



HM Treasury

Financial Services (Banking Reform) Bill

Amendments – Third Reading

Briefing for Peers

December 2013

The majority of the amendments tabled by the Government on 4 December fulfil commitments it made at Lords Report stage. The remainder make minor and technical changes intended to ensure that the provisions in the Bill properly deliver their policy intention.

Payday lending cap

This amendment imposes a duty on the FCA to make rules to cap the cost of credit, specifically by requiring the FCA to make rules under certain of its existing powers (under section 137C of FSMA 2000) to cap the cost of credit in relation to high-cost short-term credit agreements. These powers were introduced as part of the Financial Services Act 2012. The Government believes a cap is necessary to tackle consumer detriment in the high-cost short-term credit market, and that it will help to put an end to excessive costs on borrowers. This will help deliver a well functioning and sustainable consumer credit market which is able to meet consumers' needs.

The Government believes that the full detail of a cap should be set out in FCA rules rather than in legislation, to allow greater flexibility to adapt to innovations in this fast-moving market. However, the FCA must ensure that it designs a cap that works in UK consumers' interests and fits the UK market. The FCA must consider the evidence and the implications of its proposals thoroughly; this will include drawing on the analysis and findings of the Competition Commission, whose investigation into the payday lending market is currently underway.

The clause sets out that the FCA must make these rules in order to protect consumers from excessive charges, and these rules must advance one or more of its operational objectives. These rules will take effect no later than 2 January 2015. In addition, the FCA must consult the Treasury before it publishes any draft rules, and report on the use of this power in its annual report.

An exchange of letters between the Treasury and the FCA gives a fuller picture of the Government's expectations on how the FCA will approach designing the cap, and the FCA's agreement to this framework.

Certification regime

These amendments give full effect to the Parliamentary Commission on Banking Standards' recommendations on the 'licensing regime', which the Government committed to implement during Report stage. The amendments will impose obligations on banks and PRA-regulated investment firms to:

- verify before making an application to a regulator for approval of a candidate for a senior management position or another role requiring regulatory pre-approval that the person is fit and proper to perform that role in the firm;
- consider at least once a year thereafter, whether there are any grounds on which a regulator might seek to withdraw its approval of a senior manager or another person approved by a regulator and, if so, to notify the regulator of those grounds;
- verify before appointing an employee to a role in which he or she could do significant harm to the firm (and annually thereafter), that the person is fit and proper to perform that role in the firm, and issue a certificate which lasts for 12 months of that fact to the employee. (The significant harm roles will be designated by the regulators in rules);
- maintain up-to-date records of employees who have been issued certificates which could be made available to the regulators when required. (The names of senior managers and other persons approved by the regulators will be kept in the Financial Services Register maintained by the FCA.);
- notify the appropriate regulator when they take formal disciplinary action against senior managers, other persons approved by the regulators, and other employees (not limited to employees performing significant harm roles). Formal disciplinary action could include giving a formal written warning, dismissal, suspension or clawing back remuneration;
- notify senior managers, other persons approved by the regulators, and other employees (not limited to employees performing significant harm roles) of the banking standards rules that apply to them.

FCA Consumer Panel

The FCA's Consumer Panel is the consultative panel of the FCA which represents the interests of consumers. This amendment provides a statutory basis for arrangements whereby the FCA's Consumer Panel can raise issues it is considering with the PRA – for example, through meetings or in correspondence. Such arrangements will ensure the PRA can benefit from the expertise of the FCA's Consumer Panel without facing the undue burden of a formal requirement to consult them each time they change their rules or policies. The arrangements reflect the fact that the PRA's prudential remit differs from that of the consumer focused FCA, and are a proportionate means of enabling the PRA to consider consumer interests. As the PRA will benefit from the advice of the FCA's Consumer Panel, the amendment includes provision to enable the PRA to make arrangements to cover related expenditure if that becomes appropriate (for example, if the FCA's Consumer Panel Chair were to incur a travel cost wholly related to this function).

Review of proprietary trading

The Government is tabling amendments to implement the recommendation of the Parliamentary Commission on Banking Standards for an independent review of proprietary trading. The amendments therefore provide for:

- a review by the PRA within one year of the ring-fence coming into force (the Government has committed to the ring-fence coming into force in 2019), to assess to what extent proprietary trading is being carried out by authorised persons. The PRA will also have to consider the prudential risks proprietary trading may give rise to and whether the powers it has to deal with proprietary trading are sufficient. The PRA's report of the review is to be laid before Parliament; and

- an independent review set up by the Treasury, following the PRA's report. The review panel must consider whether it agrees with the conclusions of the PRA's report and whether further restrictions on propriety trading are necessary in its opinion. Beyond this it can make whatever recommendations it regards as necessary.

Review of ring-fencing

The Government previously amended the Bill to provide for an independent review of ring-fencing, once the ring-fence has come into force. In line with the recommendation of the Parliamentary Commission on Banking Standards, it was originally proposed that this review take place four years after ring-fencing takes effect.

To reflect further views expressed in Parliament, the Government is making amendments to advance this timetable, so that the review will be held two years after ring-fencing comes into force.

Meetings with auditors

The Government is bringing forward amendments in response to arguments advanced by members of the Parliamentary Commission on Banking Standards in favour of further measures to improve the dialogue between supervisors and auditors. The amendments:

- introduce a requirement for the PRA and FCA to meet with the auditors of authorised persons which are UK banks or PRA-regulated investment firms which the PRA consider are important to the stability of the UK financial system at least once a year; and
- require each regulator to state in its annual report the number of meetings that have taken place between the regulator and auditors of authorised persons during the period the report concerns.

Enabling the Office for Legal Complaints to recoup complaints costs associated with CMCs

This amendment will allow the costs associated with extending the jurisdiction of the Office for Legal Complaints (OLC) to deal with complaints about claims management companies (CMCs) to be recovered from the claims management industry. This will provide a new and important route of redress for consumers, enabling them to seek financial compensation through an ombudsman for the first time.

The Ministry of Justice announced last year that it would commence the relevant provisions in the Legal Services Act 2007 to enable the OLC to handle complaints about CMCs, and has since been seeking a suitable legislative vehicle to put in place the necessary cost recovery arrangements to do so.

Senior managers, certification and banking standards regime: application to foreign branches

The Government is bringing forward amendments to put in place a power to extend the definition of "relevant authorised persons" to include the UK branches of non-UK deposit-takers and investment firms. This will enable the Government to apply the provisions of the senior managers, certification and banking standards regime to foreign firms operating through branches in the UK where it is appropriate to do so.

Bail-in: minor and technical amendments

The Government is making a number of minor and technical amendments to the bail-in provisions, as a result of further consideration of these amendments and discussion with interested parties. The amendments clarify the

scope and nature of the provisions that it will be necessary to make by order to apply the bail-in provisions to building societies in a way which is equivalent to the exercise of the powers over banks. They also make a number of other minor and technical changes to ensure that the bail-in provisions properly deliver their policy intention.

All policy briefs on amendments made to the Bill at Lords Committee and Report have been published on the Gov.uk website at: <https://www.gov.uk/government/publications/banking-reform-bill-government-notes-on-amendments>

Further Enquiries

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