

# Financial Services Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**Before Clause 1**

LORD TUNNICLIFFE  
LORD EATWELL

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.””

***Member’s explanatory statement***

*This new Clause would introduce a duty of care for the FCA which would strengthen the FCA’s consumer protection objective and empower the FCA to introduce rules for financial services firms informed by that duty of care.*

**Clause 3**

LORD TUNNICLIFFE  
LORD EATWELL

Page 4, line 14, leave out “adequately replaced by” and insert “replicated or otherwise reflected in”

***Member’s explanatory statement***

*This probing amendment aims to understand the degree of flexibility that the Treasury will allow the PRA when it replaces provisions of the CRR via general rules.*

Page 4, line 31, at end insert –

“( ) Where the Treasury makes regulations in reliance on subsection (4)(b), the Treasury must, when laying a draft of the regulations before Parliament, also lay before Parliament a statement explaining why, in the Treasury’s opinion, there are good reasons for revoking the provision.”

***Member’s explanatory statement***

*This amendment would require the Treasury to outline its reasons for revoking a CRR provision without requiring the PRA to adequately replace it.*

**After Clause 28**

LORD OATES  
BARONESS KRAMER  
BARONESS HAYMAN  
BARONESS JONES OF WHITCHURCH

*This amendment replaces an amendment in the name of Lord Oates published in HL Bill 162(a).*

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;
 including fund managers for occupational pension schemes, and
  - (f) life insurers and FCA-regulated pension scheme providers.”

***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.*

**Clause 34**

BARONESS COUSSINS

Page 40, line 15, leave out “and (4)” and insert “, (4) and (4A)”

***Member’s explanatory statement***

*This amendment, and the amendment to page 40, line 32 in the name of Baroness Coussins, would require that the Statutory Debt Repayment Plan element of the debt respite scheme would have to come into force before 1 May 2024.*

Page 40, line 32, at end insert –

“(4A) After subsection (8), insert –

“(9) Regulations under this section must come into force on or before 1 May 2024.””

***Member’s explanatory statement***

*This amendment, and the amendment to page 40, line 15 in the name of Baroness Coussins, would require that the Statutory Debt Repayment Plan element of the debt respite scheme would have to come into force before 1 May 2024.*

**After Clause 40**

LORD GARNIER

Insert the following new Clause –

**“Failure to prevent an economic criminal offence**

(1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.

(2) In this section –

“economic criminal offence” means an offence of the following kind, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system –

- (a) a common law offence of conspiracy to defraud;
- (b) an offence under section 1, 6 or 7 of the Fraud Act 2006;
- (c) an offence under section 1, 17 or 20 of the Theft Act 1968 (theft, false accounting and destruction of documents);
- (d) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
- (e) an offence under section 346 or 398 of the Financial Services and Markets Act 2000 (providing false statements to auditors, and misleading the FCA);
- (f) an offence under section 89, 90 or 91 of the Financial Services Act 2012 (misleading statements);
- (g) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (concealing criminal property, facilitating acquisition, acquisition and use of criminal property);

“relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.

**After Clause 40 - continued**

- (3) In subsection (2), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (4) It is a defence for B to prove that, when the economic criminal offence was committed –
  - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
  - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (5) In subsection (4) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (6) A relevant body guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine,
  - (b) on summary conviction in England and Wales, to a fine,
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether –
  - (a) any relevant conduct of a relevant body, or
  - (b) any conduct which constitutes part of a relevant criminal financial offence,
 takes place in the United Kingdom or elsewhere.
- (8) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

***Member’s explanatory statement***

*This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to certain offences listed in subsection (2).*

Insert the following new Clause –

**“Failure to prevent an economic criminal offence**

- (1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.
- (2) In this section –
 

“economic criminal offence” means any of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system;

“relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.

**After Clause 40 - continued**

- (3) In subsection (2), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (4) It is a defence for B to prove that, when the economic criminal offence was committed –
  - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
  - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (5) In subsection (4), “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (6) A relevant body guilty of an offence under this section is liable –
  - (a) on conviction on indictment, to a fine,
  - (b) on summary conviction in England and Wales, to a fine,
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether –
  - (a) any relevant conduct of a relevant body, or
  - (b) any conduct which constitutes part of a relevant criminal financial offence,
 takes place in the United Kingdom or elsewhere.
- (8) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

***Member’s explanatory statement***

*This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013.*

Insert the following new Clause –

**“Failure to prevent criminal financial offences**

- (1) A relevant body (B) is guilty of an offence if a person commits a criminal financial offence when acting in the capacity of a person associated with B.
- (2) It is a defence for B to prove that, when the criminal financial offence was committed –
  - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
  - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing criminal financial offences.

**After Clause 40 - continued**

- (4) In this section—
- “criminal financial offence” means an offence of the following kind, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system—
- (a) an offence listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013, or
  - (b) one of the offences listed below—
    - (i) an offence under section 1, 6 or 7 of the Fraud Act 2006;
    - (ii) an offence under section 1, 17 or 20 of the Theft Act 1968;
    - (iii) an offence under section 993 of the Companies Act 2006;
    - (iv) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002;
    - (v) the common law offence of conspiracy to defraud;
- “relevant body” has the same meaning as in section 44 of the Criminal Finances Act 2017.
- (5) In subsection (4), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (6) A relevant body guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine,
  - (b) on summary conviction in England, to a fine,
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether—
- (a) any relevant conduct of a relevant body, or
  - (b) any conduct which constitutes part of a relevant criminal financial offence,
- takes place in the United Kingdom or elsewhere.”

***Member’s explanatory statement***

*This new Clause would create an offence of failing to prevent any financial offence listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013.*

BARONESS BOWLES OF BERKHAMSTED  
LORD HODGSON OF ASTLEY ABBOTTS

Insert the following new Clause—

**“Commission or facilitation of financial crime**

- (1) A relevant body commits an offence if it—
- (a) facilitates a financial crime,
  - (b) uses the financial system for a purpose connected with financial crime, or
  - (c) fails to take the necessary steps to prevent a financial crime from being committed by a person acting in the capacity of the relevant body.
- (2) In subsection (1), a “relevant body” is any person, including a body corporate or an unincorporated association, using or providing financial services.

**After Clause 40 - continued**

- (3) In subsection (1), a “financial crime” means an offence of the following kind that might affect the integrity of the UK financial system –
- (a) fraud, as defined in the Fraud Act 2006;
  - (b) false accounting, as defined in the Theft Act 1968;
  - (c) an offence under the following sections of the Proceeds of Crime Act 2002 –
    - (i) section 327 (concealing etc criminal property);
    - (ii) section 328 (arrangements etc concerning the acquisition, retention, use or control of criminal property);
    - (iii) section 329 (acquisition, use and possession of criminal property).
- (4) In subsection (3), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (5) In subsection (1), “facilitates a financial crime” means –
- (a) is knowingly involved in or takes steps with a view to the commission of any of the offences in subsection (3), or
  - (b) aids, abets, counsels or procures the commission of an offence in subsection (3).
- (6) In proceedings for an offence under subsection (1), it is a defence for the relevant body to show that –
- (a) it had in place such prevention procedures as it was reasonable in all circumstances for it to have in place, or
  - (b) it was not reasonable in the circumstances to expect it to have any prevention procedures in place.
- (7) A relevant body guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction in England and Wales, to a fine;
  - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (8) If the offence was committed with the consent or connivance of –
- (a) a director, manager, secretary or other similar officer of the relevant body, or
  - (b) a person who was purporting to act in any such capacity,
- that person (as well as the relevant body) is guilty of the offence and liable to be proceeded against and punished accordingly.”

LORD BLACKWELL

Insert the following new Clause –

**“Parliamentary oversight of regulators’ delegated powers**

- (1) Rules enacted by the PRA and FCA to apply regulations under their delegated powers must be submitted for scrutiny to a committee of each House of Parliament, or a joint committee of both, charged with responsibility for considering –

**After Clause 40 - continued**

- (a) new rules submitted for scrutiny either before taking effect or within 5 days after taking effect, together with the supporting rationale and evidence;
  - (b) how the PRA and FCA are implementing established rules and regulations in accordance with their general duties.
- (2) The Secretary of State must have regard to any report published by such a committee, or committees, which recommends changes to regulations and legislation governing the relevant delegated powers.”

Insert the following new Clause –

**“PRA and FCA joint coordination committee**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 3F (with-profits insurance policies) insert –

**“3FA PRA and FCA joint coordination committee**

- (1) In exercising their general duties and their duty to exercise coordinated exercise of functions, the PRA and FCA must establish and maintain a joint regulatory coordination committee to ensure their activities are consistent and proportionate in meeting their respective general duties and objectives.
- (2) The committee membership shall be –
  - (a) the Governor of the Bank of England as Chair,
  - (b) the Chief Executives of the PRA and FCA, and
  - (c) two independent non-executive directors of each of the PRA and FCA.
- (3) The committee must review –
  - (a) how their combined exercise of functions accords with each organisation’s individual duties and objectives, and with the memorandum of understanding between the FCA and the Bank of England;
  - (b) their combined supervisory agenda for each of the five largest banks and five largest insurance companies they regulate; and
  - (c) their combined supervisory agenda for any other dual-regulated entities they identify as systemically important;

in order to ensure consistent priorities and proportionate impact.
- (4) Where the committee concludes that the combined exercise of functions by the PRA and FCA is not consistent and proportionate it must report that to the PRA and FCA boards, which must consider what changes might be made to address the concern.
- (5) The committee shall meet at least once every year.””

LORD HODGSON OF ASTLEY ABBOTTS

Insert the following new Clause –

**“International competitiveness**

- (1) When making rules using their powers under the Financial Services and Markets Act 2000, the PRA and FCA must –

**After Clause 40 - continued**

- (a) take into account the impact of regulation for the sustainability and international competitiveness of the United Kingdom as a global financial centre;
  - (b) promote the United Kingdom as a centre for innovative financial services products and industries within a system of good governance; and
  - (c) protect and enhance the United Kingdom's reputation and position as a leading international financial centre.
- (2) In fulfilling this duty the PRA and FCA must each provide an annual statement to the responsible Treasury Minister and relevant parliamentary committees which includes, but is not limited to, the following information—
- (a) an analysis of the effect of relevant legislation and rules on the overall regulatory burden within the United Kingdom;
  - (b) cumulative cost-benefit analysis of the impact of regulation on the competitive position of United Kingdom financial services internationally;
  - (c) comparative review of the relative position of the United Kingdom's regulatory framework and the overall regulatory burdens it creates compared to other international financial centres; and
  - (d) any other matter requested by the responsible Treasury Minister.”

***Member's explanatory statement***

*This is an additional high level policy that could be embedded in the remit for the Regulators to ensure that financial regulation in the UK is benchmarked against other international financial hubs and that the UK's regulatory framework remains internationally competitive.*

LORD SHARKEY  
BARONESS KRAMER

Insert the following new Clause—

**“Access to Sharia-compliant student finance**

In the Financial Services and Markets Act 2000, in section 1B (the FCA's general duties), subsection (3) (the FCA's operational objectives), at the end insert—

- “(d) the Sharia-compliant student finance objective, which is to ensure that students who are eligible for the Government's student finance provision but do not wish to use it have access to Sharia-compliant finance products for paying tuition fees and for student maintenance on equitable terms with students accessing the Government's student finance provision.””

***Member's explanatory statement***

*This is a probing amendment to enable the Grand Committee to debate the issue of access to Sharia-compliant student finance.*

BARONESS JONES OF WHITCHURCH  
LORD TUNNICLIFFE

Insert the following new Clause—

**“Contribution of financial services to climate change targets**

- (1) In conducting their functions under this Act, and under the Financial Services and Markets Act 2000 (as amended by this Act), the Treasury, FCA and PRA must have due regard to—
  - (a) the target for 2050 contained in section 1 of the Climate Change Act 2008, and
  - (b) international climate change treaties to which the United Kingdom is a signatory, including the Paris Agreement on Climate Change.
- (2) Within 12 months of the day on which this Act is passed, the Treasury must lay before Parliament a strategy outlining the policies Her Majesty’s Government will pursue to ensure financial services operating within the United Kingdom make a positive contribution to climate change targets.
- (3) In preparing the strategy under subsection (2), the Treasury must consult—
  - (a) the FCA,
  - (b) the PRA, and
  - (c) the Committee on Climate Change.
- (4) The Treasury may choose to consult other persons who appear to the Treasury to have an interest in financial services or climate change.
- (5) In this section, “Committee on Climate Change” means the body established under section 32 of the Climate Change Act 2008.”

***Member’s explanatory statement***

*This amendment would require the Government to consult with key stakeholders in order to formulate a strategy for putting financial services at the heart of green economic growth.*

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*4 February 2021*

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