



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

Lord Sharkey
House of Lords
London
SW1A 0PW

9 February 2023

Dear Lord Sharkey,

FINANCIAL SERVICES AND MARKETS BILL: MATTERS RAISED ON DAY ONE OF GRAND COMMITTEE

Thank you for your contribution during the first Grand Committee debate of the Financial Services and Markets Bill on 25 January 2023. You asked me to respond in writing regarding Amendment 1, in your name, which relates to the repeal and replacement of retained EU law.

As you noted, the government has committed that it will not commence the repeal of a piece of retained EU law until the regulators have drafted and, where necessary, consulted on rules to replace the retained EU law being repealed, where replacement is appropriate.

You asked for clarification regarding who decides whether replacement of retained EU law is appropriate, and whether consultation was necessary, when commencing the repeal of individual parts of the Schedule.

Under the regulatory framework established by the Financial Services and Markets Act 2000 (FSMA), the government is responsible for determining what activities are subject to regulation by setting the regulatory perimeter, within which the regulators make the relevant rules. In many instances, activities that are currently regulated through retained EU law are already regulated activities under FSMA, and therefore the regulators will be able to make rules in relation to these activities using their existing powers at the point retained EU law is repealed.

Where activities currently regulated under retained EU law are not currently within the existing FSMA perimeter, where the government concludes that those activities should continue to be subject to regulation, it expects to bring these activities into the perimeter when repealing retained EU law, including through the new Designated Activities Regime introduced by Clause 8 of the Bill. Where the government subjects activities currently regulated under retained EU law to regulation under FSMA, the regulators will be responsible for such replacement rules as they consider appropriate, in order to advance their statutory objectives.

In general, it will therefore be for the regulators to determine what rules, if any, are appropriate to replace specific requirements in retained EU law, where these activities fall within the regulatory perimeter as determined by the government. This will be subject to their usual process for policy and rule-making: the regulators must consider what rules are appropriate to further their statutory objectives and fulfil their functions for firms and activities they are responsible for regulating.

It will often be necessary for the regulators to consult on replacement rules. The regulators are required to consult on any proposed new rules by sections 138I and 138K of the Financial Services and Markets Act 2000 (FSMA), with some limited exceptions provided for in section 138L, and provided for in Clause 6 of this Bill.

The Treasury will therefore work closely with the regulators to coordinate the repeal and replacement of retained EU law.

The government has been clear that it is committed to maintaining high regulatory standards across UK financial services, and will not pursue divergence from EU rules for its own sake, but where it believes there is a genuine opportunity for improvement. As

discussed during the debate, there may be some instances where the government considers that it is appropriate to repeal retained EU law without replacement: this will generally be where EU regulation has become redundant due to the fact that the activity subject to regulation is no longer being carried out, or if the government concludes that an activity doesn't pose risks that need to be addressed through regulation. When the government is considering repealing retained EU law without replacement, or considering bringing new activities into the scope of the regulatory perimeter, the Treasury would expect to consult in cases where it considers that there would be a material impact – such as where activities that are currently taking place in the UK and are subject to regulation would no longer be subject to a broadly equivalent level of regulation.

For example, the Treasury has published a consultation on a proposed alternative framework for retail disclosure in the UK, seeking views on the future direction of retail disclosure following the planned repeal without replacement of the Packaged Retail and Insurance-Based Investment Products Regulation. The FCA will take on responsibility for making rules to establish the detail of the new retail disclosure regime, as they did before the EU Regulation was introduced. Any rules that the FCA makes would be subject to the statutory consultation requirements, subject to any relevant exemptions.

By contrast, as part of the Edinburgh Reforms, the Chancellor announced that the regulations for the European Long Term Investment Fund would be repealed without replacement. No such fund has been established in the UK and therefore no party will be directly affected by the repeal, the government did not consider it necessary to consult on this decision.

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, appearing to be 'Baroness Penn', written in a cursive style.

BARONESS PENN