

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Schedule 3

VISCOUNT TRENCHARD

Page 131, leave out lines 31 to 32

Member's explanatory statement

This amendment would remove the admission of securities to listing on a securities market from the list of potential activities which could be designated under Clause 8.

After Clause 23

BARONESS WORTHINGTON

Insert the following new Clause—

“Reporting of revenue from derivative trading

The FCA must make rules requiring a listed company to include in its annual financial report, where applicable, the revenue and earnings attributable to trading commodity derivatives and economically equivalent over the counter contracts.”

Member's explanatory statement

This amendment requires the FCA to make rules requiring listed companies to report revenue and earnings from commodity derivative trading of all kinds.

BARONESS SHEEHAN

Insert the following new Clause—

“Vote reporting

(1) The FCA must—

- (a) make rules requiring relevant FCA-regulated persons to give clients information on request about the exercise by the persons or on their behalf of all voting rights attached to assets in which the clients have an interest, including in respect of any specified description of scheme or investment vehicle, and
- (b) issue guidance in respect of the format of the information provided.

After Clause 23 - continued

- (2) A Minister of the Crown must make regulations requiring other relevant persons to give beneficiaries information on request about the exercise by the persons or on their behalf of all voting rights attached to assets in which the clients have an interest.
- (3) In this section—
- “relevant FCA-regulated persons” means—
- (i) managers of personal pension schemes within the meaning of an order under section 22 of FSMA 2000 (regulated activities),
 - (ii) managers of stakeholder pension schemes within the meaning of such an order,
 - (iii) persons managing investments within the meaning of an order under section 22 of that Act, including the activity described in paragraph 6 of Schedule 2 to that Act,
 - (iv) persons effecting or carrying out a contract of insurance within the meaning of an order under section 22 of that Act;
- “other relevant persons” means—
- (i) trustees of occupational pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 with £1 billion or more in assets;
 - (ii) an administering authority of the local government pension scheme.”

Member’s explanatory statement

This amendment requires (a) the FCA to make rules requiring fund managers, personal pension providers and insurers to give information on request to clients, and (b) Ministers to make regulations requiring pension funds to give information on request to beneficiaries, on the exercise of all voting rights on their behalf, however those rights are held.

Clause 24

BARONESS HAYMAN
 BARONESS NORTHOVER
 LORD VAUX OF HARROWDEN
 LORD RANDALL OF UXBRIDGE

Page 38, line 19, at end insert “and the climate and nature objective (see section 1EC).”

THE EARL OF KINNOULL

Page 38, line 19, at end insert—

- “(4B) The FCA must monitor and measure to what extent it has advanced the competitiveness and growth objective in various ways, including but not limited to—
- (a) the PRA’s responsiveness to entities that are regulated or seeking to become so,
 - (b) its consistency of approach to entities that are regulated or seeking to become so, and
 - (c) the proportionality of its approach to the regulation of entities that are regulated or seeking to become so.”

Member's explanatory statement

This amendment seeks to provide some measurable ways in which the competitiveness and growth objective can be monitored and subjected to scrutiny.

BARONESS HAYMAN
BARONESS NORTHOVER
LORD VAUX OF HARROWDEN
LORD RANDALL OF UXBRIDGE

Page 38, line 27, at end insert –

“1EC Climate and nature objective

The climate and nature objective is: facilitating alignment of the economy of the United Kingdom (including in particular the financial services sector) with –

- (a) sections 1 (target for 2050) and 4(1)(b) (net UK carbon account) of the Climate Change Act 2008, and
- (b) the conservation and enhancement of the natural environment, including but not limited to ensuring compliance with the targets set under sections 1 to 3 of the Environment Act 2021 (environmental targets).”

Member's explanatory statement

This amendment, together with four others in the name of Baroness Hayman, introduces a climate and nature secondary objective for the FCA, alongside the competitiveness and growth objective.

LORD MOYLAN

Page 38, line 27, at end insert –

“(3A) In section 2B (PRA’s general objective), insert –

“(3A) In advancing its general objective, the PRA must act so as to minimise barriers to the wider ownership of regulated investments by the general public consistently with its general objective in subsection (2).”

BARONESS HAYMAN
BARONESS NORTHOVER
LORD VAUX OF HARROWDEN
LORD RANDALL OF UXBRIDGE

Page 38, line 36, at end insert “, and

(c) the climate and nature objective”

Member's explanatory statement

This amendment, together with four others in the name of Baroness Hayman, introduces a climate and nature secondary objective for the PRA, alongside the competitiveness and growth objective.

Page 39, line 7, at end insert –

“(1C) The climate and nature objective is: facilitating alignment of the economy of the United Kingdom (including in particular the financial services sector) with –

Clause 24 - continued

- (a) sections 1 (target for 2050) and 4(1)(b) (net UK carbon account) of the Climate Change Act 2008, and
- (b) the conservation and enhancement of the natural environment, including but not limited to ensuring compliance with the targets set under sections 1 to 3 of the Environment Act 2021 (environmental targets).”

Member’s explanatory statement

This amendment, together with four others in the name of Baroness Hayman, introduces a climate and nature secondary objective for the PRA, alongside the competitiveness and growth objective.

THE EARL OF KINNOULL

Page 39, line 7, at end insert—

- “(1C) The PRA must monitor and measure to what extent it has advanced the competitiveness and growth objective in various ways, including but not limited to—
- (a) the PRA’s responsiveness to entities that are regulated or seeking to become so,
 - (b) its consistency of approach to entities that are regulated or seeking to become so, and
 - (c) the proportionality of its approach to the regulation of entities that are regulated or seeking to become so.”

Member’s explanatory statement

This amendment seeks to provide some measurable ways in which the competitiveness and growth objective can be monitored and subjected to scrutiny.

LORD SIKKA

Lord Sikka gives notice of his intention to oppose the Question that Clause 24 stand part of the Bill.

Member’s explanatory statement

This amendment is to ensure that the regulators’ core duty is to provide stability to the financial system and protect consumers, not growth or competitiveness.

Clause 25

BARONESS HAYMAN
 BARONESS NORTHOVER
 LORD VAUX OF HARROWDEN
 LORD RANDALL OF UXBRIDGE

Page 39, line 10, leave out from “(1)” to end of line 13 and insert “omit paragraph (c).”

Member’s explanatory statement

This amendment, together with four others in the name of Baroness Hayman, removes the proposed net zero emissions regulatory principle so as to avoid duplication with a climate and nature secondary objective.

BARONESS SHEEHAN

Page 39, leave out lines 11 to 13 and insert –

“(c) the need to contribute towards achieving compliance with sections 1 (the target for 2050) and 4(1)(b) (net UK carbon account) of the Climate Change Act 2008, sections 1 to 3 of the Environment Act 2021 (environmental targets), and the conservation and enhancement of the natural environment;”.

Member’s explanatory statement

This amendment adds nature to the new regulatory principle on net zero emissions.

After Clause 50

LORD BRIDGES OF HEADLEY

Insert the following new Clause –

“Office for Financial Regulatory Accountability

Creation of an Office for Financial Regulatory Accountability

- (1) The Treasury must, as soon as practicable after the end of the period of 12 months beginning with the day on which this Act is passed, by regulations make provision to create a body corporate called the Office for Financial Regulatory Accountability.
- (2) It is the duty of the Office to examine and report on the performance of the FCA and the PRA.
- (3) The Office must perform its duty objectively, transparently and impartially.
- (4) The functions of the Office are to be exercised on behalf of the Crown.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment would require the Treasury to create an Office for Financial Regulatory Accountability, with duties to provide independent and impartial analysis to Parliament and the public of the financial regulators’ performance against their statutory objectives and regulatory principles.

Insert the following new Clause –

“Charter for Financial Regulatory Accountability

- (1) The Treasury must prepare a document, to be known as the Charter for Financial Regulatory Accountability, relating to the formulation and implementation of financial regulation.
- (2) The Charter must in particular set out –
 - (a) the Treasury’s objectives in relation to financial regulation, and
 - (b) the means by which the Treasury’s objectives in relation to financial regulation will be attained.
- (3) The Charter may contain such other material as the Treasury considers appropriate.
- (4) The Treasury must lay the Charter before Parliament.”

Member's explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

Insert the following new Clause—

“Main duties of the Office

- (1) The main duties of the Office are to prepare and publish reports which—
 - (a) assess both financial regulators' overall performance in terms of meeting their statutory objectives and regulatory principles under FSMA 2000, and
 - (b) provide analysis of the impact assessments of specific pieces of financial regulation, so as to determine how those regulations are contributing to meeting the regulators' objectives under FSMA 2000.
- (2) In discharging its duties under subsection (1)(b) the Office must prioritise analysing regulations that, in its opinion—
 - (a) restrict domestic competition,
 - (b) reduce the international competitiveness of financial services in the United Kingdom,
 - (c) create new compliance costs, or
 - (d) have a significant impact on business, individuals or the economy of the United Kingdom.
- (3) The Office has complete discretion in the performance of its duties.”

Member's explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

Insert the following new Clause—

“Reports of the Office

- (1) The Office must—
 - (a) publish each of its reports,
 - (b) lay it before Parliament, and
 - (c) send a copy of it to the Treasury.
- (2) The FCA and the PRA must publish their respective responses to the reports of the Office within 60 days, including a statement of actions they will take as a result.”

Member's explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

Insert the following new Clause—

“Right to information and data

- (1) The Office has a right of access (at any reasonable time) to all regulatory information which it may reasonably require for the purpose of the performance of its duties.

After Clause 50 - continued

- (2) The Office is entitled to require from any person holding or accountable for any regulatory information any assistance or explanation which the Office reasonably thinks necessary for that purpose.
- (3) “Regulatory information” means information held by the FCA, the PRA, the Bank of England or any Minister of the Crown or Government department.”

Member’s explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

Insert the following new Clause –

“Membership of the Office

- (1) The Office is to consist of –
 - (a) a member to chair it, appointed by the Chancellor of the Exchequer with the consent of the Treasury Committee of the House of Commons, and
 - (b) two other members appointed by the Chancellor of the Exchequer after consultation with the member appointed under paragraph (a) and with the consent of that Committee.
- (2) A person may be appointed under subsection (1)(a) or (b) only if the person has knowledge or experience likely to be relevant to the performance of the Office’s duty.
- (3) An appointment under subsection (1)(a) or (b) is to be for a period of 5 years.
- (4) The Office may employ staff.”

Member’s explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

Insert the following new Clause –

“Financial arrangements of the Office

- (1) The Treasury may make to the Office such payments out of money provided by Parliament as the Treasury considers appropriate for the purpose of enabling the Office to meet its expenses.
- (2) Payments are to be made at such times, and subject to any such conditions, as the Treasury considers appropriate.
- (3) The Office must aim to carry out its functions efficiently and cost-effectively.”

Member’s explanatory statement

See explanatory statement to the first new Clause amendment in the name of Lord Bridges of Headley after Clause 50.

LORD SIKKA

Insert the following new Clause –

“Establishment of the Financial Regulator’s Supervision Council

- (1) The Secretary of State must, within six months of this Act being passed, make provision for the establishment of a body to be known as the Financial Regulator’s Supervision Council (“FRSC”).
- (2) The role of the FRSC is to provide independent scrutiny and oversight of the work of the FCA and its fulfilment of its duties and responsibilities, particularly its consumer protection objective.
- (3) The responsibilities of the FRSC include, but are not limited to –
 - (a) overseeing the performance of the FCA from a consumer perspective, including undertaking annual appraisals and commissioning or undertaking periodic reviews as appropriate, and
 - (b) appointing, reviewing annually the performance of, and where appropriate dismissing –
 - (i) the Chair and Chief Executive of the FCA (jointly with the Treasury),
 - (ii) the non-executive directors of the FCA appointed by the Department for Business, Energy and Industrial Strategy,
 - (iii) members and Chair of the Financial Services Consumer Panel,
 - (iv) the investigator appointed under section 84(1)(b) of the Financial Services Act 2012,
 - (v) the directors of the Financial Ombudsman Service and its Independent Assessor,
 - (vi) the directors of the Financial Services Compensation Scheme, and
 - (vii) such of its own employees as the FRSC requires to perform its statutory role.
- (4) The FRSC is to be funded by a 1% levy on the FCA’s revenue.
- (5) Membership of the FRSC must be selected through open competition and consist of individuals representing the interests of financial services consumer groups.
- (6) The Secretary of State may by regulations, following consultation with consumer groups, make further provision for the FRSC’s responsibilities, powers, constitution and membership.
- (7) Any reports published by the FRSC must be laid before Parliament.”

Member’s explanatory statement

The amendment strengthens consumer rights and enables them to inform the FCA of their concerns on a statutory basis.

After Clause 52

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Accessibility of financial services and financial products

- (1) As soon as reasonably practicable and within three months of the passing of this Act, the Treasury must commission a review of the accessibility of financial services and products throughout the United Kingdom.
- (2) The review must consider but is not limited to –
 - (a) automatic teller machines,
 - (b) point of sale terminals,
 - (c) card payment machines, and
 - (d) internet-based and mobile platforms and products.”

Member’s explanatory statement

This amendment would require the Government to commission a review into the accessibility of financial services and products throughout the UK.

Insert the following new Clause –

“Access to banking services

- (1) Within one year of this Act being passed, the Treasury must prepare a policy statement to achieve the objective that every high street above a number of shops determined by the Treasury has a bank branch or shared banking facility of a description as set out in subsection (2).
- (2) Each bank branch or banking facility must provide services including but not limited to –
 - (a) access to cash including deposits as well as withdrawals,
 - (b) basic banking services for individuals, and
 - (c) basic banking services for small and medium-sized businesses.
- (3) The Treasury must lay the policy statement before Parliament, and must take all reasonable steps to implement it.
- (4) No bank may close a branch on a high street unless there is a shared banking facility on that high street of a description set out in subsection (2).”

Member’s explanatory statement

This amendment seeks to ensure continuity of service for areas where only one bank branch remains.

BARONESS TWYXCROSS

Insert the following new Clause –

“Impact assessment on national resilience

Within the period of 12 months beginning with the day on which this Act is passed, the Treasury must lay an impact assessment before Parliament concerning any repercussions to national resilience caused by increased use of digital finance.”

After Clause 71

BARONESS HAYTER OF KENTISH TOWN

Insert the following new Clause—

“FCA review of PEP functions

Within six months of the passing of this Act, the FCA must consult with consumers or their representatives about the exercise of its functions relating to politically exposed persons under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).”

BARONESS KRAMER

Insert the following new Clause—

“Compensation for Equitable Life policyholders

- (1) The Treasury must ensure that Equitable Life policyholders who received payments through the Equitable Life Payments Scheme for policies other than with-profits annuities receive the balance of their calculated relative losses.
- (2) The Treasury must ensure that Equitable Life policyholders who bought a with-profits annuity prior to September 1992 are compensated on the same terms as with-profits annuitants who purchased their annuity after that date, minus any ex-gratia payments that those policyholders have received.”

Member’s explanatory statement

This amendment would deliver on the recommendations of the Parliamentary Ombudsman relating to Equitable Life Policyholders.

Insert the following new Clause—

“Redress following maladministration

Where the Parliamentary and Health Service Ombudsman has established maladministration by the FCA, PRA, Treasury or other government departments or agencies in regulating financial services, leading to—

- (a) injustice, and
- (b) financial loss,

for consumers of regulated financial services, the relevant authorities must ensure that those individuals are put back into the position they would have been in had that maladministration not occurred.”

Member’s explanatory statement

This amendment would deliver on the recommendations of the Parliamentary Ombudsman relating to Equitable Life Policyholders.

BARONESS NOAKES

Insert the following new Clause—

“Politically exposed persons

- (1) Regulation 35 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (enhanced customer due diligence: politically exposed persons) is amended as follows.

After Clause 71 - continued

- (2) In paragraph (12)(a), at the end insert “, subject to paragraph (14A);”.
- (3) After paragraph (14) insert—
 - “(14A) Where these regulations apply to a relevant person in relation to whom the FCA is the supervisory authority under regulation 7, United Kingdom citizens are not to be treated as PEPs except to the extent that the FCA, having considered the risk of money laundering and terrorist financing, considers that any of the categories of individual set out in paragraph (14) should include United Kingdom citizens.”

BARONESS KRAMER
BARONESS TYLER OF ENFIELD

Insert the following new Clause—

“Banking licences: financial inclusion

- (1) The FCA in granting approval to the PRA to authorise or renew the licence of a banking institution must have regard to that bank’s provision for providing services to low-income communities where those services are provided either by—
 - (a) the bank itself, or
 - (b) through its investment in—
 - (i) a credit union,
 - (ii) a community bank, or
 - (iii) a community development financial institution.
- (2) In this section a “low-income community” means a community where the median household income is less than 50 percent of median household income in the United Kingdom.”

Member’s explanatory statement

This amendment would require the FCA to have regard to a bank’s provision of services to low-income communities when granting approval to the PRA to authorise or renew the licence of that institution.

LORD SIKKA

Insert the following new Clause—

“Private right of action for breach of FCA’s consumer duty

The FCA must, before 31 July 2024, introduce rules to secure that any breach of its consumer duty is actionable at the suit of a private person under section 138D of FSMA 2000 (action for damages).”

Member’s explanatory statement

The amendment strengthens the FCA’s accountability to consumers.

Insert the following new Clause—

“Consumers’ right to compensation for regulatory failure

- (1) Relevant regulators may be the subject of civil damages actions in cases where—

After Clause 71 - continued

- (a) a consumer has suffered material financial loss,
 - (b) the activity in the course of which the consumer suffered material financial loss was within the remit of the relevant regulator, and
 - (c) the relevant regulator was aware, or could reasonably be expected to have been aware, that the consumer could have been at risk of suffering financial loss and negligently failed to take appropriate action to prevent the consumer from suffering such loss.
- (2) The complaints scheme under section 84(1) of the Financial Services Act 2012 (arrangements for the investigation of complaints) must include the following features –
- (a) it facilitates the payment of full restitution where –
 - (i) a consumer has suffered material financial loss,
 - (ii) the activity in the course of which the consumer suffered material financial loss was within the remit of the relevant regulator, and
 - (iii) the relevant regulator was aware, or could reasonably be expected to have been aware, that the consumer could have been at risk of suffering financial loss and negligently failed to take appropriate action to prevent the consumer from suffering such loss;
 - (b) any recommendations made by the investigator appointed under section 84(1)(b) of the Financial Services Act 2012 following the upholding of a complaint made against a regulator by a consumer who has suffered financial loss, which may include the payment of material financial redress, are binding on the regulator;
 - (c) it is required to consider cases in which the complainant first became aware of the circumstances giving rise to the complaint more than 12 months previously where one or more of the following applies –
 - (i) the complaint is of the type described in paragraph (a)(i) to (iii);
 - (ii) the rules of the complaints scheme as constructed or interpreted by the regulators at the time were such that complaints of that type were unlikely to result in the payment to consumers of full restitution;
 - (iii) the investigator appointed under section 84(1)(b) of the Financial Services Act 2012 had previously upheld a complaint made against a regulator by that consumer who has suffered financial loss and made recommendations which included the payment of material financial redress, which the regulator had declined to pay, in part or in whole.”

Member's explanatory statement

The amendment requires the FCA to compensate consumers where its regulatory failures have caused those losses.

Insert the following new Clause—

“Authorised persons’ duty of care

- (1) Individuals and organisations undertaking activities within the remit of the FCA and PRA owe a duty of care to consumers in respect of those activities.
- (2) The “duty of care” means an obligation to act towards consumers with a reasonable level of watchfulness, attention, caution and prudence.
- (3) An individual or organisation in breach of this duty of care may be subject to legal claims for negligence.”

Member’s explanatory statement

The amendment is intended to improve the conduct of authorised individuals and entities and requires them to protect consumers.

BARONESS SHEEHAN

Insert the following new Clause—

“Green national savings investment

In the National Savings Bank Act 1971 after section 25 insert—

“25A Review of green retail investment

- (1) Within 12 months of the Financial Services and Markets Act 2023 being passed, and no less than every 3 years thereafter, the Director of Savings and the Commissioners must lay before the House, with the consent of the Treasury, a statement of the contribution made by the National Savings Bank’s bonds, certificates and deposits towards achieving compliance with part 1 of the Climate Change Act 2008.
- (2) The report must cover—
 - (a) the contribution made towards UK green financing and the consequent reduction in targeted greenhouse gas emissions;
 - (b) an assessment of the saving to the consolidated fund, and the contribution made to financial stability through use of bonds, certificates and deposits in comparison with other money raised by the Treasury and paid into the National Loans Fund;
 - (c) a comparison of the rates of interest payable on bonds, certificates and deposits and the rates payable on—
 - (i) other money raised by the Treasury and paid into the National Loans Fund, and
 - (ii) money raised by private borrowers on similar investments;
 - (d) an assessment of the scope for future green financing and greenhouse gas emission reductions.
- (3) In this section, “targeted greenhouse gas emissions” has the meaning in section 24 of the Climate Change Act 2008.””

Member’s explanatory statement

This amendment is intended to probe Government’s plans in relation to National Savings and Investments and future green savings bond issuance, including consideration of the interest rates payable compared with other forms of finance-raising and the stability of the loans.

Financial Services and Markets Bill

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20 January 2023
