



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

Lord Forsyth of Drumlean and Baroness Noakes
House of Lords
London
SW1A 0PW

18 April 2023

Dear Michael and Sheila,

FINANCIAL SERVICES AND MARKETS BILL: POWER FOR HM TREASURY TO REQUIRE THE REGULATORS TO REVIEW RULES

Thank you for your contributions during the Grand Committee debate on the Financial Services and Markets Bill on 20 February 2023. Lord Harlech committed to write to you on your questions relating to the power introduced by clause 27 of the Bill. I am writing to fulfil that commitment.

You both asked for a definition of the “public interest” as referenced in clause 27. Subsection (1) of new section 3RC of the Financial Services and Markets Act 2000, inserted by clause 27, provides a power for HM Treasury to direct the regulators to review their rules when it is in the public interest. The government does not consider that there is one definition of the public interest or that this should be defined in legislation. There is precedent, both in financial services legislation and elsewhere, for powers being subject to a public interest test without the public interest being explicitly defined.

For example, section 77 of the Financial Services Act 2012 gives the Treasury a power to direct the regulators to investigate relevant events where the Treasury considers that it is

in the public interest. The government has exercised this power twice, most recently to direct the investigation into the FCA's regulation of London Capital & Finance plc. In other legislation, section 13ZC of the National Health Service Act 2006 provides that the Secretary of State may give NHS England directions as to the exercise of any of its functions. The legislation states that a direction must include a statement that the Secretary of State considers the direction to be in the public interest but does not define the public interest beyond this reference.

The term "public interest" is also used elsewhere in this Bill without being defined – for example, clause 33 amends FSMA to require annual responses from the regulators in relation to recommendations from HM Treasury. It states that the regulator is not required to provide any information whose publication would, in the opinion of the relevant regulator, be against the public interest.

Given the need for the power in clause 27 of the Bill to cover a wide range of possible future circumstances, it would be inappropriate to attempt to exhaustively define the public interest here, and doing so could inadvertently limit HM Treasury's ability to exercise the power where necessary. However, paragraph 249 of the Explanatory Notes to the Bill sets out some examples of situations where HM Treasury expects that it may be in the public interest to exercise the power to direct the regulator to review its rules. This includes where significant developments in the relevant markets give rise to the possibility that the current rules may no longer be appropriate; or substantial evidence gives rise to the possibility that the rules are not achieving their purpose.

As noted during the debate, it will be important for HM Treasury to work with Parliamentary committees and other stakeholders to understand the evidence base for whether it is in the public interest to exercise the power.

Baroness Noakes also asked what interested parties, such as the statutory panels and consumer or trade bodies, can expect if they make representations to HM Treasury in relation to exercising the rule review power.

HM Treasury will, of course, take into account all representations made by stakeholders, as these will form an important part of the evidence base when determining whether the exercise of the power is in the public interest. HM Treasury engages closely with stakeholders across all levels of seniority. The Economic Secretary and officials meet regularly with financial services firms, trade associations, and consumer groups to discuss issues of regulation, the work of the regulators, and the government's vision for the financial services sector.

Therefore, HM Treasury will work to ensure that stakeholders can be confident that their representations are fully considered as part of an active and ongoing dialogue with relevant stakeholders. However, it may not always be appropriate for HM Treasury to respond publicly, for example where representations are made in confidence.

I am copying this letter to other Peers who 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', with a stylized initial 'P' and a long horizontal flourish.

BARONESS PENN