

# FINANCIAL SERVICES AND MARKETS BILL

## EXPLANATORY NOTES TO LORDS AMENDMENTS

### What these notes do

These Explanatory Notes relate to the Financial Services and Markets Bill as brought from the House of Lords on 19 June 2023 (Bill 326).

- 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.
- These Explanatory Notes, like the Lords Amendments themselves, refer to HL Bill 80, the Bill as first introduced in the House of Lords.
- 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
- Lords Amendments 1 to 6, 8 to 9, 11 to 35 and 37 to 83 were tabled in the name of the Minister.
- Lords Amendment 7 was tabled by Baroness Hayman and was opposed by the Government.
- Lords Amendment 10 was tabled by Baroness Chapman of Darlington and was opposed by the Government.
- Lords Amendment 36 was tabled by Baroness Boycott and was opposed by the Government.
- In the following Commentary, an asterisk (\*) appears in the heading of any paragraph that deals with a non-Government amendment.

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# Commentary on Lords Amendments

## Lords Amendments before Clause 20

### Lords Amendment 1: Retained EU law

- 1 Lords Amendment 1 clarifies that HM Treasury can use the powers in relation retained EU law listed in Schedule 1 of the Bill, which allow it to make transitional amendments to that legislation, or to restate it with or without modification, to give itself powers to make subordinate legislation.

### Lords Amendment 2: Ensuring the new secondary competitiveness and growth objectives are appropriately captured

- 2 Lords Amendment 2, along with Lords Amendments 6, 8, 12, 13, 17 and 21 (see below), is intended to ensure the new secondary growth and competitiveness objectives for the Financial Conduct Authority (“the FCA”) and the Prudential Regulation Authority (“the PRA”) are appropriately captured in references to the regulators’ objectives in the Bill and existing legislation including the Financial Services and Markets Act 2000 (“FSMA 2000”).

### Lords Amendments 3 to 4: Retained EU law

- 3 Lords Amendment 3 requires the Bank, when making material rule changes when exempt from consultation requirements under Clause 6 of the Bill, to explain in a statement how the changes are compatible with its general duties, including its Financial Stability Objective and regulatory principles.
- 4 Lords Amendment 4 fixes a minor drafting error in Clause 8, to clarify that the exception in section 71P(2)(a) of FSMA 2000 (on liability in connection with designated activities) also extends to designated activity regulations made under section 71Q.

## Lords Amendment after Clause 20

### Lords Amendment 5: Sustainability Disclosure Requirements

- 5 Lords Amendment 5 would support the regulation of disclosure requirements relating to sustainability, by requiring the FCA and the PRA to have regard to an SDR policy statement by HM Treasury when making rules or issuing guidance about such requirements.
- 6 The amendment also requires the FCA and the PRA to comply with a request by HM Treasury to provide a report in order to inform a HM Treasury policy statement; and to report (in their annual reports) how they have had regard to any HM Treasury policy statement when making SDR rules.

## Lords Amendment after Clause 24

### Lords Amendment 6: Reporting requirements for new growth and competitiveness objectives

- 7 Lords Amendment 6 requires the FCA and the PRA to each produce and publish two separate reports on how they have complied with their duty to advance the secondary competitiveness and growth objectives.

- 8 The reports must include how the objectives have been embedded in their operations, processes and decision-making, and how any rules and guidance they have made have advanced the objectives. The amendment requires that the two reports must be produced within 12 and 24 months of the new objectives coming into force.
- 9 HM Treasury must lay copies of each report in Parliament. Each regulator must publish its reports.

## Lords Amendment to Clause 25

### Lords Amendment 7: Expanding the regulatory principle on net zero emissions \*

- 10 Lords Amendment 7 expands the regulatory principle introduced by Clause 25 relating to the net zero emissions target to include reference to the UK's Carbon Budgets, the conservation and enhancement of the natural environment, targets in the Environment Act 2021, and the climate safety and nature targets of the Scottish Parliament, Senedd Cymru, and the Northern Ireland Assembly.

## Lords Amendments to Clause 26

### Lords Amendments 8 to 9: Ensuring the new secondary growth and competitiveness objectives are appropriately captured in relevant legislation

- 11 Lords Amendment 8 ensures that provisions of FSMA 2000 that refer to the objectives of the FCA and the PRA also include a reference to the new secondary growth and competitiveness objective, as inserted by Clause 24 of the Bill.
- 12 Lords Amendment 9 ensures that section 232A of FSMA 2000 includes reference to the secondary growth and competitiveness objective, as inserted by Clause 24 of the Bill.

## Lords Amendment after Clause 26

### Lords Amendment 10: Financial inclusion \*

- 13 Lords Amendment 10 requires the FCA to take financial inclusion into account, in addition to the other principles and information listed in section 1C(2) of FSMA 2000, when advancing its consumer protection objective of securing an appropriate degree of protection for consumers.

## Lords Amendments to Clause 27

### Lords Amendment 11: Statement of policy about the review of rules by the FCA and the PRA

- 14 Lords Amendment 11 imposes a duty on the FCA and PRA to ensure that they include information about how stakeholders, including statutory panels, can make representations to regulators with respect to the review of their rules as part of the statements of policy, required by Clause 27. The statements must also set out how the regulator will ensure those representations are considered.
- 15 Equivalent provision for the Bank, in its role as regulator for FMI, is made by Lords Amendment 28, and equivalent provision for the Payment Systems Regulator (PSR) is made by Lords Amendment 66.

## Lords Amendments 12 to 13: Ensuring the new secondary growth and competitiveness objectives are appropriately captured

- 16 Lords Amendment 12 ensures that new section 3RD of FSMA 2000, as inserted by Clause 27 of the Bill, requires the FCA's report on its review of rules to set out whether the rules advance the FCA's secondary competitiveness and growth objective, as inserted by Clause 24 of the Bill.
- 17 Lords Amendment 13 ensures that new section 3RD of the FSMA 2000, as inserted by Clause 27 of the Bill, requires the PRA's report on its review of rules to set out whether the rules advance the PRA's secondary competition objective, in section 2H of FSMA, and the secondary competitiveness and growth objective, as inserted by Clause 24 of the Bill. (The words after "review" in section 3RD(2)(b) would become sub-paragraph (i)).

## Lords Amendments to Clause 35

### Lords Amendments 14 to 15: Reports on appointments to Statutory Panels by the FCA and the PRA

- 18 Lords Amendments 14 and 15 require the FCA and the PRA to, as part of their annual reports, include information on how appointments to their statutory panels have complied with their respective statements of policy on panel appointments. These statements are required by existing Clause 43 of the Bill.
- 19 Equivalent provision for the PSR is made by Lords Amendment 67, and the PSR's statement of policy on panel appointments is already required by paragraph 11 of Schedule 7 to the Bill.

## Lords Amendments to Clause 36

### Lords Amendments 16 to 23: Notifying Parliamentary Committees of consultations

- 20 Lords Amendments 16 to 23 expand the requirement in Clause 36 for the FCA and the PRA to notify the Treasury Select Committee when they publish a relevant consultation, to require that they also notify a relevant committee of the House of Lords and a relevant Joint Committee, should one be established.
- 21 The amendments set out how a committee of the House of Lords (and a Joint Committee) can be designated as a relevant committee for the purposes of this provision.
- 22 Equivalent provision for the Bank, in its role as regulator for FMI, is made by Lords Amendment 31 and equivalent provision for the PSR is made by Lords Amendment 68.

## Lords Amendments to Clause 41

### Lords Amendments 24 and 25: Representation of Authorised Persons on CBA Panels

- 23 Lords Amendment 24 introduces a requirement for the FCA to appoint at least two members who are employed by FCA-authorized persons to its Cost Benefit Analysis (CBA) Panel, required by Clause 41 of the Bill.
- 24 Lords Amendment 25 mirrors this requirement for the PRA, to require that it must appoint at least two members who are employed by PRA-authorized persons to its CBA Panel.

## Lords Amendment 26: Ensuring the PRA CBA Panel can be consulted on rules relating to critical third parties

- 25 Lords Amendment 26 provides that the purpose of the PRA CBA Panel includes the provision of advice on cost-benefit analyses (“CBAs”) prepared by the Bank relating to rules for critical third parties. The Bank is required to consult the panel on these CBAs under Clause 19 of the Bill. The amendment, therefore, prevents a circumstance where the panel could suggest they do not have the power to consider CBAs relating to Critical Third Parties.

## Lords Amendment after Clause 44

### Lords Amendment 27: Reporting by Statutory Panels

- 26 Lords Amendment 27 provides that HM Treasury may, by regulations, require the FCA, PRA and PSR statutory panels to produce an annual report, and provide it to HM Treasury. The amendment requires that HM Treasury must lay a copy of the report before Parliament and the statutory panel must publish the report. Regulations under this amendment are made subject to the negative procedure.

## Lords Amendments to Clause 46

### Lords Amendments 28: Statement of policy about the review of rules by the Bank of England

- 27 Lords Amendment 28 imposes a duty on the Bank to include in its statement of policy about the review of rules (required by section 300J of FSMA 2000, as inserted by Clause 46) information about how representations (including by statutory panels) can be made on rule review and how the regulator will ensure they are considered.

### Lords Amendment 29: Ensuring the Bank of England’s new innovation secondary objective is appropriately captured

- 28 Lords Amendment 29 ensures that new section 300L of FSMA 2000, as inserted by Clause 46 of the Bill, requires the Bank’s report on its review of rules to set out whether the rules under review advance the Bank’s secondary innovation objective, provided for in Clause 45 of the Bill, as well as its Financial Stability Objective. (The words after “advance” in section 300L(2)(a) would become sub-paragraph (i)).

## Lords Amendments to Clause 47

### Lords Amendment 30: Ensuring the Bank of England’s new secondary innovation objective is appropriately captured

- 29 Lords Amendment 30 ensures that new paragraph 33B of Schedule 17A to FSMA 2000, as inserted by Clause 47(14) of the Bill, includes a reference to the Bank’s secondary innovation objective, as inserted into the Bank of England Act 1998 by Clause 45 of the Bill. As a result, when paragraph 36 of Schedule 1ZB (inserted by clause 36) is applied to the Bank, the Bank is required to notify the relevant Parliamentary Committees of how its proposals advance its new secondary innovation objective, as well as its Financial Stability Objective.

## Lords Amendment 31: Representations from Parliamentary Committees

- 30 Lords Amendment 31 ensures that when paragraph 36 of Schedule 1ZB is applied to the Bank, new sub-paragraph (5A) (inserted by Lords Amendment 23) is modified so that references to the PRA being notified are read as references to the Bank being notified.

## Lords Amendments to Clause 50

### Lords Amendments 32 to 34: Representations from Parliamentary Committees

- 31 Lords Amendments 32 to 34 expand the existing requirements in sections 138I and 138J of FSMA 2000 and section 104 of the Financial Services (Banking Reform) Act 2013 (“FSBRA 2013”) for the FCA, the PRA and the PSR to provide a summary of representations made to consultations and of the regulators’ response. The amendments require that the regulators must explain, in particular, how representations by Parliamentary committees have been considered.

## Lords Amendment after Clause 59

### Lords Amendment 35: Financial Ombudsman Service

- 32 Lords Amendment 35 amends paragraph 15 of Schedule 17 of FSMA 2000 to enable HM Treasury to make regulations to add to the list of persons who the Financial Ombudsman Service (“the FOS”) is able to charge case fees to. This new power cannot be used by HM Treasury to add eligible complainants to the list of those to whom the FOS can charge case fees.
- 33 HM Treasury intends to use this regulation making power to allow the FOS to charge case fees to claims management companies and certain other professional representatives engaged in claims management activities for bringing complaints to the FOS.
- 34 These regulations must be made via the affirmative procedure as set out in section 429 of FSMA 2000 and HM Treasury must consult the FOS on any regulations made. In line with the current approach in FSMA 2000, the FOS would then be responsible for making the detailed case fee rules.

## Lords Amendment after Clause 65

### Lords Amendment 36: Forest risk commodities \*

- 35 Lords Amendment 36 imposes a duty on those carrying on a regulated activity in the UK to implement a “due diligence” system to ensure that they do not directly or indirectly support a commercial activity that relates to a “forest risk commodity”, or illegal deforestation, where relevant local laws have not been complied with. The due diligence system must be in place within 24 months of the passage of the Bill.
- 36 The amendment requires the Secretary of State to make regulations within 12 months of the passage of this Bill, subject to the affirmative procedure, to set out what a “due diligence” scheme should contain.

## Lords Amendments after Clause 71

### Lords Amendment 37: Financial Regulators Complaints Commissioner

- 37 Lords Amendment 37 amends section 84 of the Financial Services Act 2012 to make HM Treasury, rather than the FCA, the PRA and the Bank of England, responsible for the appointment (and dismissal) of an independent person, known as the Complaints Commissioner, to conduct investigations under the regulators' complaints scheme.
- 38 The amendment makes HM Treasury responsible for the terms and conditions of the appointment.
- 39 The amendment also amends section 87 of the Financial Services Act 2012 to require the regulators to provide, as part of their response to the Commissioner's annual report, a summary of where they have decided not to comply with Commissioner recommendations on individual cases made throughout the previous year and a summary of their reasons for not complying.
- 40 The amendment also gives HM Treasury a power to direct the Commissioner to include particular matters which are relevant to the complaints scheme in their annual report.

### Lords Amendment 38: Distinguishing between domestic and non-domestic politically exposed persons (PEPs) and the level of due diligence applied

- 41 Lords Amendment 38 introduces a legislative requirement for HM Treasury to amend Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the MLRs") to explicitly distinguish between domestic and non-domestic politically exposed persons ("PEPs") within 12 months of this Bill receiving Royal Assent. The purpose of this distinction is so that the level of enhanced due diligence scrutiny applied in respect of domestic PEPs is to be less than that for non-domestic PEPs (unless other risk factors are present).
- 42 The amendment also introduces a legislative requirement for HM Treasury to lay before Parliament a statement setting out the progress towards making the amendment to the MLRs within 6 months of this Bill receiving Royal Assent.

### Lords Amendment 39: Review of PEPs guidance

- 43 Lords Amendment 39 introduces a legislative requirement for the FCA to conduct a review of its guidance on PEPs, and firms' adherence to that guidance, and make public the conclusions of that review within 12 months of this Bill receiving Royal Assent. Following this, the FCA would also be required to amend its guidance if the conclusions of the review deem it appropriate to do so, with draft revised guidance being required to be published in the same 12-month timeframe as is given for the review.
- 44 The amendment also introduces a legislative requirement for the FCA to publish an update on its plan for this review within 3 months of this Bill receiving Royal Assent.

## Lords Amendments to Clause 76

### Lords Amendments 40 and 41: Powers to make regulations

- 45 Lords Amendments 40 and 41 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.

## Lords Amendments to Clause 78

### Lords Amendments 42 to 43: Technical amendments relating to Commencement

- 46 Lords Amendment 42 ensures that the provision in Schedule 2 of the Bill, inserted by Lords Amendment 63, giving the Bank the power to extend the maximum run-off period for non-UK central counterparties (“CCPs”) from one year to three years and six months, comes into effect on Royal Assent rather than by commencement regulations.
- 47 Lords Amendment 43 ensures that Lords Amendments 38 and 39 relating to PEPs and review of the FCA’s guidance come into force on the day the Act is passed.

## Lords Amendments to Schedule 1

### Lords Amendments 44 to 62: List of Retained EU law to be repealed by the Bill

- 48 Lords Amendments 44 to 58 and 60 to 62 inserts a number of pieces of retained EU law into Schedule 1 of the Bill, so they will be repealed or revoked.
- 49 Lords Amendment 59 removes one statutory instrument from Schedule 1, so it is not revoked.

## Lords Amendment to Schedule 2

### Lords Amendment 63: Run-off period for non-UK CCPs

- 50 Lords Amendment 63 gives the Bank the power to extend the maximum period non-UK CCPs can be in the run-off of the Temporary Recognition Regime from one year to three years and six months. In the event of a delay between a CCP’s exit from the run-off and Royal Assent, this amendment also allows the Bank to determine that a CCP’s run-off period is to be treated as not having expired, from the making of the determination onwards.

## Lords Amendments to Schedule 5

### Lords Amendments 64 to 65: Technical amendments to Schedule 5

- 51 Lords Amendments 64 to 65 aligns the wording of new section 55Y(4A), being inserted by paragraph 10(3) to (5) of Schedule 5 to the Bill, with section 55Y(4) of FSMA 2000, by replacing both of these provisions with a new section 55Y(4) which clarifies in a single subsection the circumstances in which a written notice must be given to a person.
- 52 Lords Amendment 65 makes an amendment that is consequential on Lords Amendment 64.

## Lords Amendments to Schedule 7

### Lords Amendment 66: Statement of policy about the review of rules by the PSR

- 53 Lords Amendment 66 imposes a duty on the PSR to include in its statement of policy about the review of requirements (required by section 104B of the Financial Services (Banking Reform) Act 2013, as inserted by paragraph 7 of Schedule 7 to the Bill) information about how representations (including by statutory panels) can be made and considered.

## Lords Amendment 67: Reports on appointments to Statutory Panels by the PSR

- 54 Lords Amendment 67 ensures that the PSR includes in its annual report under paragraph 7 of Schedule 4 to the Financial Services (Banking Reform) Act 2013a summary of how it has complied with the statement of policy on panel appointments in section 104I as inserted into the 2013 Act by paragraph 7 of Schedule 7.

## Lords Amendment 68, 70, 71: Notifying Parliamentary Committees of consultations

- 55 Lords Amendments 68, 70, 71 expand the requirement in Schedule 7 for the PSR to notify the Treasury Select Committee when they publish a relevant consultation, to require that they also notify a relevant committee of the House of Lords and a relevant Joint Committee, should one be established. The amendment would also set out the process for how a committee of the House of Lords (and a Joint Committee) can be designated as a relevant committee for the purposes of this provision.

## Lords Amendments 69: Technical amendment to Schedule 7

- 56 Lords Amendment 69 ensures that the amendments to the Financial Services (Banking Reform) Act 2013 made by Schedule 7 of the Bill correctly require the PSR, when notifying the relevant Parliamentary Committees of a relevant consultation, to explain which parts of the consultation, if any demonstrate that it has had regard to the regulatory principles in section 53 when preparing the proposals.

## Lords Amendments to Schedule 8

### Lords Amendment 72 to 77: Free access to cash

- 57 Lords Amendments 72 to 77 ensures that the FCA's duty, in new section 131U of FSMA 2000 introduced by Schedule 8, includes seeking to ensure reasonable provision of free cash access services for holders of relevant personal current accounts, and clarify that HM Treasury's cash access policy statement must include policies concerning free cash access services. The amendment also introduces definitions of "free cash access service" and "relevant personal current accounts" for the purposes of Schedule 8.

## Lords Amendments to Schedule 11

### Lords Amendments 78 to 83: Technical amendments to Schedule 11

- 58 Lords Amendments 78 to 83 ensures that the CCP resolution regime as set out in Schedule 11 functions as intended, by correcting drafting and amending the scope of certain provisions to ensure that the original policy intent is fulfilled.

## Lords Amendments to Schedule 12

### Lords Amendments 84 to 86: Technical amendments to Schedule 12

- 59 Lords Amendment 84 ensures that the effect of a write-down order on a liability reduced by the order is more clearly reflected by stating how a liability is, to the extent of its reduction, to be treated when under a write-down.
- 60 Lords Amendment 85 ensures that the date on which the revocation of a write-down order

happens is more clearly reflected in the table of termination events by referring to the date of “revocation” instead of the date of “termination”.

- 61 Amendment 86 ensures that the particular provision required to be included in specified measures is more clearly reflected in this provision concerning compensation to policyholders where insurers are in financial difficulties.

## Financial Effects of Lords Amendments

- 62 Lords Amendment 35 enables fees to be charged in relation to complaints made under the Ombudsman scheme (maintained under Part 16 of FSMA 2000) to be imposed on persons other than respondents to complaints. The existing ways and means resolution for the Bill would cover such charging of fees (if cover is needed). There are no financial implications in relation to the other Lords amendments.

# FINANCIAL SERVICES AND MARKETS BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Lords Amendments to the Financial Services and Markets Bill as brought from the House of Lords on 19 June 2023 (Bill 326).

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