



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Lord Tunncliffe, Lord Sharkey, Baroness Kramer and Lord Thomas of Cwmgiedd
House of Lords
London
SW1A 0PW

6 March 2023

Dear Lord Tunncliffe, Lord Sharkey, Baroness Kramer and Lord Thomas of Cwmgiedd,

FINANCIAL SERVICES AND MARKETS BILL: SMALL & MEDIUM ENTERPRISES

Thank you for your contributions during the second Grand Committee debate on the Financial Services and Markets Bill on 30 January 2023. I committed to write to you regarding a number of questions raised during the debate on amendments 40 and 219 relating to lending to Small and Medium Enterprises (SMEs).

Lord Sharkey asked for confirmation about whether a policy announced by the previous Prime Minister – to raise the definition of a small business, within the context of the Better Regulation targets, from 250 to 500 employees – has been implemented.

The government is committed to supporting SMEs through exemption from new regulations where possible. Government departments are already required by the Better Regulation Framework to consider the impact of regulatory changes on businesses with up to 50 employees and exempt them where practical. This is known as a small and micro business assessment (SaMBA). In October 2022, the government introduced supplementary guidance to the Better Regulation Framework, requiring departments to

consider the impact on businesses with up to 500 employees and to also exempt them where practical. This test applies to new regulations, as well as regulations under review that could impact businesses, including Retained EU Law.

This new exemption will potentially reduce red tape and bureaucracy for up to 40,000 more businesses. This means thousands of businesses will not have to comply with forthcoming regulations and most notably this will extricate them from hundreds of EU regulations during their process of review and repeal.

Lord Tunncliffe asked whether the government had an estimate of the cost of introducing the sort of regulation envisaged under amendment 40, which would require firms providing credit to SMEs to comply with consumer credit regulation.

Unfortunately, the government is not able to provide this: he will understand that it is exceptionally difficult to provide an accurate figure, because the ultimate cost to businesses of bringing SME lending into regulation would depend on multiple factors. The SME lending market benefits from a diversity of financial products, being offered by a diversity of financial institutions including high-street banks, challenger banks and non-bank lending platforms. How the costs would apply across these different lenders and products would differ.

I can, however, summarise the direct and indirect costs that could be associated with such a move. Direct costs would include a requirement to pay annual FCA fees, product reviews and increased compliance and monitoring costs. Indirect costs would include stifled product innovation, narrower product choice for SMEs and higher barriers to entry leading to reduced competition in the SME lending market.

As I set out in the debate, the government is committed to regulating only where there is a clear case for doing so. At the moment, loans of £25,000 or less to the smallest businesses are already regulated as consumer credit agreements. This captures over 60% of all UK businesses and protects them where there is the potential for detriment in their dealings with lenders. Beyond these proportionate protections, there is a significant risk that bringing SME lending more broadly within the scope of consumer credit regulation would negatively impact the availability and price of credit for small businesses, at a time

when it is vitally important that small business have the ability and confidence to invest, expand and contribute to growth in the real economy.

Lord Thomas of Cwmgiedd asked for the Financial Conduct Authority's (FCA's) view on amendments 40 and 219. I want to be clear that setting the regulatory perimeter is a matter for government and Parliament. The government consults on any proposed changes to the perimeter, which are then subject to parliamentary approval. The FCA plays an important role in raising perimeter issues with the Treasury and advising on possible perimeter changes.

It would not be appropriate for me to speak for the FCA, which is an independent regulator, on this issue. However, I can say that the FCA's latest perimeter report in July 2022 noted that SME lending is a longstanding perimeter issue and the FCA continues to monitor this important area.

Lord Sharkey asked how many cases the Business Banking Resolution Service (BBRS) has handled since its inception. Since the BBRS launched in February 2021, there have been 905 total case registrations with the Business Banking Resolution Service. Of these, 820 cases have been closed and 85 live cases are currently being considered.

Since the BBRS launched in 2021, ministers and officials have regularly engaged with the BBRS to understand more about its caseload. The volume of cases suggest the number of SMEs with banking complaints that have not already been through an independent review process is much lower than anticipated.

In addition, Baroness Kramer asked that I confirm the banks that participate in the BBRS. These are Barclays Bank, Danske Bank, HSBC, Lloyds Banking Group, NatWest Group, Santander UK and Virgin Money. These banks continue to hold a significant majority of all business current accounts in the UK. These banks held over 90% of all business current accounts during the time period of the BBRS's historical scheme (from 2001 to 2019).

I look forward to further discussing these issues throughout the passage of the Bill. I am copying this letter to Peers who also spoke during the debate, and I am depositing a copy of this letter in the Library of the House.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a series of loops and a long horizontal stroke extending to the right.

BARONESS PENN