

UK Financial Services Update: Financial Services and Markets Bill 2023 and Sustainability Disclosure

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The Financial Services and Markets Bill 2022-23 (the “Bill”) has completed the report and third reading stages of the legislative process in the House of Lords. The amendments made during these stages are now under consideration by the House of Commons and the Bill is expected to receive royal assent later this summer.

A revised version of the Bill has been published, with the Lords having made some important and detailed amendments in relation to sustainability disclosure requirements (“SDR”).

The revised draft includes a new clause 21 which supplements the Financial Services and Markets Act 2000 (“FSMA”) by the addition of new sections 416A and 416B. These new sections, respectively:

- give the government of the day the authority to make and update specific disclosure requirements in relation to sustainability via an “SDR policy statement”, which they must then keep under review; and
- place an obligation on the Financial Conduct Authority (the “FCA”) and the Prudential Regulation Authority (the “PRA”) to have regard to this SDR policy statement when making rules or issuing guidance in relation to disclosure of matters related to sustainability.

Section 416B also clarifies that sustainability includes matters relating to the environment (including climate change); social, community and human rights issues; and issues related to tackling corruption and bribery. The breadth of issues potentially captured by this broad definition of sustainability means that issuers are likely to be required to make significantly more disclosures on matters related to sustainability, with perhaps the most affected issuers being those in the oil and gas, mining and chemicals and aviation and transportation industries.

The revised Bill also includes amendments related to sustainability that:

- require the FCA and the PRA to have regard to the government’s 2050 net-zero target (and all other environmental targets approved by Parliament or the devolved institutions) in executing the functions as regulators; and
- introduce restrictions and reporting obligations on any person (i.e. not just an issuer) carrying on a regulated activity (as defined in FSMA) that may directly or indirectly support a commercial activity concerned with a forest risk commodity.

While much of the detail of these requirements will be determined by subordinate legislation and the SDR policy statements from time to time published by the government, it is clear that the foundations are being laid for a much more rigorous and detailed set of sustainability disclosures to be required in public market transactions in the UK.

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