

Financial Services Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Before Clause 1

BARONESS BOWLES OF BERKHAMSTED
LORD SHARKEY

As an amendment to the first amendment printed on sheet HL Bill 162(c)

At end insert—

- “(5) “High market standards” means—
- (a) standards that are no lower than current standards, and
 - (b) high standards of governance in rules and in their enforcement by the FCA and the PRA.
- (6) At least every 3 years an independent oversight review must be conducted on the standards of governance in relation to rules and their enforcement by the PRA and FCA.
- (7) The PRA and the FCA must fund each independent oversight review which they must publish without modification.”

Member’s explanatory statement

The purpose of this amendment is to probe what is meant by high market standards, and to include independent monitoring.

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Non-exploitation of consumers or small businesses

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1C (the consumer protection objective), after subsection (2)(e) insert—
 - “(ea) the general principle that firms should not exploit a consumer’s or small business’s vulnerability, behavioural biases or constrained choices;”
- (3) After subsection (2) insert—
 - “(3) Exploitation under paragraph (2)(e) includes, but is not limited to, situations where—

Before Clause 1 - 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; or
- (e) there are risks that the supplier should have foreseen would not be apparent to the customer or small business;

In this section, “small business” is as defined in Part 15 of the Companies Act 2006 (accounts and reports).”

Member’s explanatory statement

This amendment is to protect consumers and small businesses from exploitation.

After Clause 40

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause—

“Equivalence

The Treasury may not make an equivalence decision unless it has determined that a third country has equivalent legal and supervisory standards, and it may not make a determination based only on agreement to make reciprocal determinations.”

Member’s explanatory statement

This is a probing amendment in order to discuss equivalence determinations and processes and the role of reciprocity.

BARONESS KRAMER

Insert the following new Clause—

“Access to the Term Funding Scheme

No clearing bank will be eligible to access the Term Funding Scheme at the Bank of England unless that bank can demonstrate it is making such funds available to non-clearing banks and non-bank lenders on similar terms.”

Member’s explanatory statement

This is designed to create a level playing field for lenders funding bounce back loans.

Insert the following new Clause—

“Enhancement of Basic Accounts or provision through an alternate provider

- (1) In regulation 19 of The Payment Accounts Regulations 2015 (payment account with basic features), after sub-paragraph (1)(d) insert—

After Clause 40 - continued

“(e) access budget management tools and debt advice directly or indirectly through an alternate provider.””

Member’s explanatory statement

This is designed to give enhanced services to those reliant on basic bank accounts.

Insert the following new Clause –

“Access to cash

- (1) Within two months of the passing of this Act the Government must publish a report detailing the progress it has made on its commitments to protect access to cash.
- (2) The report must include –
 - (a) an assessment of the impact of COVID-19 on the extent to which access to cash is protected by the providers of relevant services, and
 - (b) an assessment of access to cash, access to digital payment services and training to use digital payment services for –
 - (i) vulnerable people, and
 - (ii) rural communities.”

Member’s explanatory statement

This is intended to ensure that cash is available to those who currently rely on it and to increase their capability to use digital payment services.

Insert the following new Clause –

“Registered societies with withdrawable share capital: removal of restriction on banking

- (1) The Co-operative and Community Benefit Societies Act 2014 is amended as follows.
- (2) In section 4 (registration etc: special cases), leave out subsections (1) and (2).
- (3) Leave out section 67 (registered society with withdrawable share capital not to carry on banking etc) and section 68 (power to amend figures in section 67(2)).
- (4) In section 69 (society carrying on banking must display statement) leave out subsection (2).”

Member’s explanatory statement

This removes provisions which prevent certain Co-operative and Community Benefit Societies from undertaking banking activities.

Insert the following new Clause –

“Legal protections for small businesses against the mis-selling of financial services

- (1) Regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (private person) is amended as follows.
- (2) In sub-paragraph (1)(a), leave out “individual” and insert “relevant person”.

After Clause 40 - continued

- (3) In sub-paragraph (1)(b), leave out “an individual” and insert “a relevant person”.
- (4) After paragraph (1), insert—
 - “(1A) For the purposes of this regulation, a “relevant person” means—
 - (a) any individual;
 - (b) any body corporate which meets the qualifying conditions for a small company under sections 382 and 383 Companies Act 2006 in the financial year in which the cause of action arises; or
 - (c) any partnership which would, if it were a body corporate, meet the qualifying conditions for a small company under section 382 Companies Act 2006 in the financial year in which the cause of action arises.”

Member’s explanatory statement

This new Clause seeks to give small businesses greater legal protections against the mis-selling of financial services products.

Insert the following new Clause—

“Establishment of an Office of the Financial Services Whistleblower

- (1) Within one year of the passing of this Act the Secretary of State must by regulations made by statutory instrument establish an Office of the Financial Services Whistleblower (the Office).
- (2) The duties of the Office are—
 - (a) the administration of arrangements to facilitate whistleblowing in financial services; and
 - (b) the prevention of detriment to whistleblowers.
- (3) A whistleblower is any person or persons in financial services protected under the Public Disclosures Act 1998.
- (4) The Office has powers to—
 - (a) give direction to and monitor activities of the Financial Conduct Authority and the Prudential Regulation Authority relevant to section 1 of this Act, including but not limited to—
 - (i) confidentiality,
 - (ii) protection of whistleblowers, and
 - (iii) the use of disclosed information;
 - (b) give direction to the Financial Conduct Authority and the Prudential Regulation Authority to inform an employment tribunal of the significance of the information provided by the whistleblower when a whistleblower is seeking redress;
 - (c) act as a point of contact for whistleblowers who wish to make a disclosure they believe to be protected under the Public Interest Disclosure Act 1998 or the Public Interest Disclosure (Northern Ireland) Order 1998 (S.I. 1998/1763 (N.I. 17));
 - (d) form and maintain a panel of accredited legal firms and advisory bodies to advise and support whistleblowers;

After Clause 40 - continued

- (e) maintain a fund to support whistleblowers in any tribunal process consequent on their whistleblowing actions; and
- (f) recommend civil and criminal penalties for entities causing detriment to whistleblowers including recompense to whistleblowers for that detriment.”

Member’s explanatory statement

This expands protection for whistleblowers in financial services from detriment.

BARONESS BOWLES OF BERKHAMSTED

Insert the following new Clause –

“Whistleblowers

- (1) Where a whistleblower is seeking redress in an employment tribunal, the PRA or FCA, whichever is relevant, must give evidence as to the significance of the information provided by the whistleblower.
- (2) The FCA or PRA must regard any attempt by an individual in authority to identify, dismiss or penalise a legitimate whistleblower as behaviour that is not fit and proper for the purpose of being an authorised person or board member.
- (3) Suspensions under subsection (2) must be reviewed and take into account whether the individual was instructed by a more senior individual.”

Schedule 2

LORD TUNNICLIFFE
LORD EATWELL

Page 66, line 17, at end insert –

“143HA Parliamentary engagement on rules

- (1) When publishing a draft of proposed Part 9C rules published in accordance with section 138I(1)(b), the FCA must make arrangements with the Treasury for the draft to be laid before each House of Parliament.
- (2) The FCA may not make the rules contained in the draft unless –
 - (a) a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each published a report on the proposed rules, and –
 - (i) each committee in their respective reports consents to proposed rules being made, or
 - (ii) the FCA has, having had regard to any objections contained within the reports, responded to those objections in writing, or
 - (b) the relevant period has elapsed without any report being published.
- (3) In this section “the relevant period” means the period –

Schedule 2 - continued

- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before each House as mentioned in subsection (1), and
- (b) ending with whichever of the following is the later –
 - (i) the end of the period of 20 Commons sitting days beginning with that first day, and
 - (ii) the end of the period of 20 Lords sitting days beginning with that first day.
- (4) For the purposes of subsection (4) –
 - (a) where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
 - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
 - (c) “Lords sitting day” means a day on which the House of Lords is sitting.”

Page 66, line 19, leave out “and 143H” and insert “to 143HA”

Schedule 3

LORD TUNNICLIFFE
LORD EATWELL

Page 83, line 2, at end insert –

“144DA Parliamentary engagement on rules

- (1) When publishing a draft of proposed CRR rules published in accordance with section 138J(1)(b), the PRA must make arrangements with the Treasury for the draft to be laid before each House of Parliament.
- (2) The PRA may not make the rules contained in the draft unless –
 - (a) a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each published a report on the proposed rules, and –
 - (i) each committee in their respective reports consents to proposed rules being made, or
 - (ii) the PRA has, having had regard to any objections contained within the reports, responded to those objections in writing, or
 - (b) the relevant period has elapsed without any report being published.
- (3) In this section “the relevant period” means the period –
 - (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before each House as mentioned in subsection (1), and
 - (b) ending with whichever of the following is the later –

Schedule 3 - continued

- (i) the end of the period of 20 Commons sitting days beginning with that first day, and
 - (ii) the end of the period of 20 Lords sitting days beginning with that first day.
- (4) For the purposes of subsection (4) –
- (a) where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
 - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
 - (c) “Lords sitting day” means a day on which the House of Lords is sitting.”

Page 83, line 4, leave out “and 144D” and insert “to 144DA”

Schedule 4

BARONESS KRAMER

Page 91, line 6, at end insert –

“2A In Article 92(1) (own funds requirements) after “institutions” add “(with assets in excess of £100 billion (sterling)).”

Member’s explanatory statement

This is designed to ensure that capital requirements for medium sized banks are proportionate.

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5 February 2021
