

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Schedule 1

BARONESS PENN

Page 94, line 12, at end insert –

“Official Listing of Securities (Change of Competent Authority) Regulations 1991 (S.I. 1991/2000)”

Member’s explanatory statement

This amendment and the Minister’s other amendments to Schedule 1 (except for the amendment at page 100, lines 45 and 46) would add various instruments containing retained EU law relating to financial services to the list of subordinate legislation to be revoked in Part 2 of Schedule 1 to the Bill.

Page 94, line 16, at end insert –

“Official Listing of Securities (Change of Competent Authority) Regulations 2000 (S.I. 2000/968)
Financial Markets and Insolvency (Settlement Finality) (Revocation) Regulations 2001 (S.I. 2001/1349)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 94, line 18, at end insert –

“Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 (S.I. 2001/2587)
Public Offers of Securities (Exemptions) Regulations 2001 (S.I. 2001/2955)
Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (S.I. 2001/2956)
Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 (S.I. 2001/2957)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 94, line 20, at end insert –

“Electronic Commerce Directive (Financial Services and Markets) (Amendment) Regulations (S.I. 2002/2015)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 95, line 1, at end insert –

“Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126)
Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment No. 2) Regulations 2007 (S.I. 2007/2160)
Financial Services and Markets Act 2000 (Motor Insurance) Regulations 2007 (S.I. 2007/2403)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 95, line 2, at end insert –

“Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254)
Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007/3255)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 95, line 20, at end insert –

“Takeover Code (Concert Parties) Regulations 2008 (S.I. 2008/3073)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 95, line 23, at end insert –

“Financial Services and Markets Act 2000 (Amendment) Regulations 2009 (S.I. 2009/2461)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 95, line 26, at end insert –

“Financial Services and Markets Act 2000 (Market Abuse) Regulations 2009 (S.I. 2009/3128)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 96, line 11, at end insert –

“Prospectus Regulations 2013 (S.I. 2013/1125)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 96, line 42, at end insert –

“Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 96, line 47, at end insert –

“Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 (S.I. 2014/3350)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 97, line 21, at end insert –

“Financial Services and Markets Act 2000 (Qualifying EU Provisions) (Amendment) Order 2016 (S.I. 2016/936)

Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 (S.I. 2016/1095)

Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016 (S.I. 2016/1194)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 98, line 13, at end insert –

“Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 100, line 21, at end insert –

“Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020 (S.I. 2020/117)”

Member’s explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 100, leave out lines 45 and 46

Member's explanatory statement

This amendment would remove from the list of instruments to be revoked under Part 2 of Schedule 1 the Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716) which predominantly comprise domestic regulation.

Page 101, line 9, at end insert –

“Financial Services and Markets Act 2000 (Qualifying Provisions)(Amendment) Order 2022 (S.I. 2022/1252)”

Member's explanatory statement

See explanatory statement for the amendment at page 94, line 12.

Page 103, line 3, at end insert –

“(za) section 55J(7A) to (7C);
(zb) section 55KA;”

Member's explanatory statement

This amendment would add sections 55J(7A) to (7C) and 55KA of the Financial Services and Markets Act 2000 to the list of legislation to be revoked in Part 4 of Schedule 1 to the Bill. The provisions implemented in part the Solvency 2 Directive and concern powers of the Prudential Regulation Authority to cancel permission of certain undertakings.

Page 103, line 9, at end insert –

“(fa) section 367(3)(za);”

Member's explanatory statement

This amendment would add section 367(3)(za) of the Financial Services and Markets Act 2000 to the list of legislation to be revoked in Part 4 of Schedule 1 to the Bill. The provisions implemented in part the Solvency 2 Directive and concern winding-up petitions where the Prudential Regulation Authority has cancelled permission of certain undertakings.

Schedule 2

BARONESS PENN

Page 126, line 39, at end insert –

“PART 4A

AMENDMENTS TO THE CENTRAL COUNTERPARTIES (AMENDMENT, ETC., AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2018

50A Regulation 19B of the Central Counterparties (Amendment, etc., and (1) Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184) is amended as follows.

(2) In paragraph (2) for “one year” substitute “3 years and 6 months”.

(3) After paragraph (3) insert –

“(4) The period determined by the Bank of England in a particular case under paragraph (2) (whenever determined) may be varied by the making of a subsequent determination.””

Member's explanatory statement

This amendment would allow the Bank of England to extend the period during which third country central counterparties that have fallen out of the temporary recognition regime following IP completion day can continue to offer services to firms in the United Kingdom, from a maximum period of one year to a maximum period of 3 years and 6 months.

Clause 3

BARONESS PENN

Page 3, line 15, at end insert –

“(aa) authorise the making of subordinate legislation by the Treasury;”

Member's explanatory statement

This amendment would ensure that the powers in clauses 3 and 4 of the Bill to make transitional amendments or saving provision in relation to the retained EU law listed in Schedule 1 for revocation, also include the power to confer new regulation-making powers on the Treasury.

Clause 6

BARONESS PENN

Page 6, line 39, at end insert “, and

“(ii) the Bank’s duties under section 30D(1)(a) of that Act;”

Member's explanatory statement

This amendment would ensure that when the Bank of England makes material changes to rules where consultation exemptions apply under clause 6, the Bank must publish a statement explaining how the rules are compatible with the Bank’s duties relating to the regulatory principles inserted by clause 45 of the Bill. (The words after “with” in line 38 become subparagraph (i)).

Clause 8

BARONESS PENN

Page 10, line 31, after “provided” insert “by designated activity regulations under section 71Q or”

Member's explanatory statement

This amendment would insert a cross-reference to section 71Q to ensure that the exception in section 71P(2)(a) of the Financial Services and Markets Act 2000 as inserted by clause 45 of the Bill (on liability in connection with designated activities) also refers to designated activity regulations under section 71Q.

Clause 24

BARONESS KRAMER

Page 38, line 27, at end insert –

“(2) In this section “international standards” does not refer to a mutual recognition agreement or recognition of equivalence as outlined in section 23 of the Financial Services and Markets Act 2023.”

Member's explanatory statement

The purpose of this amendment is to prevent regulators changing UK standards to match the foreign law and practices recognised in a mutual recognition agreement.

Page 39, line 7, at end insert –

“(1C) In this section “international standards” does not refer to a mutual recognition agreement or recognition of equivalence as outlined in section 23 of the Financial Services and Markets Act 2023.”

Member's explanatory statement

The purpose of this amendment is to prevent regulators changing UK standards to match the foreign law and practices recognised in a mutual recognition agreement.

Clause 36

LORD FORSYTH OF DRUMLEAN

Page 50, line 30, leave out “chair of the Treasury Committee of the House of Commons” and insert “chairs of the relevant committees of Parliament”

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 50, line 31 published on HL Bill 80(b)

Page 50, line 31, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

LORD FORSYTH OF DRUMLEAN

Page 50, leave out line 43 and insert “relevant committees of Parliament”

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 50, line 43 published on HL Bill 80(b)

Page 50, line 43, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

LORD FORSYTH OF DRUMLEAN

Page 51, leave out lines 1 to 11 and insert –

- “(6) In this paragraph “relevant committees of Parliament” means –
- (a) the Treasury Committee of the House of Commons, or another committee of the House of Commons whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Commons at the same time);
 - (b) the Economic Affairs Committee or Industry and Regulators Committee of the House of Lords, or another committee of the House of Lords whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Lords at the same time);

Clause 36 - continued

- (c) a joint committee of both Houses whose terms of reference designate it as having functions for the purposes of this paragraph.”

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 51, line 2 published on HL Bill 80(b)

Page 51, line 2, after “Commons” insert “or the Economic Affairs and Industry and Regulators Committees of the House of Lords”

LORD FORSYTH OF DRUMLEAN

Page 51, line 42, leave out “chair of the Treasury Committee of the House of Commons” and insert “chairs of the relevant committees of Parliament”

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 51, line 43 published on HL Bill 80(b)

Page 51, line 43, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

LORD FORSYTH OF DRUMLEAN

Page 52, leave out line 11 and insert “relevant committees of Parliament”

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 52, line 11 published on HL Bill 80(b)

Page 52, line 11, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

LORD FORSYTH OF DRUMLEAN

Page 52, leave out lines 12 to 22 and insert –

- “(6) In this paragraph “relevant committees of Parliament” means –
- (a) the Treasury Committee of the House of Commons, or another committee of the House of Commons whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Commons at the same time);
 - (b) the Economic Affairs Committee or Industry and Regulators Committee of the House of Lords, or another committee of the House of Lords whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Lords at the same time);
 - (c) a joint committee of both Houses whose terms of reference designate it as having functions for the purposes of this paragraph.”

Clause 36 - continued

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Clause 36, page 52, line 13 published on HL Bill 80(b)

Page 52, line 13, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

Clause 37

BARONESS KRAMER

Page 53, line 6, at end insert –

- “(aa) the effect of the Financial Services and Markets Act 2023 on financial stability, and potential risks to financial stability, in the United Kingdom;
- (ab) an assessment of the delivery of the FCA’s objectives in the previous year;
- (ac) an assessment of measures which could improve the delivery of the FCA’s objectives in the next year;”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 37 in the name of Baroness Kramer, would place additional requirements on the FCA and PRA to report on their objectives, including an assessment of financial stability and proposed future improvements.

Page 53, line 43, at end insert –

- “(aa) the effect of the Financial Services and Markets Act 2023 on financial stability, and potential risks to financial stability, in the UK;
- (ab) an assessment of the delivery of the PRA’s objectives in the previous year;
- (ac) an assessment of measures which could improve the delivery of the PRA’s objectives in the next year;”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 37 in the name of Baroness Kramer, would place additional requirements on the FCA and PRA to report on their objectives, including an assessment of financial stability and proposed future improvements.

Schedule 7

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Schedule 7, page 156, line 37 published on HL Bill 80(b)

Page 156, line 37, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

Schedule 7 - continued

BARONESS PENN

Page 156, leave out line 43 and insert –

“(b) demonstrate that the Regulator has had regard to the regulatory principles in section 53 when preparing the proposals,”

Member’s explanatory statement

This amendment ensures that the notification provisions align with the duty in section 49(3) of the Financial Services (Banking Reform) Act 2013 for the Payment Systems Regulator to have regard to the regulatory principles set out in section 53 of that Act.

LORD TUNNICLIFFE

This amendment replaces the amendment in the name of Lord Tunncliffe to Schedule 7, page 157, line 6 published on HL Bill 80(b)

Page 157, line 6, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

This amendment replaces the amendment in the name of Lord Tunncliffe to Schedule 7, page 157, line 8 published on HL Bill 80(b)

Page 157, line 8, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

Schedule 8

BARONESS TYLER OF ENFIELD

BARONESS KRAMER

Page 162, line 7, at end insert –

“(1A) When exercising its functions under this Part, the FCA may issue a direction to a designated person, for the purpose of establishing a banking hub.

(1B) A designated person must comply with a direction under subsection (1B).

(1C) A “banking hub” is a facility which –

- (a) provides cash access and other basic banking services,
- (b) is facilitated jointly by multiple providers of such services,
- (c) contains private consultation spaces for users of cash access services, and
- (d) is established for the purpose of ensuring reasonable provision of cash access services where there would otherwise be a local deficiency of such provision.”

Member’s explanatory statement

This amendment would require designated persons to comply with direction given by the FCA for the purposes of establishing banking hubs.

BARONESS TYLER OF ENFIELD

Page 163, line 18, at end insert –

“(d) not close a cash access service in a specific location until alternatives have been installed.”

Schedule 11

BARONESS PENN

Page 213, line 3, leave out “financial”

Member’s explanatory statement

This amendment would enable the Bank to direct a central counterparty’s parent company to establish a separate holding company as a parent of the subsidiary, rather than requiring that holding company to be a separate financial holding company.

Page 213, leave out lines 23 and 24

Member’s explanatory statement

This amendment is consequential on the amendment at page 213, line 3 and omits the definition of “financial holding company” as it is no longer required.

Page 231, line 3, at end insert –

“(ia) paragraph 34(6)(d),”

Member’s explanatory statement

This amendment would ensure that paragraph 34(6)(d) of Schedule 11 is read as including onward bridge central counterparties for the purpose of being able to convert liabilities owed by a central counterparty into securities issued by an onward bridge central counterparty.

Page 234, line 2, leave out from “cover” to end of line 4 and insert “the CCP’s potential future exposure in the event of default by those members”

Member’s explanatory statement

This amendment would correct the definition of “initial margin requirements” so that it refers to the counterparty exposure that would arise if the clearing member lodging the initial margin defaulted.

Page 285, line 6, after “paragraph” insert “121 or”

Member’s explanatory statement

This amendment would ensure that paragraph 127 of Schedule 11, regarding the admissibility of statements made to investigators, applies to statements made to investigators appointed under paragraph 121 of Schedule 11 as well as to those appointed under paragraph 122.

Clause 68

BARONESS KRAMER

Page 84, line 40, at end insert –

“(5A) The relevant requirement referred to in subsection (5) must specify that reimbursement in qualifying cases cannot be refused on the basis that a victim, or victims, ought to have known that the payment order was executed subsequent to fraud or dishonesty.”

Member’s explanatory statement

This amendment would prevent reimbursement for victims of fraudulent or dishonest payments being refused on the basis that that they should have known the payment was fraudulent or dishonest.

After Clause 71LORD MOYLAN
BARONESS HAYTER OF KENTISH TOWN

Insert the following new Clause –

“Politically exposed persons: UK taxpayers

- (1) Within six months of this Act being passed, the Treasury must take all reasonable steps to make regulations to amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) so as to secure that, for the purposes of the regulation of financial services, individuals who are ordinarily resident for tax purposes in the United Kingdom are not treated as politically exposed persons, or as family members or close associates of a politically exposed person.
- (2) Regulations under this section are subject to the affirmative procedure.”

BARONESS KRAMER

Insert the following new Clause –

“Limitation on the powers of the PRA

The PRA may not accept an application from any insurance undertaking, reinsurance undertaking or third-country insurance undertaking for the application of a matching adjustment to a risk-free interest rate term structure for a portfolio of assets with a rating of less than BBB by Standard and Poors Global Ratings or its equivalent.”

Member’s explanatory statement

This amendment seeks to prevent a matching adjustment being applied to a portfolio of high-risk and/or illiquid assets.

Insert the following new Clause –

“Distribution of the proceeds of fines

The Treasury must distribute any proceeds of fines levied by the courts for breaches of FSMA 2000 (as amended) and related regulations to the FCA, the PRA and the National Crime Agency.”

Member's explanatory statement

The purpose is to provide resources to the regulators and the enforcement agency from the proceeds of fines for wrongdoing in financial services and thereby to increase their regulatory and enforcement capacity.

Clause 76

BARONESS PENN

Page 89, line 36, after "Act" insert ", or under any other enactment,"

Member's explanatory statement

This amendment and the amendment at page 89, line 37, would allow any provision that may be made by regulations subject to the negative procedure under this Act, or under any other enactment, to be made in regulations under this Act subject to the affirmative procedure.

Page 89, line 37, after "regulations" insert ", made under or by virtue of this Act,"

Member's explanatory statement

See the explanatory statement for the amendment at page 89, line 36.

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18 January 2023
