House of Commons Library

Research Briefing
Number CBP 9369
By Ali Shalchi
21 December 2021

Critical Benchmarks (References and Administrators' Liability) Act 2021

1 Background

The Critical Benchmarks (References and Administrators' Liability) Bill [HL] 2021-22 was introduced in the House of Lords as a Government bill on 8 September 2021. It passed its third reading in the Lords and was sent to the Commons on 2 November. The Bill passed all remaining Commons stages on 18 November and received Royal Assent on 15 December 2021.

No amendments were made to the Bill in either House, and it passed all stages without division.

LIBOR

LIBOR is an interest rate benchmark used to set prices for a huge number of financial contracts around the world. In 2017 the Chief Executive of the FCA announced that the FCA would no longer seek to persuade or compel banks to submit the data that goes into calculating LIBOR. The Financial Services

Act 2021 granted the FCA powers to oversee its orderly wind-down – see section 3.3 of the Commons Library briefing on the Financial Services Act 2021 for an explanation of the powers granted.[1]

Alongside the passage of the Financial Services Act 2021, in February 2021 the Government consulted on further legislation to reduce the scope for uncertainty and litigation that might arise from the FCA's actions to wind down LIBOR. The risks arise in relation to so-called "tough legacy" contracts which use LIBOR but, for whatever reason, are unable to transition from LIBOR to another benchmark before LIBOR stopped being published.[2] The consultation concluded that further legislation was desirable and would be brought forward when parliamentary time allowed.[3] This Act contains the resulting legislative provisions.

For more detailed discussion of the Act's background, see the House of Lords Library briefing.[4]

Fast-track procedure

The Cabinet Office's Guide to Making Legislation states that when a Bill is fast-tracked, the Government uses the Explanatory Notes for the legislation to address the reasons.[5] The Government's decision to fast-track the legislation was not originally addressed in the Explanatory Notes for this Bill.

On 17 November 2021, an updated version of the Explanatory Notes was published. It stated that the Bill is being fast-tracked because the FCA will exercise its powers to provide for LIBOR to continue being published using a "synthetic methodology" (a different method) at the end of 2021. As a result, the Government wanted the Bill's protections to be in force by then.[6]

Further information on this procedure is provided in the House of Commons library briefing on Fast-track legislation.[7] A second Commons Library briefing provides a list of public bills since 1979 where the main Commons stages (Second and Third Reading) have been passed within one day.[8]

---

[1] House of Commons Library, Financial Services Act 2021, CBP 8705, 7 May 2021

[2] HM Treasury, Supporting the wind-down of critical benchmarks: consultation, 15 February 2021

[3] HM Treasury, Letter to Tushar Morzaria, Chair of the Working Group on Sterling Risk-Free Reference Rates, ref wind-down of LIBOR benchmark, 7 May 2021. See also House of Lords Library briefing below

[4] House of Lords Library, Critical Benchmarks (References and Administrators' Liability) Bill [HL], 1 October 2021

[5] Cabinet Office, Guide to making legislation, July 2017, para 11.54

[6] Explanatory Notes (17 November 2021), para 56

[7] House of Commons Library, Fast-track legislation, 25 March 2020

[8] House of Commons Library, Expedited legislation: Public bills receiving their second and third readings on the same day in the House of Commons, 27 September 2021

The Act

The Act seeks to support the wind-down of important financial services benchmarks, focusing on the London Interbank Offered Rate (LIBOR). It has four sections. Sections 1 and 2 contain the substantive provisions. Section 3 deals with consequential matters and section 4 deals with interpretation, territorial extent and the Bill's title.

Section 1 seeks to provide more certainty for parties to contracts that contain references to a benchmark designated as "critical" (which is currently only LIBOR). It aims to allow contracts to continue operating if the FCA exercises specific powers in relation to these benchmarks. For example, if the FCA directs a change in how the benchmark is calculated, the contract should be treated as referencing the benchmark after the FCA has exercised its powers. This would not override contracts which reference a benchmark but have a fallback mechanism allowing for a different benchmark to be used in certain circumstances.

Section 2 deals with the risk that administrators of benchmarks could face legal action as a result of complying with requirements imposed upon them by the FCA (such as the FCA instructing an administrator to change the methodology for calculating a benchmark). It grants administrators immunity from legal action when acting in accordance with FCA requirements.

Financial services are a reserved matter for the United Kingdom Parliament. The Act therefore extends to the whole of the UK and came into force on the day it was passed.[9]

2 House of Lords scrutiny

The Bill's House of Lords second reading debate was on 13 October 2021, where it passed without a division.

Nine peers spoke in the debate, from the Labour, Conservative and Liberal Democrat parties.

For the Government, Cabinet Office and Treasury Minister, Lord Agnew of Oulton, said the Bill "reaffirms the Government's commitment to protecting and promoting the UK's financial services sector."[10] Lord Sharkey (Liberal Democrat) expressed a general concern that there is a "very large gap in our scrutiny system where financial affairs are concerned"[11] and called for a dedicated financial affairs select committee.

---

[9] See section 4(2) and (3)
[10] HL Deb 13 October 2021, col 1890
[11] Ibid, col 1893

Baroness Noakes (Conservative) said she has some “concerns” but was a “big supporter” of the Bill.[12] Lord Blackwell (Conservative) said he welcomed the Bill but has concerns that, despite the legal immunity granted under clause 2, “claims that run against the intention of this legislation may still be pursued and can be costly.”[13] Lord Eatwell (Labour) said the Bill was “eminently sensible in the context of the complexities associated with Libor transition”[14] but expressed some concern that the Bill’s legal immunity to firms was simply shifting the risk to retail customers, saying that “this is the sort of legislation that gives the financial services industry a bad name”.[15]

As no amendments were subsequently tabled, the Bill did not go through Grand Committee or Report stage.[16] The Bill received its third reading on 2 November 2011, where it passed without a division; Baroness Noakes noted that the “Bill does not deliver everything that the industry wanted but it delivers a great deal”.[17] No amendments were made to the Bill in the House of Lords.

3 House of Commons scrutiny

The Bill was introduced to the Commons (first reading) on 2 November and all remaining stages took place on 18 November.

Second reading

Four MPs spoke in the second reading debate, where the Bill passed without a division. These were Minister John Glen, Shadow Minister Pat McFadden, SNP Deputy Treasury spokesperson Peter Grant, and Conservative MP Bob Stewart.

Mr Glen introduced the Bill, saying that it “reaffirms the Government’s commitment to protecting and promoting the UK’s financial services sector”, noting that it was an “unusually complex and technical Bill”.[18]

Shadow Minister Mr McFadden said that Labour would “not oppose the Bill today because we understand that continuity of contracts is in the public interest” but raised a number of questions on the nature and scope of the legislation, including on “exactly why this legislation was needed in the first place and how long it may last”.[19]

[12] Ibid, col 1897
[13] Ibid, col 1901
[14] Ibid, col 1904
[15] Ibid, col 1906
[16] See HL Deb 27 October 2021, vol 815 (Order of Commitment Discharged)
[17] HL Deb 2 November 2021, vol815
[18] HC Deb 18 November 2921, vol703, col779
[19] Ibid, col783

SNP spokesperson Peter Grant said that the SNP “support the Bill’s passage” and would not table amendments, but were agreeing to the unamended Bill with “fingers crossed, because I fear that only time will tell whether it is 100% watertight”.[20]

In summing up, Mr Glen said it was the Government’s view that the “Bill comprehensively addresses the risk of legal uncertainty in a proportionate way, while not interfering with other valid claims. We considered approaches taken in other jurisdictions, notably New York, but as a matter of policy the Government do not think it would be appropriate or proportionate to prevent parties’ ability to seek legal redress via the courts for other issues that may arise under affected contracts.”

He concluded that the Bill is intended to “mitigate the residual risk of litigation and disruption resulting from the LIBOR wind-down in the UK. We believe that it is vital to the protection of consumers and the integrity of UK markets.”[21]

Remaining stages

Committee stage took place in the House of Commons chamber, immediately after second reading.

No amendments were tabled to the Bill. Mr Glen explained each clause of the Bill, concluding that it would “allow for an orderly wind-down of LIBOR and, in doing so, ensure the protection of consumers and the integrity of UK markets.”[22]

Shadow Minister Mr McFadden raised a number of specific questions and repeated his concern that, through the Bill the Government was “kicking this can down the road with nothing other than encouragement for a group of contracts that have stubbornly stuck to LIBOR despite all the regulator’s enthusiasm”.[23] Mr Grant requested an assurance that the Government had not “closed the door” on the possibility of a compensation scheme for those that could be negatively impacted by the Bill’s measures – especially those holding mortgages linked to LIBOR.[24]

Mr Glen responded that the Government would keep these matters “under review”.[25]

[20] Ibid, col786

[21] Ibid, col786 and 787

[22] HC Deb 18 November 2021, vol703, col791

[23] Ibid, col792

[24] Ibid

[25] Ibid, see both col793 and 794

The Bill was then reported to the House for Report stage without amendment. Report stage took place immediately after without further debate or amendment.

Third reading then took place immediately after Report stage. Mr Glen and Mr Grant thanked those involved in the passage of the legislation, following which the Bill was given its third reading without a division.[26] No amendments were made to the Bill in the House of Commons.

Royal Assent for the Bill was obtained on 15 December 2021.

[26] Ibid, col794 and 795

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing ‘Legal help: where to go and how to pay’ for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:

commonslibrary.parliament.uk

@commonslibrary