

# Financial Services Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**Before Clause 1**

LORD SHARKEY  
BARONESS KRAMER

Insert the following new Clause –

**“Duty of the FCA to make rules introducing a duty of care**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137C, insert the following new section –

**“137CA FCA general rules: duty of care**

- (1) The power of the FCA to make general rules includes the power to introduce a duty of care owed by authorised persons to consumers in carrying out regulated activities under this Act.
  - (2) “Duty of care” means an obligation to exercise reasonable care and skill when providing a product or service.
  - (3) “Consumer” has the meaning given in section 2(3) of the Consumer Rights Act 2015.”
- (3) The FCA must make rules in accordance with section 137CA (FCA general rules: duty of care) of the Financial Services and Markets Act 2000 which come into force no later than six months after the day on which this Act is passed.”

***Member’s explanatory statement***

*This amendment would impose on financial services providers a general duty of care to their clients.*

**Clause 2**

BARONESS NOAKES

Page 2, line 28, at end insert –

- “(2) Schedule 2 does not come into effect until each House of Parliament has approved accountability arrangements for the powers conferred on the FCA in that Schedule.
- (3) Accountability arrangements under subsection (2) include arrangements for –
  - (a) draft rules to be laid before each House of Parliament;

**Clause 2 - continued**

- (b) final rules to be laid before each House of Parliament;
- (c) opportunities for each House of Parliament to take evidence on the draft or final rules and to express an opinion on them;
- (d) the consequences of an expression of opinion by either House of Parliament.”

***Member’s explanatory statement***

*This amendment would mean that the rule making powers given to the FCA in Schedule 2 can be exercised only when Parliament has agreed how accountability for those powers will be exercised by Parliament.*

**Clause 3**

LORD SHARKEY  
BARONESS KRAMER

Page 4, line 13, after “provision” insert “if the regulations contain the full text of the replacing general rules, unless subsection 4(b) applies, and”

***Member’s explanatory statement***

*This amendment adds an element of parliamentary scrutiny to the rules generated by Clause 3.*

LORD OATES  
BARONESS KRAMER

Page 4, line 13, after “consider that” insert “the effect of the regulation is compliant with the net zero target of the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056), and”

***Member’s explanatory statement***

*The purpose of this amendment is to prevent the Treasury revoking a requirement where to do so would be detrimental to the target for net UK emissions of greenhouse gases.*

**Clause 5**

BARONESS NOAKES

Page 6, line 24, at end insert –

“(6A) Schedule 3 does not come into effect until each House of Parliament has approved accountability arrangements for the powers conferred on the PRA in that Schedule.

(6B) Accountability arrangements under subsection (6A) include arrangements for –

- (a) draft rules to be laid before each House of Parliament;
- (b) final rules to be laid before each House of Parliament;
- (c) opportunities for each House of Parliament to take evidence on the draft or final rules and to express an opinion on them;
- (d) the consequences of an expression of opinion by either House of Parliament.”

**Member's explanatory statement**

*This amendment would mean that the rule making powers given to the PRA in Schedule 3 can be exercised only when Parliament has agreed how accountability for those powers will be exercised by Parliament.*

**After Clause 5**

BARONESS BOWLES OF BERKHAMSTED  
BARONESS KRAMER

Insert the following new Clause—

**“Parliamentary oversight**

- (1) The responsible Treasury Minister, Chairs and Chief Executive Officers of the Prudential Regulation Authority and Financial Conduct Authority must each separately provide reports to relevant Committees of the House of Commons and House of Lords on the following matters and occasions—
  - (a) at the end of each financial quarter;
  - (b) before attending meetings of the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions or any other international standards-setting body, regarding matters to be discussed, objectives and any matters to be raised on behalf of the United Kingdom, and positions preferred by the United Kingdom and the reasons for those preferences;
  - (c) after attending meetings of the Basel Committee on Banking Supervision or any other international standards-setting body, to report on the proceedings;
  - (d) at any other time when a report is requested by a relevant Committee regarding an incident or concern, including confidential and supervisory information and data on specific incidents as requested.
- (2) The responsible Treasury Minister, Chairs and Chief Executive Officers of the Prudential Regulation Authority and Financial Conduct Authority must appear before the relevant Committees of the House of Commons and House of Lords when requested to discuss a report provided under subsection (1), if necessary in private for the consideration of confidential information.
- (3) The Prudential Regulation Authority and the Financial Conduct Authority must seek the views of relevant Committees of the House of Commons and House of Lords on the following matters and occasions—
  - (a) before launching a consultation on rules;
  - (b) on publication and implementation of new rules;
  - (c) at least annually regarding their business plans, new market activity and the regulatory perimeter.
- (4) The statutory panels of the Prudential Regulation Authority and Financial Conduct Authority—
  - (a) must publish their own remits, which must be finalised after taking into account any relevant proposals from any relevant Committees of the House of Commons and House of Lords,

**After Clause 5 - continued**

- (b) shall each include a person nominated by resolutions of the House of Commons and House of Lords, whose nomination may not be declined, and
  - (c) shall be permitted to consult relevant organisations, individuals and Members of both Houses of Parliament.
- (5) The relevant Committees of the House of Commons and House of Lords are entitled to—
- (a) examine underlying data in the possession of the Prudential Regulation Authority and Financial Conduct Authority relating to regulatory rules;
  - (b) require the National Audit Office (or any other public office) to provide assistance including impact assessments to those Committees and report to them on regulatory burdens and the cumulative impact of regulations and rules on financial services;
  - (c) require the Prudential Regulation Authority and Financial Conduct Authority to pause the implementation of new rules by up to three months in order for those Committees to conduct further scrutiny and consider evidence including on the cumulative impact of regulatory rules on financial services.”

***Member’s explanatory statement***

*This is a probing amendment to demonstrate features that an oversight regime could have, including access to information.*

LORD OATES  
BARONESS KRAMER

Insert the following new Clause—

**“Considerations in setting capital adequacy requirements**

In setting the capital adequacy requirements of a credit institution, the Prudential Regulation Authority shall have regard to—

- (a) the level of exposure of an institution to climate-related financial risk;
- (b) the level of compliance of the institution with the recommendations of the Task Force on Climate-Related Financial Disclosure; and
- (c) the objectives of the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056).”

***Member’s explanatory statement***

*The purpose of this amendment is to place a requirement on the PRA in setting capital adequacy requirements of a credit institution to have regard to its exposure to climate-related financial risk.*

BARONESS BOWLES OF BERKHAMSTED  
BARONESS KRAMER

Insert the following new Clause—

**“Further matters for regulators to take into account**

When making rules using their powers under the Financial Services and Markets Act 2000, the Prudential Regulation Authority and Financial Conduct Authority must—

- (a) have regard to competition within the contexts of—
  - (i) the availability of consumer choice and fair pricing;
  - (ii) the development and encouragement of new products and new industry;
  - (iii) the desirability of supporting the international reputation of the United Kingdom for good governance;
- (b) structure the rules to establish clear categories for different types and sizes of financial service businesses including—
  - (i) in banking, for small co-operative, mutual and community banks;
  - (ii) in insurance, for captives and reinsurance.”

***Member’s explanatory statement***

*This is a non-exhaustive example of additional high level policy that could be embedded in the remit for the Regulators.*

Insert the following new Clause—

**“Skilled person review of supervisory bodies**

- (1) At least once every five years, an independent skilled person review must be conducted of—
  - (a) the Financial Conduct Authority and
  - (b) the Prudential Regulation Authority.
- (2) The body set up to conduct the independent skilled person review must include a person nominated by resolutions of the House of Commons and House of Lords.
- (3) The independent skilled person review must include a review of—
  - (a) internal operations and controls;
  - (b) systems for responding to whistleblowers, Parliamentary correspondence and reports, and public concerns;
  - (c) regulatory perimeters;
  - (d) the effectiveness of relevant legislation and rules and the regulatory burden;
  - (e) whether all statutory and public policy objectives have been met;
  - (f) the operation and effectiveness of engagement practices before and during rule making;
  - (g) the skills base of the Authority’s staff;
  - (h) any other matter the skilled person considers relevant;
  - (i) any other matter requested by a relevant Committee of the House of Commons or House of Lords.”

**Member's explanatory statement**

*This amendment suggests a generalised review, not linked to specific fault or failure, of a kind that exists in other jurisdictions.*

**After Clause 6**

LORD OATES  
BARONESS KRAMER

Insert the following new Clause—

**“Requirement to amend the Credit Rating Agencies Regulation**

- (1) The Treasury must by regulations amend the Credit Rating Agencies Regulation to make provision related to the issuing and use of credit ratings to require such ratings to give due consideration to the level of exposure of a credit institution to climate-related financial risk.
- (2) Regulations under subsection (1) must be made by the Treasury within six months of the day on which this Act is passed.”

**Member's explanatory statement**

*The purpose of this new Clause is to require HM Treasury to make regulations requiring credit rating agencies to assess climate related financial risk in determining credit ratings.*

**After Clause 28**

LORD OATES  
BARONESS KRAMER

Insert the following new Clause—

**“Requirement for disclosure of climate-related financial risk**

- (1) An organisation specified in subsection (2) may not operate in the United Kingdom after 31 December 2022 unless it—
  - (a) has made disclosures consistent with the recommendations of the final report of the Task Force on Climate-Related Financial Disclosure, and
  - (b) has made a statement in its annual financial report confirming that it has made such disclosures.
- (2) Subsection (1) applies to the following organisations—
  - (a) premium listed companies, and all issuers of standard listed shares on the FCA's Official List,
  - (b) private companies operating in the financial sector with a turnover above the thresholds of a “medium-sized company” as defined by section 465 of the Companies Act 2006,
  - (c) PRA regulated banks, building societies, PRA-designated investment firms, and their groups,
  - (d) UK PRA-regulated insurance and reinsurance firms and groups,
  - (e) UK-authorized asset managers, defined as—
    - (i) MiFID investment firms who provide portfolio management services;
    - (ii) alternative investment fund managers (AIFMs), including small authorised AIFMs that have managing permissions;
    - (iii) UCITS management companies; and UCITS funds,

**After Clause 28 - continued**

- (f) life insurers and FCA-regulated pension scheme providers, and
- (g) occupational pension schemes that are regulated by the Department for Work and Pensions.”

***Member’s explanatory statement***

*The purpose of this amendment is to bring forward to 2023 a mandatory requirement for climate related disclosure consistent with the recommendations of the 2017 final report of the Task Force on Climate-Related Disclosure. The Government and FCA are currently suggesting that the recommendations should not become mandatory until 2025.*

**After Clause 40**

BARONESS BOWLES OF BERKHAMSTED  
BARONESS KRAMER

Insert the following new Clause—

**“Warning regarding non-regulated activity**

- (1) Financial services firms that are authorised for any regulated activity may not use reference to that authorisation in any communication, including by way of representation on letterheads or websites, as a reputational guarantee regarding non-regulated activity.
- (2) When non-regulated financial services activity is conducted by an authorised person or firm any communication relating to that activity must feature a prominent warning that it is outside the Financial Conduct Authority regulatory perimeter, and communicating the effect of that fact with respect to the Financial Ombudsman Service and the Financial Services Compensation Scheme.
- (3) It is an offence to imply that a non-regulated financial services activity is covered by an authorisation, and proceedings for an offence may be instituted under section 401 of the Financial Services and Markets Act 2000 (proceedings for offences).”

***Member’s explanatory statement***

*This amendment addresses a concern from the Gloster report that indicated lack of understanding of what was not regulated when conducted by an authorised firm.*

Insert the following new Clause—

**“Unconscionable conduct**

- (1) Notwithstanding that a financial services transaction or contract is voluntarily entered into by a financial services provider or customer of such a provider, the Financial Conduct Authority may intervene and require change or redress, or impose penalties on firms or responsible individuals, where there is conduct that is unconscionable.
- (2) Conduct that is unconscionable under subsection (1) includes but is not limited to situations where—

**After Clause 40 - continued**

- (a) there is a system of conduct, or pattern of behaviour, that relies upon unequal power between the parties to impose disadvantage on consumers or small businesses or gain advantage for the larger party;
- (b) notice or other compliance terms are imposed which make it impractical for consumers or small businesses to comply;
- (c) there is use of notice terms to coerce consumers or small businesses into unfavourable contracts;
- (d) conduct by a supplier causes a consumer or small business to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (e) there are risks that the supplier should have foreseen would not be apparent to the customer or small business.”

***Member’s explanatory statement***

*This is a probing amendment bringing contracts involving small businesses into the regulatory perimeter.*

Insert the following new Clause—

**“Alignment of accounting to prudential standards**

- (1) Where the prudential capital and profit or losses for a banking company are lower than the accounting numbers for that banking company where International Accounting Standards have been used, then the accounting numbers must have an adjustment to the balance sheet and profit and loss account in order to—
  - (a) align the accounting numbers with the regulatory capital of the banking company which constrains the growth of a banking company and its ability to lend,
  - (b) align the regulatory capital for going concern purposes with the accounting capital for going concern purposes,
  - (c) align the regulatory capital and profits for remuneration purposes with the accounting capital and profits in accordance with the regulations for shareholder approval of director remuneration, and
  - (d) align the regulatory capital and profits for distribution purposes with the accounting capital and profits for distribution purposes.”

***Member’s explanatory statement***

*This amendment ensures that when there are prudential filters discounting capital these should be carried through to accounting capital figures.*

**Schedule 2**

LORD OATES  
BARONESS KRAMER

Page 62, line 9, at end insert—

“(ca) the climate-related financial risks to which FCA investment firms are exposed,”



**Member's explanatory statement**

*The purpose of this amendment is to require the FCA, in exercising its power to make general rules, to have specific regard to the climate related financial risks to which FCA investment firms are exposed.*

Page 63, line 15, at end insert –

“(ca) the climate-related financial risks to which FCA investment firms are exposed by virtue of their relationship with their parent undertaking,”

**Member's explanatory statement**

*The purpose of this amendment is to require the FCA, in exercising its power to make general rules, to have specific regard to the climate related financial risks to which FCA investment firms are exposed as a consequence of their relationship with their parent undertaking.*

Page 65, line 27, at end insert –

“(ba) the likely effect of the rules on the relative standing of the United Kingdom as an international leader in combatting climate change,”

**Member's explanatory statement**

*The purpose of this amendment and the amendment in the name of Lord Oates to page 65, line 32 is to require the FCA, in making Part 9C rules, to have regard to the UK's international standing as a leader in tackling climate change.*

Page 65, line 32, at end insert –

“( ) For the purposes of subsection (1)(ba), the FCA must consider the United Kingdom's international and domestic obligations to tackle climate change, including but not limited to –

- (a) the agreement adopted under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015,
- (b) the United Kingdom's nationally determined contribution under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015, and
- (c) the UK's net zero target for greenhouse gases set out in the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056).”

**Member's explanatory statement**

*The purpose of this amendment and the amendment in the name of Lord Oates to page 65, line 27 is to require the FCA, in making Part 9C rules, to have regard to the UK's international standing as a leader in tackling climate change.*

**Schedule 3**

LORD SHARKEY  
BARONESS KRAMER

Page 82, leave out lines 7 to 10

**Member's explanatory statement**

*This is a probing amendment to allow discussion of the merits of having regard to "the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities."*

LORD OATES  
BARONESS KRAMER

Page 82, line 14, at end insert –

“(ca) the likely effect of the rules on the relative standing of the United Kingdom as an international leader in combatting climate change,”

**Member's explanatory statement**

*The purpose of this amendment and the amendment in the name of Lord Oates to page 82, line 20, is to require the PRA in making CRR rules to have regard to the UK's international standing as a leader in tackling climate change.*

Page 82, line 20, at end insert –

“( ) For the purposes of subsection (1)(ca), the PRA must consider the United Kingdom's international and domestic obligations to tackle climate change including but not limited to –

- (a) the agreement adopted under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015,
- (b) the United Kingdom's nationally determined contribution under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015, and
- (c) the UK's net zero target for greenhouse gases set out in the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056).”

**Member's explanatory statement**

*The purpose of this amendment and the amendment in the name of Lord Oates to page 82, line 14, is to require the PRA in making CRR rules to have regard to the UK's international standing as a leader in tackling climate change.*

# Financial Services Bill

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TO BE MOVED  
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*29 January 2021*

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