

Financial Services Bill

AMENDMENTS
TO BE MOVED
ON REPORT

[DRAFT: These draft amendments refer to the Bill as first printed for the Lords on 23 May 2012]

Clause 6

LORD SASSOON

- 1 Page 38, line 28, after “to” insert “(a)”

Clause 6

LORD SASSOON

- 2 Page 38, line 29, at end insert “or
(b) the setting of a specified benchmark.”

Clause 6

LORD SASSOON

- 3 Page 38, line 30, after “(1A),” insert—
“() after subsection (5) insert—
“(6) “Benchmark” means an index, rate or price that—
(a) is determined from time to time by reference to the state of the market,
(b) is made available to the public (whether free of charge or on payment), and
(c) is used for reference for purposes that include one or more of the following—

- (i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
- (ii) determining the price at which investments may be bought or sold or the value of investments;
- (iii) measuring the performance of investments.””

Clause 6

LORD SASSOON

4 Page 39, line 16, for “22(1A)” substitute “22(1A)(a)”

Clause 6

LORD SASSOON

5 Page 39, line 33, at end insert—

“PART 2B

REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS

General

24E The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

Providing information

24F Providing any information or expression of opinion that—
(a) is required by another person in connection with the determination of a benchmark, and
(b) is provided to that person for that purpose.

Administration

24G (1) Administering the arrangements for determining a benchmark.
(2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

Determining or publishing benchmark or publishing connected information

24H (1) Determining a benchmark.
(2) Publishing a benchmark or information connected with a benchmark.””

Clause 22

LORD SASSOON

6 Page 81, line 19, at end insert –

“137DA Rules requiring participation in benchmark

- (1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.
- (2) The rules may in particular –
 - (a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;
 - (b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;
 - (c) make provision by reference to any code of practice or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.
- (3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code of practice or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.
- (4) In this section –
 - “benchmark” has the meaning given in section 22(6);
 - “specified” means specified in, or determined in accordance with, the rules.”

Clause 22

LORD SASSOON

7 Page 87, line 5, leave out “section 397(5)(b)” and insert “the relevant exemption provisions”

Clause 22

LORD SASSOON

8 Page 87, line 12, at end insert –

- “(4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012 –
 - (a) section (*Misleading impressions*)(9)(b);
 - (b) section (*Misleading statements etc in relation to benchmarks*)(4)(a).”

After Clause 83

LORD SASSOON

9 Insert the following new Clause –

“PART 6A

OFFENCES RELATING TO FINANCIAL SERVICES

Misleading statements

- (1) Subsection (2) applies to a person (“P”) who –
 - (a) makes a statement which P knows to be false or misleading in a material respect,
 - (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or
 - (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.
- (2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made) –
 - (a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or
 - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) In proceedings for an offence under subsection (2) brought against a person to whom that subsection applies as a result of paragraph (a) of subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with –
 - (a) price stabilising rules,
 - (b) control of information rules, or
 - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) Subsections (1) and (2) do not apply unless –
 - (a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,
 - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or
 - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.”

After Clause 83

LORD SASSOON

10 Insert the following new Clause –

“Misleading impressions

- (1) A person (“P”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if –
 - (a) P intends to create the impression, and
 - (b) the case falls within subsection (2) or (3) (or both).
- (2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.
- (3) The case falls within this subsection if –
 - (a) P knows that the impression is false or misleading or is reckless as to whether it is, and
 - (b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.
- (4) Those results are –
 - (a) the making of a gain for P or another, or
 - (b) the causing of loss to another person or the exposing of another person to the risk of loss.
- (5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).
- (6) “Gain” and “loss” –
 - (a) extend only to gain or loss in money or other property of any kind;
 - (b) include such gain or loss whether temporary or permanent.
- (7) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (8) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.
- (9) In proceedings brought against any person (“D”) for an offence under subsection (1) it is a defence for D to show –
 - (a) to the extent that the offence results from subsection (2), that D reasonably believed that D’s conduct would not create an impression that was false or misleading as to the matters mentioned in subsection (1),
 - (b) that D acted or engaged in the conduct –
 - (i) for the purpose of stabilising the price of investments, and
 - (ii) in conformity with price stabilising rules,
 - (c) that D acted or engaged in the conduct in conformity with control of information rules, or

- (d) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (10) This section does not apply unless –
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
 - (b) the false or misleading impression is created there.”

After Clause 83

LORD SASSOON

11 Insert the following new Clause –

“Misleading statements etc in relation to benchmarks

- (1) A person (“A”) who makes to another person (“B”) a false or misleading statement commits an offence if –
 - (a) A makes the statement in the course of arrangements for the setting of a relevant benchmark,
 - (b) A intends that the statement should be used by B for the purpose of the setting of a relevant benchmark, and
 - (c) A knows that the statement is false or misleading or is reckless as to whether it is.
- (2) A person (“C”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction commits an offence if –
 - (a) C intends to create the impression,
 - (b) the impression may affect the setting of a relevant benchmark,
 - (c) C knows that the impression is false or misleading or is reckless as to whether it is, and
 - (d) C knows that the impression may affect the setting of a relevant benchmark.
- (3) In proceedings for an offence under subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with –
 - (a) price stabilising rules,
 - (b) control of information rules, or
 - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) In proceedings brought against any person (“D”) for an offence under subsection (2) it is a defence for D to show –
 - (a) that D acted or engaged in the conduct –
 - (i) for the purpose of stabilising the price of investments, and

- (ii) in conformity with price stabilising rules,
 - (b) that D acted or engaged in the conduct in conformity with control of information rules, or
 - (c) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (5) Subsection (1) does not apply unless the statement is made in or from the United Kingdom or to a person in the United Kingdom.
- (6) Subsection (2) does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
 - (b) the false or misleading impression is created there.”

After Clause 83

LORD SASSOON

12 Insert the following new Clause—

“Penalties

- (1) A person guilty of an offence under this Part is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (2) For the purpose of subsection (1)(a) “the applicable maximum term” is—
- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
 - (b) in Scotland, 12 months;
 - (c) in Northern Ireland, 6 months.”

After Clause 83

LORD SASSOON

13 Insert the following new Clause—

“Interpretation of Part 6A

- (1) This section has effect for the interpretation of this Part.
- (2) “Investment” includes any asset, right or interest.
- (3) “Relevant agreement” means an agreement—
- (a) the entering into or performance of which by either party constitutes an activity of a kind specified in an order made by the Treasury, and

- (b) which relates to a relevant investment.
- (4) “Relevant benchmark” means a benchmark of a kind specified in an order made by the Treasury.
- (5) “Relevant investment” means an investment of a kind specified in an order made by the Treasury.
- (6) Schedule 2 to FSMA 2000 (except paragraphs 25 and 26) applies for the purposes of subsections (3) and (5) with references to section 22 of that Act being read as references to each of those subsections.
- (7) Nothing in Schedule 2 to FSMA 2000, as applied by subsection (6), limits the power conferred by subsection (3) or (5).
- (8) “Price stabilising rules” and “control of information rules” have the same meaning as in FSMA 2000.
- (9) In this section “benchmark” has the meaning given in section 22(6) of FSMA 2000.”

After Clause 83

LORD SASSOON

14 Insert the following new Clause –

“Affirmative procedure for certain orders

- (1) This section applies to the first order made under section (*Interpretation of Part 6A*).
- (2) This section also applies to any subsequent order made under that section which contains a statement by the Treasury that the effect of the proposed order would include one or more of the following –
 - (a) that an activity which is not specified for the purposes of subsection (2)(a) of that section would become one so specified,
 - (b) that an investment which is not a relevant investment would become a relevant investment;
 - (c) that a benchmark which is not a relevant benchmark would become a relevant benchmark.
- (3) A statutory instrument containing (alone or with other provisions) an order to which this section applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.”

After Clause 83

LORD SASSOON

15 Insert the following new Clause –

“Consequential provisions relating to Part 6A

- (1) Section 397 of FSMA 2000 (which relates to misleading statements and practices and is superseded by the provisions of this Part) is repealed.

- (2) In each of the provisions of FSMA 2000 listed in subsection (3), any reference to an offence under that Act includes a reference to an offence under this Part.
- (3) Those provisions are—
- (a) section 400 (offences by bodies corporate etc);
 - (b) section 401 (proceedings for offences);
 - (c) section 403 (jurisdiction and procedure in respect of offences)."

Clause 97

LORD SASSOON

- 16** Page 165, line 27, after “which” insert “section (*Affirmative procedure for certain orders*) or”

Schedule 9

LORD SASSOON

- 17** Page 226, line 38, at end insert—
- “() In section 130 (guidance), in subsection (1)(b), for “section 397 of this Act” substitute “Part 6A of the Financial Services Act 2012”.”

Schedule 12

LORD SASSOON

- 18** Page 250, line 22, at end insert—
- “() In subsection (2)(a), for “or 397” substitute “or under Part 6A of the Financial Services Act 2012”.”

