The Rt Hon Sir George Young MP
Lord Privy Seal and Leader of the House of Commons
The House of Commons
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Dear George,

The Draft Financial Services Bill

The White Paper **A new approach to financial regulation: the blueprint for reform** (Cm 8083 June 2011) proposes that the Pre-Legislative Scrutiny process should take twelve weeks and 'be well under way before the summer recess'

Although this is a welcome extension on the time allowed by the dictatorial regime of Gordon Brown for consultation on the Financial Services & Markets Bill, a relatively modest extension to the time allowed would, I believe, provide some very substantial benefits.

A major reason for allowing more time is the decision to produce a single piece of legislation amending an unsatisfactory Act. Although the White Paper gives reasons for this, I recall that Hector Sants opposed this approach in evidence to the Treasury Committee. The result is a dog's breakfast, and there must be a real danger that the two Houses will recognise this.

I set out some suggestions and identify specific issues that might enable the Scrutiny process to make real improvements.

Specific suggestions

1. Although the Committee should be set up before the Recess and have some opportunity to deliberate among themselves, whether formally or informally, **evidence hearings should not begin until after the Recess,** unless perhaps initial evidence is taken from the Treasury, the Bank and the FSA. However I think it would be better if these took place in September after Members had seen some of the submissions made.

2. **The Committee should be able to set up sub-committees**, if need be bringing in some extra MPs. The decision to proceed by amending

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FSMA means that the Draft Bill requires the House to address six separate issues - two (the most likely to cause major difficulties as we have seen in the NHS legislation) not even addressed:

a. An overarching issue, '***the democratic deficit'***, that has been raised by a number of Members across the House, and which is not addressed at all as far as I can see in the White Paper

b. Again not addressed the implications of regulation for the social cohesion of the nation. A number of MPs - notably George Mudie - have raised the question of the impact the FSA has had ***on the availability of mortgages***. Others from all sides of the House have raised the question of ***encouraging everyone to save***. The current approach of the FSA seems to be based on Two nations - with far more emphasis on protecting the Rich than enabling the Poor to become if not rich at least to build up some savings.

c. The structure set up by the FSMA failed its most crucial test. A large part of the Scrutiny process will rightly be addressed to the question ***'is this reform going to work?'*** That should not be allowed to deny time for other issues.

d. There are a number of issues about the powers of the PRA and FCA and the interaction between them. Some of these are technical issues, but there is a big philosophical question about ***the extent to which the regulators are to re-shape the structure of the industry and the extent to which they are there to regulate the structure that emerges from the operation of markets***.

e. The Bill contains clauses and Schedules that will affect the ***disciplinary regime, the supervisory and approval regime, the Financial Ombudsman Service and Financial Services Compensation Scheme.***

f. There are ***a number of provisions in the existing legislation that ought to be tidied up*** - for instance, there are ambiguities and what appear to be straightforward errors of drafting in the sections dealing with Investigations that ought to be addressed.

Unless the PLS Committee is enabled to set up sub committees, it is unlikely that all the substantial issues raised by the legislation can be considered. Apart from leading to damage to consumers and producers, the Treasury will end up with a less than satisfactory Bill and that invites trouble during its Parliamentary passage, especially through the Lords.

There would, it seems to me, be huge benefit if the Pre Legislative Scrutiny Committee were enabled, through sub-Committees, to take evidence separately on specific parts of the Bill.

Problems with the trade associations

There are two weaknesses with the trade associations that inevitably provide much of the evidence heard by a Committee that cannot be eliminated but might be significantly ameliorated by a slightly longer timetable.

First, and this applied in particular to the concentrated sectors of the industry, banking and insurance, the major firms have a habit of allowing a trade association to give a single view or when in a joint delegation giving a common view but immediately afterwards contacting MPs, civil servants and even Ministers to say 'actually it is not quite as set out' and then advancing a different, often self interested, analysis. A little extra time might allow more thorough probing.

The second problem - strongly criticised by Andrew Tyrie - is the habit some trade associations have of saying one thing when the FSA can hear them (for instance in public evidence before the TSC) and another thing in private. This is very unsatisfactory.

With legislation going through a process that will take at least a year this is a recipe for trouble as MPs and Members of the House of Lords respond to direct approaches from constituents and firms. It also gives an unhealthy weight to lobbyists - those with the deepest pockets may be able to obtain a result that suits them rather than the public good. **Slightly more time might reduce the adverse impact of this by giving MPs the opportunity to recall witnesses if it seemed that they had not given a full and accurate picture. It would also allow trade associations the opportunity to test proposed evidence on their members.**

Conclusion

I realise that the Treasury wants to get legislation on the statute book. I urge you to remind your colleagues of the good advice of your great predecessor John Biffen - not to do things in haste that one has occasion to repent at leisure.

Yours ever

Joe

J R S Egerton