

# FINANCIAL SERVICES BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

1. These Explanatory Notes relate to the Lords Amendments to the Financial Services Bill as brought from the House of Lords on 19 April 2021 (Bill 287).
2. These Explanatory Notes have been prepared by HM Treasury in order to assist the reader of the Bill and the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
3. These Explanatory Notes, like the Lords Amendments themselves, refer to HL Bill 162, the Bill as first introduced in the Lords.
4. These Explanatory Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not intended to be, a comprehensive description of the Lords Amendments.
5. Lords Amendment 1 was tabled by Lord Stevenson of Balmacara and was opposed by the Government.
6. Lords Amendments 2 to 7, 10 to 12 and 14 to 21 were tabled in the name of the Minister.
7. Lords Amendment 8 was tabled by Lord Sharkey and was opposed by the Government.
8. Lords Amendments 9 and 13 were tabled by Lord Holmes of Richmond and were accepted by the Government.
9. In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

# Commentary on Lords Amendments

## Lords Amendments before clause 1

### Lords Amendment 1\*

- 1 Lords Amendment 1 would insert a new clause, containing two provisions amending the Financial Services and Markets Act 2000 (FSMA). The first provision would require the Financial Conduct Authority (FCA) to have regard to the general principle that firms should not profit from exploiting a consumer's vulnerability, behavioural biases, or constrained choices when considering the appropriate degree of protection which it should secure for consumers in accordance with its consumer protection objective. The provision would do this by adding a new subsection (2) (ea) to section 1C of FSMA, which lists matters the FCA must have regard to when considering the appropriate degree of consumer protection.
- 2 The second provision would require the FCA to make rules introducing a duty of care by 6 April 2022. These rules would mean that authorised persons under FSMA owe a duty of care towards consumers when carrying out regulated activities under FSMA. The provision would do this by inserting new section 137CA into FSMA, which obliges the FCA to make such rules under its general rule-making power in section 137A and for those rules to come into force no later than 6 April 2022.

## Lords Amendments to clause 34: Debt respite scheme

### Lords Amendment 2 to 5

- 3 Lords Amendments 2 to 5 would provide that new subsection (4A) of section 7 of the Financial Guidance and Claims Act 2018 is relevant only to the debt respite scheme so far as it applies in England and Wales. Lords Amendments 2, 3 and 5 would make drafting changes that are consequential on Lords Amendment 4.

## Lords Amendment after clause 35

### Lords Amendment 6

- 4 Lords Amendment 6 would insert a new clause into the Bill that gives HM Treasury the ability to bring interest-free Buy-Now-Pay-Later products into the scope of FCA regulation in a proportionate way. Such products are currently exempted from FCA regulation as the activities involved fall within exemptions in the Regulated Activities Order.
- 5 Lords Amendment 6 would provide the ability to regulate such products in a proportionate way by enabling HM Treasury to exclude provisions of the Consumer Credit Act 1974 from applying to activities which currently fall within the relevant exemptions in the Regulated Activities Order, either when they are brought within the scope of regulation or at any point thereafter.
- 6 It would extend an existing power which provides that HM Treasury may disapply provisions of the Consumer Credit Act 1974 in relation to an activity previously licensed under the 1974 Act, or exempted under specified provisions of that Act, where the activity has

become a regulated activity for the purposes of FSMA.

## **Lords Amendment after clause 36**

### **Lords Amendment 7**

- 7 Lords Amendment 7 would insert a new clause to remove a provision in Article 28 of the Market Abuse Regulation (MAR) which restricts the FCA from holding personal data collected for the purposes of MAR for more than five years. MAR is a piece of retained EU law that contains prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation, and provides the FCA with the necessary information to prevent and detect such abuses via its reporting and notification obligations.
- 8 Removing the provision requiring the FCA to delete MAR personal data after 5 years would mean that MAR personal data must be held in general compliance with GDPR personal data retention standards, which requires personal data to be held only as long as is necessary.

## **Lords Amendments after clause 40**

### **Lords Amendment 8\***

- 9 Lords Amendment 8 would insert a new clause that requires the FCA to make rules imposing a cap on the Standard Variable Rates charged to borrowers with inactive lenders or unregulated entities who cannot switch providers because of their financial circumstances. It would require that the cap must be set at a level no more than 2 percentage points above the Bank of England base rate. It would also require the FCA to make rules that would enable mortgage prisoners with certain characteristics to access new fixed-term interest rate deals. Lords Amendment 8 requires the FCA to specify the rates offered on these deals for a range of Loan-To-Valuation ratios taking into account the average 2 year and 5 years fixed rates offered to existing customers with active lenders through product transfers. The amendment places a duty on the FCA to make such rules no later than 31 July 2021.

### **Lords Amendment 9\***

- 10 Lords Amendment 9 would provide that, in certain circumstances, the provision of cash (i.e. banknotes and coins), where there is no corresponding purchase of goods and services, would be included in the list of activities that do not constitute a payment service for the purposes of the Payment Services Regulations 2017. The relevant person would no longer have to be authorised by, or registered with, the FCA in order to provide that service, so long as they do not provide the payment account held by the recipient of the cash.
- 11 It would do this by inserting a new clause that amends Schedule 1 to the Payment Services Regulations 2017. The existing Part 2 of Schedule 1 to those Regulations sets out activities that do not constitute a payment service for the purposes of those Regulations, which include the provision of cash where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services.
- 12 The new Clause would apply where there is a transfer of a corresponding amount from a payment account held by the recipient of the cash to a relevant person, who provides the cash.

The relevant person may be a person acting on their own behalf, for example a shop, or other persons acting on behalf of that person, such as a third-party provider contracting with shops. The execution of the transfer, and other services enabling that transfer, are not excluded from the meaning of payment services by the new clause. The amendment would not affect the treatment of cash withdrawal services provided through automatic teller machines.

## **Lords Amendment to clause 44: Extent**

### **Lords Amendments 10 and 12**

- 13 Lords Amendments 10 and 12 would provide that subsection (5B) of section 303Z1 of the Proceeds of Crime Act 2002 extends to Northern Ireland only. Subsection (5B), which was also inserted into the Bill on Report in the Lords, would be inserted by Lords Amendment 20.

### **Lords Amendment 11**

- 14 Lords Amendment 11 is consequential on Lords Amendment 2 and specifies that subsections (1), (3) and (5) of Clause 34 extend to England and Wales only and that subsection (4) extends to England and Wales and Northern Ireland.

## **Lords Amendment to clause 45: Commencement and transitional provision**

### **Lords Amendment 13\***

- 15 Lords Amendment 13 would provide for Lords amendment 9 concerning payment services and the provision of cash to come into force two months after the Bill receives Royal Assent.

### **Lords Amendment 14 and 15**

- 16 Lords Amendments 14 and 15 would remove the duty to consult the Department of Justice in Northern Ireland from subsection (3) of clause 45. Lords Amendment 14 is consequential on amendment 20. With the insertion of subsection (5B) of section 303Z1 of the Proceeds of Crime Act 2002 by Lords Amendment 20, the status quo in Northern Ireland would be retained with respect to the types of financial institutions to which these account freezing and forfeiture provisions relate: those being banks and building societies. Accordingly, the consultation provision originally envisaged by subsection (3) of clause 45 is no longer appropriate.

## **Lords Amendment to Schedule 2: Prudential regulation of FCA investment firms**

### **Lords Amendment 16 and 17**

- 17 Lords Amendment 16 would require the FCA to have regard to the carbon target for Net Zero emissions as set out in section 1 of the Climate Change Act 2008. This is in addition to the other matters to which the FCA are required to have regard as set out in section 143G (1) of FSMA inserted by Schedule 2. Under Lords Amendment 17, this requirement would only apply when the FCA make prudential rules for investment firms after 1 January 2022.

## **Lords Amendment to Schedule 3: Prudential regulation of credit institutions etc**

### **Lords Amendment 18 and 19**

- 18 Lords Amendment 18 would require the Prudential Regulation Authority (PRA) to have regard to the carbon target for Net Zero emissions as set out in section 1 of the Climate Change Act 2008. This is in addition to the other matters to which the PRA are required to have regard as set out in section 144C (1) of FSMA inserted by Schedule 3. Under Lords Amendment 19, this requirement would only apply when the PRA make prudential rules for credit institutions that implement the relevant Basel standards after 1 January 2022.

## **Lords Amendment to Schedule 12: Forfeiture of money: electronic money institutions and payment institutions**

### **Lords Amendments 20 and 21**

- 19 Lords Amendments 20 and 21 would amend Schedule 12 to the Bill. They provide that it is only Chapter 3B of Part 5 of the Proceeds of Crime Act 2002 as it extends to England and Wales and Scotland that is amended to provide for freezing and forfeiture of money in accounts maintained with payment and electronic money institutions. They would do so by inserting new separate definitions of “relevant financial institution” for England and Wales and Scotland on one hand, and Northern Ireland on the other.

## **Financial Effects of Lords Amendments**

- 20 The Department does not consider that any of the Lords Amendments give rise to any significant expenditure.

# FINANCIAL SERVICES BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Lords Amendments to the Financial Services Bill as brought from the Lords on 21 April 2021 (Bill 287).

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