

BANK OF ENGLAND AND FINANCIAL SERVICES BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Bank of England and Financial Services Bill [HL] as brought from the House of Commons on 20 April 2016.
- 2 These Explanatory Notes have been prepared by the Treasury in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 120, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 Commons Amendments 1 to 8 and 10 to 12 were tabled in the name of the Minister.
- 6 Commons Amendment 9 was tabled in the name of Mr Charles Walker MP and supported by the Government.

Commentary on Commons amendments

Commons Amendments 1, 2, 3, 4, 5 and 6 (Examinations and reviews)

- 7 **Commons Amendment 1** extends new section 7D of the Bank of England Act 1998 ("the Act") (inserted by clause 11) to give the Comptroller and Auditor General power to examine the economy, efficiency and effectiveness of Bank companies as well as of the Bank of England itself.
- 8 **Commons Amendment 2** is consequential on Commons Amendment 1.
- 9 **Commons Amendment 3** defines "Bank company" for these purposes, to include subsidiaries of the Bank and companies which are not Bank subsidiaries (though the Bank or one of its nominees must be a member of the company) but which are indemnified by the Treasury and have been required to send their accounts to the Comptroller and Auditor General for review under section 7C of the Act.
- 10 **Commons Amendment 4** extends new section 7D(11) of the Act so that section 6 of the National Audit Act 1983 does not apply to Bank companies. Section 6 provides for economy, efficiency and effectiveness examinations by the Comptroller and Auditor General. Disapplying it ensures that all examinations by the Comptroller and Auditor General, whether in relation to the Bank or in relation to a Bank company, will be carried out under the regime provided for in new section 7D of the Act.

- 11 **Commons Amendments 5 and 6** amend new section 7G of the Act to provide that where the Comptroller and Auditor General is examining a Bank company under new section 7D of the Act, he will have access to the documents and information held by that company and its auditors.

Commons Amendment 7 (Appointment of Financial Conduct Authority chief executive)

- 12 **Commons Amendment 7** amends Schedule 1ZA to the Financial Services and Markets Act 2000. Paragraph 2A(1) provides that the term of office of the person who is appointed by the Treasury as the chief executive of the Financial Conduct Authority may not start until that person has appeared before the Treasury Select Committee in connection with the appointment, or if earlier, three months has passed since the appointment was made. Subparagraph (2) ensures that this requirement will not apply where an appointment is made on a temporary basis (where for example it is necessary to appoint an acting chief executive). Subparagraphs (3) and (4) provide for the possibility that the name of the Treasury Committee may in future be changed, or its functions pass to another Committee of the House of Commons.

Commons Amendment 8 (Illegal money lending)

- 13 **Commons Amendment 8** amends the Financial Services and Markets Act 2000 to insert new sections 333S (Financial assistance for action against illegal money lending) and 333T (funding of action against illegal money lending).
- 14 **New section 333S** gives the Treasury power to make grants and loans, and to provide other forms of financial assistance for the purpose of taking action against illegal money lending. Under subsection (3), such financial assistance can be given on terms set by the Treasury. Subsection (2) gives a number of examples of the sort of action which might be financed by the Treasury in this way and subsection (4) defines "illegal money lending" for these purposes.
- 15 **New section 333T** requires the FCA to make rules imposing a levy on authorised persons (or a specified class of authorised person) to recover any costs notified to the FCA by the Treasury as having been incurred by the Treasury in providing the financial assistance referred to in new section 333S, or in doing (or commissioning) research into illegal money lending.

Commons Amendment 9 (money laundering)

- 16 **Commons Amendment 9** inserts a new clause into the Bill requiring the Secretary of State to ensure that appropriate attention is given to specified provisions in Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing when that Directive is transposed. It also amends the Financial Services and Markets Act 2000 to introduce an obligation for the FCA to issue guidance in relation to the definition of "politically exposed persons", and gives the Secretary of State power to make regulations both in relation to that guidance, and providing for the handling of complaints in relation to the way in which regulated entities have implemented provisions about politically exposed persons.

Commons Amendment 10 (early exit pension charges)

- 17 **Commons Amendment 10** amends the Financial Services and Markets Act 2000 to insert new section 137FBB (FCA general rules: early exit pension charges). This requires the FCA to make rules banning specified charges being imposed on members of pension schemes who take, convert or transfer pension benefits after they have reached normal pension age but

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before their expected retirement date. Subsection (1) of new section 137FBB imposes this requirement on the FCA, and subsection (2) sets out the purpose which must be served by the FCA rules: to prevent early exit charges being a deterrent against members dealing with their pension benefits in this way. Subsection (3) sets out how FCA rules may identify the early exit charges to be banned, and subsection (4) ensures that it will not be possible to impose any of the specified early exit charges after the rules come into force, even if the pension scheme to which they relate was established before that date. Subsection (5) provides examples of the provision which may be made in FCA banning early exit pension charges. Subsections (6) and (7) define early exit charges for the purpose of these provisions, and subsection (8) gives the Treasury power to identify matters which may not be treated as early exist charges under these provisions.

Commons Amendment 11 (removing the privilege amendment)

- 18 **Commons Amendment 11** removes the standard words which were added to the Bill before it left the House of Lords for the purpose of recognising and maintaining the privileges of the House of Commons in respect of financial matters.

Commons Amendment 12 (reports of the MPC)

- 19 **Commons Amendment 12** replaces the obligation for the Monetary Policy Committee (MPC) to submit a monthly report with an obligation for the MPC to submit a report eight times a year. This matches the requirement for the MPC to meet eight times a year, and ensures that the MPC is not required to submit a report in relation to a month in which they do not meet.

Financial Effects of Commons Amendments

- 20 **Commons Amendments 1 to 6** permit value for money studies of the Bank, which may require additional National Audit Office ("NAO") resource if the Comptroller and Auditor General decides to proceed with a review. The charge for the NAO's programme of value for money studies is funded through resources voted to the NAO directly by Parliament. The amendment to the clause ensures that value for money studies can be undertaken of subsidiaries or companies of the Bank, as well as the Bank itself, in line with the policy intention. This could increase the likelihood of a value for money study being undertaken, relative to the previous drafting of the clause.
- 21 Commons Amendment 8 gives a power to the HM Treasury to provide financial assistance to those involved in the enforcement of illegal money lending. In order to fund this assistance there is a new duty on the FCA to impose a levy on consumer credit firms in order to fund the Treasury's illegal money lending costs. The current enforcement regime in England, Wales and Scotland costs around £4.7 million. As the clause puts enforcement for illegal money lending on a sustainable long-term footing throughout the UK, funding will also be given to support enforcement in Northern Ireland. Therefore, the current level of funding is likely to increase slightly. It is expected that this cost will be recovered from all firms authorised by the FCA that receive income from consumer credit activities.
- 22 Commons Amendment 10 requires the FCA to make rules prohibiting FCA-regulated pension schemes from imposing early exit charges on members if those charges are a deterrent on members taking, converting or transferring benefits under the schemes. Indicative analysis suggests that this will have an equivalent annual net cost to business of £8m. The cost to business is made up of the cost of the foregone early exit charges, and the cost of administration of this policy. The majority of this cost (£7.5m p.a.) is made up of transfer payments to individuals, who will directly benefit from any cap, by being able to keep more of their pension.

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