

LORDS AMENDMENTS TO THE
FINANCIAL SERVICES BILL

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

Before Clause 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.”

Clause 34

- 2** Page 40, line 14, leave out subsection (2)
- 3** Page 40, line 16, at beginning insert “In section 7 of that Act (debt respite scheme: regulations),”
- 4** Page 40, line 17, at end insert “so far as it applies in England and Wales”
- 5** Page 40, line 31, leave out “subsection (5)” and insert “section 7(5) of that Act”

After Clause 35

6 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 –
 - (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.”

After Clause 36

7 Insert the following new Clause –

“Retention of personal data under the Market Abuse Regulation

In Article 28 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (data protection), omit “Personal data is to be retained for a maximum period of five years.””

After Clause 40

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.”

9 Insert the following new Clause –

“Payment services and the provision of cash

In Part 2 of Schedule 1 to the Payment Services Regulations (S.I. 2017/752) (activities which do not constitute payment services), after paragraph 2 insert –

- “3 (1) The provision of cash otherwise than through an automatic teller machine does not constitute a payment service where –
- (a) there is a transfer of a corresponding amount from a payment account held by the recipient of the cash to a relevant person, and
 - (b) the payment account is not provided by a relevant person.
- (2) In sub-paragraph (1), “relevant person” means –
- (a) where the cash is provided by a person (“P1”) through one or more persons acting on P1’s behalf, P1 and each person acting (directly or indirectly) on P1’s behalf;
 - (b) where the cash is provided by a person (“P2”) otherwise than on behalf of another person or through one or more persons acting on P2’s behalf, P2.
- (3) The execution of the transfer referred to in sub-paragraph (1)(a), and other services enabling that transfer, are not excluded from the meaning of payment services by this paragraph.””

Clause 44

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

11 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.”

12 Page 47, line 34, at end insert –

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

Clause 45

13 Page 48, line 18, at end insert –

“(e) section (*Payment services and the provision of cash*).”

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

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

Schedule 2

16 Page 65, line 27, at end insert –

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

17 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.”

Schedule 3

18 Page 82, line 14, at end insert—

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

19 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.”

Schedule 12

20 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.””

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

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*Ordered, by The House of Commons,
to be Printed, 20th April 2021.*

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