

# Financial Services and Markets Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**Clause 8**

BARONESS NOAKES

Page 8, line 4, at beginning insert “If the condition specified in subsection (1A) is met,”

***Member’s explanatory statement***

*This amendment, and another, would ensure that the designation of activities did not go beyond the FCA’s operational objectives (consumer, integrity and competition).*

Page 8, line 5, at end insert—

“(1A) The condition is that the Treasury considers that it is necessary for the FCA to regulate the designated activities in order to meet its operational objectives in section 1B(3).”

***Member’s explanatory statement***

*This amendment, and another, would ensure that the designation of activities did not go beyond the FCA’s operational objectives (consumer, integrity and competition).*

**Schedule 3**

BARONESS NOAKES

Page 131, leave out lines 13 to 20

***Member’s explanatory statement***

*This amendment would remove short selling from the list of potential activities which could be designated under Clause 8.*

**Clause 12**

BARONESS NOAKES

Page 19, line 25, at end insert—

“(4) Omit subsections (3), (6) and (7).”

**Member's explanatory statement**

*This amendment probes why the power to make recommendations to and obtain information from "bankers" remains relevant.*

**Clause 18**

BARONESS NOAKES

Page 29, leave out lines 34 to 36 and insert –

- “(3) In complying with the duty in subsection (1) the relevant regulators must ensure that any information or other requirements imposed on a critical third party minimise, so far as is reasonably practicable, the burden placed on the critical third party.”

**Member's explanatory statement**

*This amendment shifts the emphasis from burdens on regulators to burdens on third parties.*

**Clause 24**

BARONESS NOAKES

Page 38, line 22, leave out from “facilitating” to end of line 23

**Member's explanatory statement**

*This amendment probes what “relevant international standards” are and their relationship with the competitiveness and growth objective.*

Page 39, leave out line 2

**Member's explanatory statement**

*This amendment probes what “relevant international standards” are and their relationship with the competitiveness and growth objective.*

**After Clause 25**

BARONESS NOAKES

Insert the following new Clause –

**“General duties**

- (1) FSMA 2000 is amended as follows.
- (2) In section 1B(1) (the FCA’s general duties) at the end insert –
  - “(c) ensures that any burden or restriction which is imposed on a person, or on the carrying on of an activity, is proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.”
- (3) In section 2B(1) (the PRA’s general objective) at the end insert “and ensures that any burden or restriction which is imposed on a person, or on the carrying on of an activity, is proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.”
- (4) In section 3B omit subsection (1)(b).”

**Member's explanatory statement**

*This amendment places proportionality, currently a regulatory principle, in the general duties of the FCA and the PRA.*

**Clause 29**

BARONESS NOAKES

Page 42, line 39, at end insert –

“(bb) an explanation of the ways in which having regard to the competitiveness and growth objective (see section 1EB) has affected the proposed rules;”;

**Member's explanatory statement**

*This amendment requires the FCA to include a statement of how they have taken the competitiveness and growth objective into account when consulting on rules.*

Page 43, line 14, at end insert –

“(bb) an explanation of the ways in which having regard to the competitiveness and growth objective (see section 2H(1B)) has affected the proposed rules;”;

**Member's explanatory statement**

*This amendment requires the PRA to include a statement of how they have taken the competitiveness and growth objective into account when consulting on rules.*

**After Clause 35**

BARONESS NOAKES

Insert the following new Clause –

**“The Financial Services Regulators Committee of Parliament**

- (1) There is to be a body known as the Financial Services Regulators Committee of Parliament (“the FSRC”).
- (2) The FSRC is to consist of nine members who are to be drawn both from the Members of the House of Commons and from the members of the House of Lords.
- (3) Each member of the FSRC is to be appointed by the House of Parliament from which the member is to be drawn.
- (4) A person is not eligible to become a member of the FSRC if the person is a Minister of the Crown.
- (6) A member of the FSRC is to be the Chair of the FSRC chosen by its members.
- (7) Schedule 7A makes further provision about the FSRC.”

**Member's explanatory statement**

*These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.*

Insert the following new Clause—

**“Main functions of the FSRC**

- (1) The FSRC may examine or otherwise oversee the administration, policy and operations of—
  - (a) the Financial Conduct Authority,
  - (b) the Prudential Regulation Authority,
  - (c) the Payments Systems Regulator, and
  - (d) any other body or person which appears to the FSRC to be carrying out regulatory functions in respect of financial services in Great Britain.
- (2) The FSRC may examine any consultations issued by the bodies specified in subsection (1) including those covered by paragraph 27 of Schedule 1ZA and paragraph 36 of Schedule 1ZB to FSMA 2000.
- (3) The FSRC may examine any reports published by the FCA or the PRA pursuant to a direction given by the Treasury under paragraph 11A of Schedule 1ZA or paragraph 21A of Schedule 1ZB to FSMA 2000.”

***Member’s explanatory statement***

*These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.*

Insert the following new Clause—

**“Reports of the FSRC**

- (1) The FSRC may make such reports to Parliament as it considers appropriate concerning any aspect of its functions.
- (2) The FSRC must lay before Parliament any report made by it to Parliament.”

***Member’s explanatory statement***

*These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.*

**Clause 36**

BARONESS NOAKES

Page 50, line 30, leave out “Treasury Committee of the House of Commons” and insert “FSRC”

***Member’s explanatory statement***

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

Page 50, leave out line 43 and insert “FSRC.”

***Member’s explanatory statement***

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

Page 51, leave out lines 1 to 11

**Member's explanatory statement**

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

Page 51, line 42, leave out “Treasury Committee of the House of Commons” and insert “FSRC”

**Member's explanatory statement**

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

Page 52, leave out line 11 and insert “FSRC”

**Member's explanatory statement**

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

Page 52, leave out lines 12 to 22

**Member's explanatory statement**

*This amendment is consequential on the amendments to add new Clauses after Clause 35.*

**After Clause 37**

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

**“Efficiency report**

- (1) FSMA 2000 is amended as follows.
- (2) In paragraph 11 of Schedule 1ZA (FCA annual report), after sub-paragraph (2) insert –
  - “(2A) The report must include how they have undertaken this efficiency comparison, including the periodicity of the comparison and its terms of reference and detailed outcome.”
- (3) In paragraph 19 of Schedule 1ZB (PRA annual report), after sub-paragraph (2) insert –
  - “(2A) The report must include how they have undertaken this efficiency comparison, including the periodicity of the comparison and its terms of reference and detailed outcome.””

**After Schedule 7**

BARONESS NOAKES

Insert the following new Schedule –

**“SCHEDULE 7A**

**THE FINANCIAL SERVICES REGULATORS COMMITTEE OF PARLIAMENT**

*Tenure of office*

- 1 (1) Subject to what follows, a person appointed as a member of the FSRC during a Parliament holds office for the duration of that Parliament.
- (2) A member of the FSRC vacates office if –

**After Schedule 7 - continued**

- (a) the person ceases to be a member of the House of Parliament by virtue of which the person is a member of the FSRC,
  - (b) the person becomes a Minister of the Crown, or
  - (c) a resolution for the person's removal is passed in the House of Parliament by virtue of which the person is a member of the FSRC.
- (3) A member of the ISC may resign at any time by notice given to—
- (a) the Chair of the FSRC, or
  - (b) in the case of the member who is the Chair of the FSRC, the Speaker of the House of Parliament by virtue of which the person is a member of the FSRC.
- (4) A person who ceases to be a member of the FSRC is eligible for reappointment.
- (5) Sub-paragraph (2) does not affect the validity of anything done between the occurrence of a vacancy and the vacancy being filled.
- (6) Anything which, immediately before the end of a Parliament, is in the process of being done or omitted to be done by or in relation to the FSRC may be continued by or in relation to the FSRC in the new Parliament.
- (7) Anything done or omitted to be done by or in relation to the FSRC in a Parliament (or treated as so done or omitted) is, if in force or effective immediately before the end of that Parliament, to have effect as if done or omitted by or in relation to the FSRC in the new Parliament so far as that is required for continuing its effect in that Parliament.

*Procedure*

- 2 (1) The FSRC may determine its own procedure; but this is subject to sub-paragraphs (2) to (5).
- (2) If on any matter there is an equality of voting among the members of the FSRC, the Chair of the FSRC has a second or casting vote.
- (3) The Chair of the FSRC may appoint another member of the FSRC to act, in the Chair's absence, as the chair of the FSRC at any meeting of it.
- (4) A person appointed under sub-paragraph (3) does not enjoy the right conferred on the Chair of the FSRC by sub-paragraph (2).
- (5) The quorum of the FSRC is three.
- (6) The FSRC may take evidence on oath, and for that purpose may administer oaths.

*Funding and other resources*

- 3 A Minister of the Crown—
- (a) may make payments to either House of Parliament in respect of any expenditure incurred, or to be incurred, by either House in relation to the FSRC,
  - (b) may provide staff, accommodation or other resources to either House of Parliament for the purposes of the FSRC,
  - (c) may make payments, or provide staff, accommodation or other resources, to the FSRC, or
  - (d) may otherwise make payments, or provide staff, accommodation or other resources, to any person for the purposes of the FSRC.”

**Schedule 8**

BARONESS NOAKES

Page 165, line 47, at end insert –

**“131Z3 Expiry**

- (1) This Part (subject to subsection (2)) expires at the end of the period of 10 years beginning with the day that it is brought into force.
- (2) The Treasury may by regulations provide that any provision of this Part –
  - (a) does not expire at the time that it would otherwise expire, and
  - (b) expires instead at such later time as is specified in the regulations.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.”

***Member’s explanatory statement***

*This amendment sunsets the powers relating to cash access after 10 years unless the Treasury provides for their extension.*

**Schedule 9**

BARONESS NOAKES

Page 180, line 20, at end insert –

**“206Z7 Expiry**

- (1) This Part (subject to subsection (2)) expires at the end of the period of 10 years beginning with the day that it is brought into force.
- (2) The Treasury may by regulations provide that any provision of this Part –
  - (a) does not expire at the time that it would otherwise expire, and
  - (b) expires instead at such later time as is specified in the regulations.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.”

***Member’s explanatory statement***

*This amendment sunsets the powers relating to cash distribution after 10 years unless the Treasury provides for their extension.*

**After Clause 65**

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

**“Passing off**

After section 24 of FSMA 2000 insert –

**“24A Passing off**

**After Clause 65 - continued**

A person (whether an authorised person or not) commits an offence if their actions, or omissions, may suggest to a reasonable person that their activities, in whole or part, are authorised under the provisions of the Act, and related instruments, when this is not the case.””

**After Clause 71**

LORD HUNT OF KINGS HEATH

*As an amendment to the new Clause "National strategy on financial fraud" tabled by Lord Tunnicliffe on HL Bill 80(a)*

After subsection (3), insert—

“(3A) The strategy must include—

- (a) arrangements specifically aimed at protecting older people from fraud in relation to financial services, and
- (b) support services to help older people who are the victims of fraud with advice and information as to their rights in relation to financial services.”

***Member’s explanatory statement***

*The amendment would add to the original amendment specific provisions in relation to older people who suffer from financial fraud.*

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

**“Failure to prevent fraud and facilitation of fraud**

- (1) Where a person (P) is a regulated entity or is identified as being responsible for a designated senior management function in an authorised person’s statement of responsibilities under section 60 of FSMA 2000 (application for approval), P is guilty of failing to prevent fraud or facilitation of fraud if a person associated with P commits fraud as defined in the Fraud Act 2006 for the purposes of intending—
  - (a) to obtain or retain business for P, or
  - (b) to obtain or retain an advantage in the conduct of business for P, or
  - (c) to obtain or procure personal advantage for P including through bonuses or incentives.
- (2) It is a defence for P to prove that P had in place procedures that a reasonable person would expect that are designed to prevent persons associated with P from undertaking such conduct.
- (3) An “associated person” means a person who performs services for or on behalf of P and includes employees, agents and subsidiaries.
- (4) Where P is guilty of failing to prevent fraud, the FCA and the PRA have the following powers in relation to that person—
  - (a) a power to require the supply of information;
  - (b) a power to make investigations (including the making of reports);
  - (c) a power of entry into premises controlled by P;

**After Clause 71 - continued**

- (d) powers of inspection, search and seizure with respect to premises controlled by P;
  - (e) a power to make a private or public statement of censure;
  - (f) a power to impose monetary penalties;
  - (g) a power to require restitution for loss or damage.
- (5) The FCA, or PRA in relation to entities it regulates, may also pursue criminal prosecutions.
- (6) A relevant body guilty of a criminal offence under subsection (5) is liable—
- (a) on conviction on indictment, to a fine,
  - b) on summary conviction in England and Wales, to a fine, or
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (4) and may make such modifications to the provision in subsection (4) as the Treasury consider appropriate.”

**Clause 78**

## BARONESS NOAKES

Page 90, line 30, at beginning insert “Subject to subsection (3A),”

***Member’s explanatory statement***

*This amendment ensures that retained EU law will cease to have effect no later than 31 December 2026.*

Page 90, line 31, at end insert—

“(3A) Except to the extent that section 1 has already come into force, section 1 comes into force on 31 December 2026.”

***Member’s explanatory statement***

*This amendment ensures that retained EU law will cease to have effect no later than 31 December 2026.*

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*16 January 2023*

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