performance as soon as practicable after the end of—
 - (a) the period of 6 months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The report must include the average length of time taken from application to final decision for each of the following regulatory responsibilities—
 - (a) approved persons;
 - (b) change in control;
 - (c) variation of permission;
 - (d) waivers and modifications that alter compliance obligations.”

Member’s explanatory statement

This amendment requires the FCA to publish regular reports to Parliament on their regulatory performance for existing authorised entities and persons.

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD

Insert the following new Clause—

“FCA duty to report on financial inclusion

- (1) The FCA must lay before Parliament a report on financial inclusion in the United Kingdom, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period.
- (2) A report under this section must include—
 - (a) an assessment of the state of financial inclusion in the United Kingdom;
 - (b) details of any measures the FCA has taken, or is planning to take, to improve financial inclusion in the United Kingdom;
 - (c) developments which the FCA considers could significantly impact on financial inclusion in the United Kingdom; and
 - (d) any recommendations to the Treasury which the FCA considers may promote financial inclusion in the United Kingdom.”

Member’s explanatory statement

This amendment would require the FCA to report on financial inclusion across the UK.

LORD TUNNICLIFFE

Insert the following new Clause—

“FCA duty to report on mutual and co-operative business models

- (1) The FCA must lay before Parliament a report, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,on how it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) include the needs of mutual and co-operative financial services providers to have a level playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—
 - (a) credit unions,
 - (b) building societies,
 - (c) mutual banks,
 - (d) co-operative banks,
 - (e) regional banks,
 - (f) mutual insurers, and
 - (g) co-operative insurers.”

Member's explanatory statement

This new Clause would require the FCA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

Insert the following new Clause—

“PRA duty to report on mutual and co-operative business models

- (1) The PRA must lay before Parliament a report, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on how it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) include the needs of mutual and co-operative financial services providers to have a level playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—
 - (a) credit unions,
 - (b) building societies,
 - (c) mutual banks,
 - (d) co-operative banks,
 - (e) regional banks,
 - (f) mutual insurers, and
 - (g) co-operative insurers.”

Member's explanatory statement

This new Clause would require the PRA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

Insert the following new Clause—

“Consumer Panel duty to report to Parliament

- (1) FSMA 2000 is amended as follows.
- (2) In section 1Q (the Consumer Panel), at end insert—
 - “(7) The Consumer Panel must lay an annual report before each House of Parliament evaluating the FCA’s fulfilment of its statutory duty to protect consumers, including comments on—
 - (a) the adequacy and appropriateness of the FCA’s use of its regulatory powers,
 - (b) the measures the FCA has taken to protect vulnerable consumers, including pensioners, people with disabilities, and people receiving forms of income support, and
 - (c) the FCA’s receptiveness to the recommendations of the Consumer Panel.””

Member's explanatory statement

This new Clause would introduce a further level of Parliamentary scrutiny of the work of the FCA to protect consumers by requiring the Financial Services Consumer Panel to lay an annual report before Parliament outlining its views on the FCA's fulfilment of its statutory duty to protect consumers.

Clause 41

LORD HOLMES OF RICHMOND

Page 57, line 22, at end insert –

- “(c) be provided with any information or data that the Panel requires in order to fulfil its duties,
- (d) publish the agendas and minutes of meetings of the Panel, and
- (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the FCA's activities and the range of representations made by Panel members to those recommendations.”

Member's explanatory statement

This amendment would require the FCA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel's recommendations were made publicly available.

Page 57, line 29, at end insert –

- “(7A) The Panel must include at least two representatives of FCA authorised firms.”

Page 57, leave out lines 35 and 36 and insert –

- “(11) The FCA is required to publish a response to these representations within 30 days, including a statement of actions it will take as a result of the recommendations.”

Member's explanatory statement

This amendment would require the FCA to publish their responses and actions to the CBA Panel's recommendations within 30 days.

Page 58, line 15, at end insert –

- “(c) be provided with any information or data that the Panel requires in order to fulfil its duties,
- (d) publish the agendas and minutes of meetings of the Panel, and
- (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the PRA's activities and any dissenting representations made by Panel members to those recommendations.”

Member's explanatory statement

This amendment would require the PRA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel's recommendations were made publicly available.

Page 58, line 22, at end insert –

“(7A) The Panel must include at least two representatives of PRA authorised firms.”

Page 58, leave out lines 28 and 29 and insert –

“(11) The PRA is required to publish a response to these representations within 30 days, including a statement of actions it will take as a result of the recommendations.”

Member's explanatory statement

This amendment would require the PRA to publish their responses and actions to the CBA Panel's recommendations within 30 days.

After Clause 52

LORD TUNNICLIFFE

Insert the following new Clause –

“Local community access to essential in-person banking services

- (1) The Treasury and the FCA must jointly undertake a review of the state of access to essential in-person banking services for local communities in the United Kingdom, and jointly prepare a report on the outcome of the review.
- (2) “Essential in-person banking services” include services which are delivered face-to-face and to which local communities require regular access, including services provided in banks, banking hubs, or other service models.
- (3) The report mentioned in subsection (1) must be laid before the House of Commons and the House of Lords as soon as practicable after the review has been undertaken.
- (4) The report mentioned in subsection (1) must propose a minimum level of access to essential in-person banking services which must be provided by banks and building societies in applicable local authority areas in the United Kingdom, for the purpose of ensuring that local communities have adequate access to essential in-person banking services.
- (5) The applicable local authority areas mentioned in subsection (4) are local authority areas in which, in the opinion of the FCA, local communities have a particular need for the provision of essential in-person banking services.
- (6) In any applicable local authority area in which, according to the results of the review undertaken under subsection (1), access falls below the minimum level of access mentioned in subsection (4), the FCA may give directions for the purpose of ensuring that essential in-person banking services meet the minimum level of access required under subsection (4).
- (7) A direction under subsection (6) may require a minimum level of provision of essential in-person banking services through mandating, for example –

After Clause 52 - continued

- (a) a specified number of essential in-person banking services within a geographical area, or
- (b) essential in-person banking services to operate specific opening hours.”

Member’s explanatory statement

This new Clause would require the Treasury and FCA to conduct and publish a review of community need for, and access to, essential in-person banking services, and enable the FCA to ensure areas in need of essential in-person banking service have a minimum level of access to such services.

Insert the following new Clause –

“Essential banking services access policy statement

- (1) The Treasury must lay before the House of Commons and the House of Lords an essential banking services access policy statement within six months of the passing of this Act.
- (2) An “essential banking services access policy statement” is a statement of the policies of His Majesty’s Government in relation to the provision of adequate levels of access to essential in-person banking services in the United Kingdom.
- (3) “Essential in-person banking services” include services which are delivered face-to-face, and may include those provided in banks, banking hubs, or other service models.
- (4) The policies mentioned in subsection (2) may include those which relate to –
 - (a) ensuring adequate availability of essential in-person banking services,
 - (b) ensuring adequate provision of support for online banking training and internet access, for the purposes of ensuring access to online banking, and
 - (c) expectations of maximum geographical distances service users should be expected to travel to access essential in-person banking services in rural areas.
- (5) The FCA must have regard to the essential banking services access policy statement when fulfilling its functions.”

Member’s explanatory statement

This new Clause would require the Treasury to publish a policy statement setting out its policies in relation to the provision of essential in-person banking services, including policies relating to availability of essential in-person banking services, support for online banking, and maximum distances people can expect to travel to access services.

Insert the following new Clause –

“Access to cash: guaranteed minimum provision for consumers

- (1) The Treasury must, by regulations, make provision to guarantee a minimum level of access to free of charge cash access services for consumers across the United Kingdom.
- (2) The minimum level of access referred to in subsection (1) must be specified in the regulations.

After Clause 52 - continued

- (3) Regulations under this section are subject to the affirmative procedure.”

Insert the following new Clause—

“Access to cash: guaranteed minimum provision for small businesses

- (1) The Treasury must, by regulations, make provision to guarantee a minimum level of access to free of charge cash access services for small businesses across the United Kingdom.
- (2) The minimum level of access referred to in subsection (1) must be specified in the regulations.
- (3) Regulations under this section are subject to the affirmative procedure.”

Insert the following new Clause—

“Duty to collect data on cash acceptance

- (1) The FCA must monitor, collect and publish data in relation to levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (2) The FCA must publish a report, as soon as practicable after the end of—
- (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
- on levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (3) The FCA can, by written notice, require a retailer or service provider to provide to the FCA information that it may reasonably require for the purposes of exercising its duties under subsections (1) and (2).”

Member’s explanatory statement

This amendment would require the FCA to monitor and report on levels of cash acceptance across the UK.

After Clause 65

LORD HOLMES OF RICHMOND

Insert the following new Clause—

“Determination of applications

- (1) FSMA 2000 is amended as follows.
- (2) In section 61 (determination of applications), after subsection (2) insert—
- “(2ZA) In determining the application, the regulator must—
- (a) assign a new application to a case handler within 5 working days of the application being made,
 - (b) complete an initial application review within 10 working days of allocation to a case handler, and
 - (c) allow a period of no more than 15 working days from receiving the application, to make requests for additional information.

After Clause 65 - continued

- (2ZB) The regulators must publish monitoring data on an annual basis regarding the following—
- (a) the proportion of cases which required escalation to sponsoring firms, including summary trend data on the reasons for escalation,
 - (b) the average time it takes to assign a case handler, and
 - (c) the average number of days it takes to complete an application in full.””

Member’s explanatory statement

This amendment would add to the regulators’ authorisation KPIs within the Financial Services and Markets Act 2000 and require them to publish monitoring data related to the determination of authorisations.

LORD SHARKEY

Insert the following new Clause—

“Redress and private right of action

In section 138D of FSMA 2000 (actions for damages), omit subsection (3).”

Member’s explanatory statement

This would allow individuals who have suffered a loss through a firm’s breach of the Consumer Duty the right to take legal action for damages against the firm.

After Clause 71

LORD TUNNICLIFFE

Insert the following new Clause—

“Green Finance Strategy update

- (1) The Treasury must lay before the House of Commons and the House of Lords an updated Green Finance Strategy within three months of the passing of this Act.
- (2) The strategy must include—
 - (a) a Green Taxonomy, and
 - (b) Sustainability Disclosure Requirements.
- (3) In preparing the strategy, the Treasury must consult—
 - (a) financial services stakeholders,
 - (b) businesses in the wider economy,
 - (c) the Secretary of State for Business, Energy and Industrial Strategy, and
 - (d) the Secretary of State for Work and Pensions.
- (4) In this section a “Green Taxonomy” means investment screening criteria which classify which activities can be defined as environmentally sustainable including, but not limited to—
 - (a) climate change mitigation and adaptation,
 - (b) sustainable use and protection of water and marine resources,
 - (c) transitions to a circular economy,

After Clause 71 - continued

- (d) pollution prevention and control, and
 - (e) protection and restoration of biodiversity and ecosystems.
- (5) In this section “Sustainability Disclosure Requirements” are the requirements placed on companies, including listed issuers, asset managers and asset owners, to report on their sustainability risks, opportunities and impacts.”

Member’s explanatory statement

This new Clause would require the Treasury to publish an updated Green Finance Strategy. This must include a Green Taxonomy and Sustainability Disclosure Requirements.

Insert the following new Clause –

“National strategy on financial fraud

- (1) The Treasury must lay before the House of Commons and the House of Lords a national strategy on the detection, prevention and investigation of fraud in relation to the provision or use of financial services, and associated financial crime, within six months of the passing of this Act.
- (2) In preparing the strategy, the Treasury must consult –
 - (a) the Secretary of State for the Home Office,
 - (b) the National Economic Crime Centre,
 - (c) law enforcement bodies which the Treasury considers relevant to the strategy,
 - (d) relevant regulators,
 - (e) financial services stakeholders,
 - (f) digital platforms, telecommunications companies, financial technology companies, and social media companies.
- (3) The strategy must include arrangements for a data-sharing agreement involving –
 - (a) relevant law enforcement agencies,
 - (b) relevant regulators,
 - (c) financial services stakeholders,
 - (d) telecommunications stakeholders, and
 - (e) technology-based communication platforms,

for the purposes of detecting, preventing and investigating fraud in relation to the provision or use of financial services, and associated financial crime, and, in particular, tracking stolen money which may pass through mule bank accounts or platforms operated by other financial services stakeholders.
- (4) The strategy must be updated at least every five years.
- (5) In this section “fraud in relation to the provision or use of financial services, and associated financial crime” includes, but is not limited to, authorised push payment fraud, and unauthorised facility takeover fraud and online and offline identity fraud as they relate to the provision or use of financial services.
- (6) In this section, “financial services stakeholders” includes banks, building societies, credit unions, investment firms, Electric Money Institutions, virtual asset providers and exchanges, and payment system operators.”

Member's explanatory statement

This amendment would compel the Treasury to publish a new national strategy on financial fraud, and update it at least every five years. The strategy would cover detection, prevention and investigation of financial fraud and associated financial crime, and arrangements for a data sharing agreement between law enforcement agencies, regulators and others to track stolen money.

Insert the following new Clause –

“Regulation of buy-now-pay-later firms

- (1) Within 28 days of the passing of this Act, the Secretary of State must by regulations make provision for –
 - (a) buy-now-pay-later credit services, and
 - (b) other lending services that have non-interest-bearing elements,to be regulated by the FCA.
- (2) The regulations must include measures which –
 - (a) ensure all individuals accessing services mentioned in subsection (1) have access to the Financial Services Ombudsman,
 - (b) ensure that individuals applying for services mentioned in subsection (1) are subject to credit checks prior to the service being approved, and
 - (c) ensure that individuals accessing services mentioned in subsection (1) are protected by section 75 of the Consumer Credit Act 1974 (liability of creditor for breaches by supplier).
- (3) Regulations are subject to the affirmative procedure.”

Member's explanatory statement

This new clause would bring into FCA regulation the non-interest-bearing elements of buy-now-pay-later lending and similar services.

LORD SHARKEY

Insert the following new Clause –

“Access to Sharia-compliant financial services including student finance

- (1) Within six months of the passing of this Act, the Treasury must make provision by regulations to facilitate the availability of Sharia-compliant financial services in the United Kingdom, including availability to students who are eligible for the Government's student finance provision of Sharia-compliant finance products for paying tuition fees and for student maintenance on equitable terms with students accessing the Government's student finance provision.
- (2) Regulations under this section are subject to the negative procedure.”

Member's explanatory statement

This is a probing amendment to allow debate on the progress towards provision of Sharia-compliant student funding.

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

11 January 2023
