

Financial Services and Markets Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 10th January 2023, as follows –

| | |
|------------------|---------------------|
| Clause 1 | Clauses 49 to 51 |
| Schedule 1 | Schedule 8 |
| Clause 2 | Clause 52 |
| Schedule 2 | Schedule 9 |
| Clauses 3 to 8 | Clause 53 |
| Schedule 3 | Schedule 10 |
| Clauses 9 to 13 | Clause 54 |
| Schedule 4 | Schedule 11 |
| Clauses 14 to 20 | Clause 55 |
| Schedule 5 | Schedules 12 and 13 |
| Clause 21 | Clauses 56 to 69 |
| Schedule 6 | Schedule 14 |
| Clauses 22 to 48 | Clauses 70 to 79 |
| Schedule 7 | Title. |

[Amendments marked ★ are new or have been altered]

Amendment
No.

After Clause 23

BARONESS BOWLES OF BERKHAMSTED
LORD NASEBY

38 Insert the following new Clause –

“FCA powers beyond designated activities

- (1) This section applies to any person (P) conducting or purporting to conduct any financial services and markets activity, including advisory services, whether or not that activity is designated or regulated, provided that P –
 - (a) occupies a position in which they are expected to safeguard, or not to act against, the financial interests of another person (CP), or in which there is significant asymmetry of information,
 - (b) dishonestly abuses that position, and

After Clause 23 - continued

- (c) intends, by means of the abuse of that position—
 - (i) to make a gain for P or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused their position even though their conduct consisted of an omission rather than an act.
- (3) If the conditions set out in subsections (1) and (2) are met, the FCA has the following powers in relation to P—
 - (a) a power to require the supply of information;
 - (b) a power to make investigations (including the making of reports);
 - (c) a power of entry into premises controlled by P;
 - (d) powers of inspection, search and seizure with respect to premises controlled by P;
 - (e) a power to make a private or public statement of censure;
 - (f) a power to impose monetary penalties.
- (4) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (3), and may make such modifications to the provision in subsection (3) as the Treasury considers appropriate.
- (5) If the conditions set out in subsections (1) and (2) are met, P is liable—
 - (a) to account to CP for any gain P has made directly or indirectly by the transaction, and
 - (b) to indemnify CP for any loss or damage resulting from the transaction.
- (6) If the FCA is satisfied that the conditions set out in subsections (1) and (2) are met, it may order P to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just, having regard to the profits appearing to the FCA to have accrued to P.
- (7) The FCA has the power to institute criminal proceedings, including under section 4 of the Fraud Act 2006, provided that the conditions set out in subsections (1) and (2) are satisfied.”

39

Insert the following new Clause—

“Persons carrying out both regulated and unregulated activities

- (1) Where an authorised person (P) carries out both regulated and unregulated activities, P must ensure clear and prominent signage relating to any advice or activity that is unregulated which must include—
 - (a) a warning that the relevant advice or activity does not carry regulatory oversight, and
 - (b) a clear statement explaining the limits of Financial Services Compensation cover and the jurisdiction of the Financial Ombudsman Service.
- (2) Where P contravenes the requirement in subsection (1), the FCA has the following powers in relation to P—
 - (a) a power to require the supply of information;

After Clause 23 - continued

- (b) a power to make investigations (including the making of reports);
 - (c) a power of entry into premises controlled by P;
 - (d) powers of inspection, search and seizure with respect to premises controlled by P;
 - (e) a power to make a private or public statement of censure;
 - (f) a power to impose monetary penalties.
- (3) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (2) and may make such modifications to the provision in subsection (2) as the Treasury considers appropriate.
- (4) Where P contravenes the requirement in subsection (1), and another person (CP) has been induced, as a result of the contravention, to enter into a transaction either with P or with a member of the group of companies to which P belongs –
- (a) the transaction is voidable at the instance of CP;
 - (b) whether or not the transaction is voided, P and any member of the same group of companies which was party to the transaction is liable –
 - (i) to account to CP for any gain they have made directly or indirectly by the transaction, and
 - (ii) to indemnify CP for any loss or damage resulting from the transaction.
- (5) If the FCA is satisfied that P has contravened the requirement in subsection (1), it may order P to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just, having regard to the profits appearing to the FCA to have accrued to P.”

LORD SHARKEY

BARONESS BENNETT OF MANOR CASTLE

40

Insert the following new Clause –

“Regulation of commercial lending to SMEs

- (1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) is amended in accordance with subsections (2) to (4).
- (2) In article 60C, in paragraph (3), at the end of sub-paragraph (b) insert “, and
(c) the borrower is not an SME.”
- (3) In article 60D, at the end insert –
 - “(6) This article does not apply to an agreement if the borrower is an SME.”
- (4) In article 60L(1) –
 - (a) at the appropriate place insert –
 - ““SME” means a small or medium-sized enterprise, being any person who is not an individual which –
 - (a) carries on business of any kind which employs fewer than 250 persons, and
 - (b) has either an annual turnover not exceeding £40,000,000 or an annual balance sheet total not exceeding £36,000,000.”;

After Clause 23 - continued

- (b) in the definition of “relevant recipient of credit” –
 - (i) omit the “or” at the end of paragraph (a), and
 - (ii) at the end of paragraph (b) insert “, or
“*(c) an SME;*”.”
- (5) Article 3(1) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (S.I. 2001/2256) is amended in accordance with subsections (6) to (8).
- (6) In sub-paragraph (a), for “any individual, unless he” substitute “any individual or SME, unless he or it”.
- (7) In sub-paragraph (b), after “individual” insert “or SME”.
- (8) At the end insert –
 - “(c) “SME” means a small or medium-sized enterprise, being any person who is not an individual which carries on business of any kind which employs fewer than 250 persons; and has either an annual turnover not exceeding £40,000,000 or an annual balance sheet total not exceeding £36,000,000.””

Member’s explanatory statement

This would bring lending to SMEs within the perimeter of the FCA.

BARONESS WORTHINGTON
BARONESS BENNETT OF MANOR CASTLE

41 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
BARONESS HAYMAN
BARONESS WHEATCROFT

42 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—
- (a) managers of personal pension schemes within the meaning of an order under section 22 of FSMA 2000 (regulated activities),
 - (b) managers of stakeholder pension schemes within the meaning of such an order,
 - (c) 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,
 - (d) 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—
- (a) trustees of occupational pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 with £1 billion or more in assets;
 - (b) 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.

BARONESS NOAKES

43 Insert the following new Clause—

“Regulation of consumer credit

- (1) The Treasury may by regulations make such provision as they consider appropriate for the purpose of, or in connection with, the regulation of consumer credit.
- (2) The power under subsection (1) is exercisable only by making such provision as the Treasury consider necessary or desirable for or in connection with one or more of the following purposes—
 - (a) promoting effectiveness in the functioning of financial markets;
 - (b) promoting effective competition in the interests of consumers in financial services and markets;
 - (c) facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term;
 - (d) protecting consumers;
 - (e) providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements in relation to the provision of financial services or the operation of financial markets.

After Clause 23 - continued

- (3) The provision that may be made by regulations under this section includes provision—
 - (a) conferring powers on the Treasury (including a power to legislate);
 - (b) conferring powers, or imposing duties, on the FCA (including a power to make rules or other instruments).
- (4) In exercising their powers under this section, the Treasury must have regard to—
 - (a) the general principle that consumers should take responsibility for their decisions,
 - (b) the importance of securing an appropriate degree of protection for consumers, and
 - (c) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- (5) The power to make regulations under this section includes the power to modify legislation.
- (6) Regulations under this section are subject to the affirmative procedure.
- (7) Before making regulations under this section, the Treasury must consult the FCA.
- (8) In this section, “legislation” means primary legislation, subordinate legislation and retained direct EU legislation.”

Member’s explanatory statement

This amendment would give HM Treasury the powers necessary to implement the findings of its ongoing review of the Consumer Credit Act 1974, saving the need for further primary legislation.

Clause 24

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

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

THE EARL OF KINNOULL

45 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

Clause 24 - continued

- (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 LILLEY
LORD MOYLAN
VISCOUNT TRENCHARD

46 Page 38, line 19, at end insert –

“(4B) When discharging its general functions in the way mentioned in subsection (1) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the predictability and consistency objective (see section 1EC).”

Member’s explanatory statement

This amendment and Lord Lilley’s other amendments to Clause 24 require the FCA and PRA to maintain high standards of clarity, predictability and certainty in exercising their general functions and applying their rules and guidance.

BARONESS NOAKES
VISCOUNT TRENCHARD
BARONESS LAWLOR

47 Page 38, line 22, leave out from “facilitating” to end of line 23

Member’s explanatory statement

This amendment probes what “relevant international standards” are and their relationship with the competitiveness and growth objective.

BARONESS BOWLES OF BERKHAMSTED

48 Page 38, line 22, at end insert “sustainability and”

49 Page 38, line 25, leave out “(including in particular the financial services sector)”

Member’s explanatory statement

This amendment is to ensure that, although the regulators have specific responsibility for financial services, they discharge their duties without preference for the financial services sector.

LORD ALTRINCHAM

50 Page 38, line 27, at end insert –

“(c) the financing of UK infrastructure.”

Clause 24 - continued

BARONESS BOWLES OF BERKHAMSTED

51 Page 38, line 27, at end insert –

“(2) In pursuance of the objective in subsection (1), the FCA must ensure that its supervisory and approval interactions are efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

BARONESS KRAMER

52 Page 38, line 27, at end insert –

“(2) In this section “international standards” does not refer to a mutual recognition agreement or recognition of equivalence as outlined in section 23 of the Financial Services and Markets Act 2023.”

Member’s explanatory statement

The purpose of this amendment is to prevent regulators changing UK standards to match the foreign law and practices recognised in a mutual recognition agreement.

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

53 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 LILLEY
LORD MOYLAN
VISCOUNT TRENCHARD

54 Page 38, line 27, at end insert –

“1EC Predictability and consistency objective

- (1) The predictability and consistency objective is: acting predictably and consistently.
- (2) In subsection (1), “acting predictably and consistently” includes –

Clause 24 - continued

- (a) that the FCA will apply without limitation its rules, technical guidance and codes, so far as is practical and appropriate, in a predictable and consistent manner, including (without limitation) –
- (i) having regard to the need for its decisions to be consistent between firms operating businesses of a similar size, scope and complexity, and which undertake the same or similar activities and which may pose similar risks to consumers and the UK financial system, and
 - (ii) having regard to the need to write clear and predictable rules, technical guidance and codes, and
- (b) that the FCA will not treat a firm or individual in an adverse manner because the firm or individual (or a connected firm or individual) has appealed or challenged any of the FCA or PRA's decisions or decision-making processes, or has expressed an intention to do so, including by means of a reference or appeal to the Tribunal.”

Member's explanatory statement

See explanatory statement for the amendment at page 38, line 19. This amendment also ensures that the FCA will not treat a firm or individual in an adverse manner if it has challenged the regulator's decision-making or other conduct.

LORD MOYLAN
VISCOUNT TRENCHARD

55 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

56 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.

LORD LILLEY
LORD MOYLAN
VISCOUNT TRENCHARD

57 Page 38, line 36, at end insert –

“(c) the predictability and consistency objective.”

Member's explanatory statement

See explanatory statement for the amendment at page 38, line 19.

BARONESS NOAKES
VISCOUNT TRENCHARD
BARONESS LAWLOR

58 Page 39, leave out line 2

Member's explanatory statement

This amendment probes what "relevant international standards" are and their relationship with the competitiveness and growth objective.

BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN

59 Page 39, line 4, leave out from "Kingdom" to ", and" in line 6

Member's explanatory statement

This amendment is to ensure that, although the regulators have specific responsibility for financial services, they discharge their duties without preference for the financial services sector.

BARONESS BOWLES OF BERKHAMSTED

60 Page 39, line 7, at end insert –

“(1C) In pursuance of the objective in subsection (1B), the PRA must ensure that its supervisory and approval interactions are efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

BARONESS KRAMER

61 Page 39, line 7, at end insert –

“(1C) In this section “international standards” does not refer to a mutual recognition agreement or recognition of equivalence as outlined in section 23 of the Financial Services and Markets Act 2023.”

Member's explanatory statement

The purpose of this amendment is to prevent regulators changing UK standards to match the foreign law and practices recognised in a mutual recognition agreement.

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

62 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—
(a) sections 1 (target for 2050) and 4(1)(b) (net UK carbon account) of the Climate Change Act 2008, and

Clause 24 - continued

- (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

63

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 LILLEY
LORD MOYLAN
VISCOUNT TRENCHARD

64

Page 39, line 7, at end insert –

- “(1C) The predictability and consistency objective is: acting predictably and consistently.
- (1D) In subsection (1C), “acting predictably and consistently” includes –
- (a) that the PRA will apply without limitation its rules, technical guidance and codes, so far as is practical and appropriate, in a predictable and consistent manner, including (without limitation) –
 - (i) having regard to the need for its decisions to be consistent between firms operating businesses of a similar size, scope and complexity, and which undertake the same or similar activities and which may pose similar risks to consumers and the UK financial system, and
 - (ii) having regard to the need to write clear and predictable rules, technical guidance and codes, and

Clause 24 - continued

- (b) that the PRA will not treat a firm or individual in an adverse manner because the firm or individual (or a connected firm or individual) has appealed or challenged any of the PRA or FCA's decisions or decision-making processes, or has expressed an intention to do so, including by means of a reference or appeal to the Tribunal.”
- (5) In section 66 (disciplinary powers), in subsection (3) after “following” insert “(having regard, where practical and appropriate, to the predictability and consistency objective)”.

Member's explanatory statement

See explanatory statement for the amendment at page 38, line 19. This amendment also ensures that the PRA will not treat a firm or individual in an adverse manner if it has challenged the regulator's decision-making or other conduct.

LORD TUNNICLIFFE

65 Page 39, line 7, at end insert –

- “(5) In performing their functions, where a regulator's primary and secondary objectives are irreconcilable, the primary objectives take precedence.”

Member's explanatory statement

This is a probing amendment to question what the mechanism is through which the Government will guarantee that the regulators' new secondary objectives will not threaten their primary objectives, namely market integrity and firm stability.

LORD SIKKA

BARONESS BENNETT OF MANOR CASTLE

The above-named Lords give notice of their 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.

After Clause 24

LORD HOLMES OF RICHMOND

BARONESS NOAKES

VISCOUNT TRENCHARD

LORD NASEBY

66 Insert the following new Clause –

“Regulators’ duty to report on competitiveness and growth objective

- (1) The FCA and PRA must each lay before each House of Parliament a report as soon as practicable after the end of –
- (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,

After Clause 24 - continued

on how they consider that they have facilitated the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term.

- (2) The reports must include analysis and data on the following—
- (a) steps taken to simplify their respective regulatory rulebooks and frameworks;
 - (b) the number of new market entrants to the United Kingdom;
 - (c) new regulations introduced in the previous twelve months;
 - (d) an assessment of the impact of the new regulations on United Kingdom competitiveness;
 - (e) comparative analysis of the number of new authorisations in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (f) comparative analysis of product and service innovations introduced in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (g) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment would require both the FCA and PRA to each publish a report annually setting out how they have facilitated international competitiveness and growth against a range of data and analysis requirements.

BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN

67 Insert the following new Clause—

“Prevention of fraud objective

In section 1B of FSMA 2000 (FCA’s general duties), in subsection (3) at the end insert—

- “(d) the prevention and detection of fraud perpetrated in or through financial services.””

Clause 25

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

68 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
 BARONESS HAYMAN
 BARONESS YOUNG OF OLD SCONE

- 69 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.

BARONESS BENNETT OF MANOR CASTLE

- 69A Page 39, line 13, at end insert –
 ““(ca) the need for companies to operate within planetary limits, including in relation to the climate, biosphere integrity, novel entities and biochemical flows;”

After Clause 25

BARONESS BOWLES OF BERKHAMSTED
 BARONESS NOAKES
 VISCOUNT TRENCHARD

- 70 Insert the following new Clause –
“Regulatory principles: efficiency
 In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) after paragraph (h) insert –
 ““(i) the principle that the regulators should exercise their supervisory and approval interactions in a manner that is efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.””

LORD HUNT OF KINGS HEATH

- 71 Insert the following new Clause –
“Regulatory principles: detection, prevention and investigation of fraud
 In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) after paragraph (d) insert –
 ““(e) the need to promote the detection, prevention and investigation of fraud in relation to the provision or use of financial services;”.”

Member’s explanatory statement

The amendment adds to the list of regulatory principles to be applied by the FCA and PRA the need to promote the detection, prevention and investigation of fraud in relation to the provision or use of financial services.

BARONESS NOAKES
VISCOUNT TRENCHARD

72 Insert the following new Clause –

“General duties

- (1) FSMA 2000 is amended as follows.
- (2) In section 1B(1) (the FCA’s general duties) at the end insert –
 - “(c) ensures that any burden or restriction which is imposed on a person, or on the carrying on of an activity, is proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.”
- (3) In section 2B(1) (the PRA’s general objective) at the end insert “and ensures that any burden or restriction which is imposed on a person, or on the carrying on of an activity, is proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.”
- (4) In section 3B omit subsection (1)(b).”

Member’s explanatory statement

This amendment places proportionality, currently a regulatory principle, in the general duties of the FCA and the PRA.

BARONESS BOWLES OF BERKHAMSTED

73 Insert the following new Clause –

“Meaning of “relevant markets” in FCA's strategic objective

In section 1F of FSMA 2000 (meaning of “relevant markets” in strategic objective), at the end insert –

- “(d) the financial markets and the markets for financial services, whether regulated or not, in matters of fraud.””

Member’s explanatory statement

This amendment is to ensure that fraud as regards financial services is comprehensively within the remit of the FCA.

After Clause 26

LORD HOLMES OF RICHMOND

74 Insert the following new Clause –

“Regulatory principles to be applied by both regulators: proportionality principle

In section 3B(1) of FSMA 2000 (regulatory principles to be applied by both regulators), in paragraph (b), for the words from “considered” to the end of that paragraph substitute “taking into consideration the nature of the service or product being delivered, the nature of risk to the consumer, whether the cost of implementation is proportionate to that level of risk and whether the burden or restriction enhances UK international competitiveness;”.

Member’s explanatory statement

This would amend the existing regulatory principle for both regulators and require that the nature of and risk to the consumer, and the service or product being delivered, must be taken into account when imposing a new burden or restriction.

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD
BARONESS BULL

75 Insert the following new Clause—

“FCA to have regard to financial inclusion within consumer protection objective

- (1) FSMA 2000 is amended as follows.
- (2) In section 1C (the consumer protection objective), after subsection (2)(c) insert—
 - “(ca) financial inclusion;”.

LORD SHARKEY
BARONESS TYLER OF ENFIELD

76 Insert the following new Clause—

“Duty of the FCA to make rules introducing a duty of care to replace the Consumer Duty

- (1) After section 137C of FSMA 2000, insert—

“137CA FCA general rules: duty of care and replacement of the consumer duty

 - (1) The power of the FCA to make general rules includes the power to replace the consumer duty with a duty of care owed by authorised persons to consumers in carrying out regulated activities under this Act.
 - (2) In this section—
 - “consumer” has the meaning given in section 2(3) of the Consumer Rights Act 2015 (key definitions);
 - “consumer duty” means the rules and guidance contained in the FCA’s Policy Statement PS22/9 and in the FCA’s Final Guidance FG22/5 of July 2022;
 - “duty of care” means an obligation to act in consumers’ best interests and to exercise reasonable care and skill when providing a product or service.”
- (2) The FCA must make rules in accordance with section 137CA of FSMA 2000 which come into force no later than six months after the day on which this Act is passed.
- (3) In section 138D of FSMA 2000 (action for damages), omit subsection (3).
- (4) The FCA may not make rules which change or qualify the definition of “duty of care” as provided for by subsection (2), reduce its scope of applicability, or disapply or fetter the private right of action afforded to consumers by section 138D of FSMA 2000.”

Member’s explanatory statement

This is a probing amendment to allow debate on the FCA’s new Consumer Duty and a replacement Duty of Care and on a Private Right of Action.

LORD DAVIES OF BRIXTON

77 Insert the following new Clause—

“Consumer protection objective: mental health

In section 1C of FSMA 2000 (the consumer protection objective) in subsection (2) at the end insert—

“(i) the principle of protecting the mental health of consumers.””

BARONESS NOAKES

77A★ Insert the following new Clause—

“Regulatory principles

In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) after paragraph (h) insert—

“(i) the principle that regulatory action should be taken only on the basis of evidence that it is needed”.”

Clause 27

BARONESS BOWLES OF BERKHAMSTED

BARONESS NOAKES

78 Page 40, line 14, after “rules” insert “or a thematic review”

BARONESS BOWLES OF BERKHAMSTED

79 Page 40, line 23, at end insert—

“or if a relevant Parliamentary Committee has requested a review.”

80 Page 40, line 41, at end insert “and the Treasury Committee of the House of Commons”

81 Page 41, line 4, at end insert—

“(10) The Treasury must establish a rolling programme of thematic reviews and report annually to Parliament on that programme and on any changes to the programme in the light of reviews carried out under subsection (1).

(11) The Treasury must in its annual report to Parliament set out the work programme for the next three years, including all the terms of reference, indicative timetables for completion and reporting and how the work will be undertaken and by whom.”

Clause 28

LORD LILLEY

LORD MOYLAN

VISCOUNT TRENCHARD

82 Page 42, line 3, at end insert—

“(5) Any rules made by a regulator in accordance with subsection (2) must, where practical and appropriate, comply with the predictability and consistency objective.”

Member's explanatory statement

This amendment requires the regulators to have regard to the need for clarity, certainty and predictability in regulatory rule-making.

Clause 29

BARONESS NOAKES
VISCOUNT TRENCHARD

83 Page 42, line 39, at end insert –

“(bb) an explanation of the ways in which having regard to the competitiveness and growth objective (see section 1EB) has affected the proposed rules;”;

Member's explanatory statement

This amendment requires the FCA to include a statement of how they have taken the competitiveness and growth objective into account when consulting on rules.

BARONESS NOAKES

84 Page 43, line 14, at end insert –

“(bb) an explanation of the ways in which having regard to the competitiveness and growth objective (see section 2H(1B)) has affected the proposed rules;”;

Member's explanatory statement

This amendment requires the PRA to include a statement of how they have taken the competitiveness and growth objective into account when consulting on rules.

After Clause 32

LORD LILLEY
LORD MOYLAN
VISCOUNT TRENCHARD

85 Insert the following new Clause –

“FCA and PRA rule-making powers

- (1) In section 137A of FSMA 2000 (FCA's general rules), after subsection (4) insert –
 - “(4A) The FCA may make rules at differing levels of detail, and where the FCA makes rules that are of a high level of generality, it must ensure that the rule meets the predictability and consistency objective.
 - (4B) The FCA may only refer to rules that are of a high level of generality to assist in interpreting specific rules, and not as a stand-alone basis for enforcement, unless –
 - (a) the standard that has been breached can be derived from the high-level rule itself, or
 - (b) the FCA has issued formal guidance making clear the FCA's interpretation of the relevant high level rule before the date of the relevant conduct in issue.”
- (2) In section 137G of FSMA 2000 (PRA's general rules), after subsection (4) insert –

After Clause 32 - continued

“(4A) The PRA may make rules at differing levels of detail, and where the PRA makes rules that are of a high level of generality, it must ensure that the rule meets the predictability and consistency objective.

(4B) The PRA may only refer to rules that are of a high level of generality to assist in interpreting specific rules, and not as a stand-alone basis for enforcement, unless –

- (a) the standard that has been breached can be derived from the high-level rule itself, or
- (b) the PRA has issued formal guidance making clear the PRA's interpretation of the relevant high-level rule before the date of the relevant conduct in issue.”

(3) After section 137GA of FSMA 2000 (PRA's general rules: Gibraltar), insert –

“137GB Interpretation of FCA and PRA rules

Rules made by the FCA and the PRA under this Act must be interpreted in accordance with common law methods of interpretation in such a way that results in a clear and predictable meaning for those rules.””

Member's explanatory statement

This amendment provides that the regulators' Principles can only properly be used as the basis for enforcement or redress if the standard sought to be enforced can be logically derived from the Principle, or if case law or formal guidance exists which makes clear the interpretation given by the regulators at the time of the conduct in question. This amendment also makes clear that the common law approach to interpretation applies to the regulators' rulebooks, guidance and other materials.

After Clause 35

BARONESS NOAKES
 VISCOUNT TRENCHARD
 BARONESS BOWLES OF BERKHAMSTED
 LORD VAUX OF HARROWDEN

86

Insert the following new Clause –

“The Financial Services Regulators Committee of Parliament

- (1) There is to be a body known as the Financial Services Regulators Committee of Parliament (“the FSRC”).
- (2) The FSRC is to consist of nine members who are to be drawn both from the Members of the House of Commons and from the members of the House of Lords.
- (3) Each member of the FSRC is to be appointed by the House of Parliament from which the member is to be drawn.
- (4) A person is not eligible to become a member of the FSRC if the person is a Minister of the Crown.
- (6) A member of the FSRC is to be the Chair of the FSRC chosen by its members.
- (7) Schedule 7A makes further provision about the FSRC.”

Member's explanatory statement

These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.

BARONESS NOAKES
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN
VISCOUNT TRENCHARD

87 Insert the following new Clause—

“Main functions of the FSRC

- (1) The FSRC may examine or otherwise oversee the administration, policy and operations of—
 - (a) the Financial Conduct Authority,
 - (b) the Prudential Regulation Authority,
 - (c) the Payments Systems Regulator, and
 - (d) any other body or person which appears to the FSRC to be carrying out regulatory functions in respect of financial services in Great Britain.
- (2) The FSRC may examine any consultations issued by the bodies specified in subsection (1) including those covered by paragraph 27 of Schedule 1ZA and paragraph 36 of Schedule 1ZB to FSMA 2000.
- (3) The FSRC may examine any reports published by the FCA or the PRA pursuant to a direction given by the Treasury under paragraph 11A of Schedule 1ZA or paragraph 21A of Schedule 1ZB to FSMA 2000.”

Member's explanatory statement

These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.

88 Insert the following new Clause—

“Reports of the FSRC

- (1) The FSRC may make such reports to Parliament as it considers appropriate concerning any aspect of its functions.
- (2) The FSRC must lay before Parliament any report made by it to Parliament.”

Member's explanatory statement

These new Clauses, together with a new Schedule 7A, create a joint committee of both Houses of Parliament to oversee the FCA, PRA and the Payment Systems Regulator.

Clause 36

LORD FORSYTH OF DRUMLEAN
LORD JUDGE
LORD TUNNICLIFFE
VISCOUNT TRENCHARD

89 Page 50, line 30, leave out “chair of the Treasury Committee of the House of Commons” and insert “chairs of the relevant committees of Parliament”

Clause 36 - continued

BARONESS NOAKES
 BARONESS BOWLES OF BERKHAMSTED
 VISCOUNT TRENCHARD

- 90 Page 50, line 30, leave out “Treasury Committee of the House of Commons” and insert “FSRC”

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD TUNNICLIFFE

- 91 Page 50, line 31, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

BARONESS NOAKES
 VISCOUNT TRENCHARD
 BARONESS BOWLES OF BERKHAMSTED

- 92 Page 50, leave out line 43 and insert “FSRC.”

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD FORSYTH OF DRUMLEAN
 LORD TUNNICLIFFE
 LORD JUDGE

- 93 Page 50, leave out line 43 and insert “relevant committees of Parliament”

LORD TUNNICLIFFE

- 94 Page 50, line 43, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

BARONESS BOWLES OF BERKHAMSTED

- 95 Page 50, line 43, at end insert “and include reference to relevant recommendations that have been made by a committee of the House of Commons or House of Lords or a joint committee of both Houses”

BARONESS NOAKES
 VISCOUNT TRENCHARD
 BARONESS BOWLES OF BERKHAMSTED

- 96 Page 51, leave out lines 1 to 11

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD FORSYTH OF DRUMLEAN
LORD TUNNICLIFFE
LORD JUDGE

- 97 Page 51, leave out lines 1 to 11 and insert –
 “(6) In this paragraph “relevant committees of Parliament” means –
 (a) the Treasury Committee of the House of Commons, or another committee of the House of Commons whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Commons at the same time);
 (b) the Economic Affairs Committee or Industry and Regulators Committee of the House of Lords, or another committee of the House of Lords whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Lords at the same time);
 (c) a joint committee of both Houses whose terms of reference designate it as having functions for the purposes of this paragraph.”

LORD TUNNICLIFFE

- 98 Page 51, line 2, after “Commons” insert “or the Economic Affairs and Industry and Regulators Committees of the House of Lords”
- 99 Page 51, line 7, after “Commons” insert “or House of Lords”
- 100 Page 51, line 11, after “Commons” insert “or House of Lords”

LORD FORSYTH OF DRUMLEAN
LORD TUNNICLIFFE
LORD JUDGE

- 101 Page 51, line 42, leave out “chair of the Treasury Committee of the House of Commons” and insert “chairs of the relevant committees of Parliament”

BARONESS NOAKES
BARONESS BOWLES OF BERKHAMSTED
VISCOUNT TRENCHARD

- 102 Page 51, line 42, leave out “Treasury Committee of the House of Commons” and insert “FSRC”

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD TUNNICLIFFE

- 103 Page 51, line 43, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

Clause 36 - continued

BARONESS NOAKES
 BARONESS BOWLES OF BERKHAMSTED
 VISCOUNT TRENCHARD

104 Page 52, leave out line 11 and insert “FSRC”

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD FORSYTH OF DRUMLEAN
 LORD TUNNICLIFFE
 LORD JUDGE

105 Page 52, leave out line 11 and insert “relevant committees of Parliament”

LORD TUNNICLIFFE

106 Page 52, line 11, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”

BARONESS BOWLES OF BERKHAMSTED

107 Page 52, line 11, at end insert “and must include reference to relevant recommendations that have been made by a committee of the House of Commons or House of Lords or a joint committee of both Houses”

BARONESS NOAKES
 BARONESS BOWLES OF BERKHAMSTED

108 Page 52, leave out lines 12 to 22

Member’s explanatory statement

This amendment is consequential on the amendments to add new Clauses after Clause 35.

LORD FORSYTH OF DRUMLEAN
 LORD TUNNICLIFFE
 LORD JUDGE

109 Page 52, leave out lines 12 to 22 and insert –

- “(6) In this paragraph “relevant committees of Parliament” means –
- (a) the Treasury Committee of the House of Commons, or another committee of the House of Commons whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Commons at the same time);
 - (b) the Economic Affairs Committee or Industry and Regulators Committee of the House of Lords, or another committee of the House of Lords whose terms of reference designate it as having functions for the purposes of this paragraph (but not more than one committee of the House of Lords at the same time);

Clause 36 - continued

- (c) a joint committee of both Houses whose terms of reference designate it as having functions for the purposes of this paragraph.”

LORD TUNNICLIFFE

- 110** Page 52, line 13, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”
- 111** Page 52, line 18, after “Commons” insert “or the House of Lords”
- 112** Page 52, line 22, after “Commons” insert “or the House of Lords”

Clause 37

BARONESS KRAMER

- 113** Page 53, line 6, at end insert –
- “(aa) the effect of the Financial Services and Markets Act 2023 on financial stability, and potential risks to financial stability, in the United Kingdom;
 - (ab) an assessment of the delivery of the FCA’s objectives in the previous year;
 - (ac) an assessment of measures which could improve the delivery of the FCA’s objectives in the next year;”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 37 in the name of Baroness Kramer, would place additional requirements on the FCA and PRA to report on their objectives, including an assessment of financial stability and proposed future improvements.

- 114** Page 53, line 43, at end insert –
- “(aa) the effect of the Financial Services and Markets Act 2023 on financial stability, and potential risks to financial stability, in the UK;
 - (ab) an assessment of the delivery of the PRA’s objectives in the previous year;
 - (ac) an assessment of measures which could improve the delivery of the PRA’s objectives in the next year;”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 37 in the name of Baroness Kramer, would place additional requirements on the FCA and PRA to report on their objectives, including an assessment of financial stability and proposed future improvements.

After Clause 37

LORD HOLMES OF RICHMOND
BARONESS NOAKES

115 Insert the following new Clause—

“Requirement to publish regulatory performance information on new authorisations

- (1) The FCA and PRA must each lay before each House of Parliament a report on their regulatory performance as soon as practicable after the end of—
 - (a) the period of six months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The reports must include analysis and data on the following—
 - (a) the total number of new applications for authorisation made to each regulator each year, and a breakdown by authorisation type;
 - (b) the rates of approval for applications for authorisation by each regulator and a breakdown by authorisation type;
 - (c) the average length of time taken from application to final authorisation decision by each regulator;
 - (d) an estimate of the time and costs required by an applicant to comply with information requirements for authorisation;
 - (e) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment requires both regulators to publish regular reports to Parliament on their regulatory performance for new applicants for regulation.

116 Insert the following new Clause—

“Requirement to publish regulatory performance information on authorised firms

- (1) The FCA must lay before each House of Parliament a report on its regulatory performance as soon as practicable after the end of—
 - (a) the period of 6 months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The report must include the average length of time taken from application to final decision for each of the following regulatory responsibilities—
 - (a) approved persons;
 - (b) change in control;
 - (c) variation of permission;
 - (d) waivers and modifications that alter compliance obligations.”

Member’s explanatory statement

This amendment requires the FCA to publish regular reports to Parliament on their regulatory performance for existing authorised entities and persons.

LORD TUNNICLIFFE
 BARONESS TYLER OF ENFIELD
 BARONESS TWYXCROSS

117 Insert the following new Clause—

“FCA duty to report on financial inclusion

- (1) The FCA must lay before Parliament a report on financial inclusion in the United Kingdom, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period.
- (2) A report under this section must include—
 - (a) an assessment of the state of financial inclusion in the United Kingdom;
 - (b) details of any measures the FCA has taken, or is planning to take, to improve financial inclusion in the United Kingdom, including digital financial inclusion;
 - (c) developments which the FCA considers could significantly impact on financial inclusion in the United Kingdom; and
 - (d) any recommendations to the Treasury which the FCA considers may promote financial inclusion in the United Kingdom.”

Member’s explanatory statement

This amendment would require the FCA to report on financial inclusion across the UK.

LORD TUNNICLIFFE

118 Insert the following new Clause—

“FCA duty to report on mutual and co-operative business models

- (1) The FCA must lay before Parliament a report, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on how it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) include the needs of mutual and co-operative financial services providers to have a level playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—
 - (a) credit unions,
 - (b) building societies,
 - (c) mutual banks,
 - (d) co-operative banks,
 - (e) regional banks,
 - (f) mutual insurers, and
 - (g) co-operative insurers.”

Member's explanatory statement

This new Clause would require the FCA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

119 Insert the following new Clause—

“PRA duty to report on mutual and co-operative business models

- (1) The PRA must lay before Parliament a report, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on how it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) include the needs of mutual and co-operative financial services providers to have a level playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—
 - (a) credit unions,
 - (b) building societies,
 - (c) mutual banks,
 - (d) co-operative banks,
 - (e) regional banks,
 - (f) mutual insurers, and
 - (g) co-operative insurers.”

Member's explanatory statement

This new Clause would require the PRA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

LORD TUNNICLIFFE
BARONESS HAYTER OF KENTISH TOWN
BARONESS ALTMANN
LORD MORSE

120 Insert the following new Clause—

“Consumer Panel duty to report to Parliament

- (1) FSMA 2000 is amended as follows.
- (2) In section 1Q (the Consumer Panel), at end insert—
 - “(7) The Consumer Panel must lay an annual report before each House of Parliament evaluating the FCA’s fulfilment of its statutory duty to protect consumers, including comments on—
 - (a) the adequacy and appropriateness of the FCA’s use of its regulatory powers,
 - (b) the measures the FCA has taken to protect vulnerable consumers, including pensioners, people with disabilities, and people receiving forms of income support, and

After Clause 37 - continued

- (c) the FCA’s receptiveness to the recommendations of the Consumer Panel.””

Member’s explanatory statement

This new Clause would introduce a further level of Parliamentary scrutiny of the work of the FCA to protect consumers by requiring the Financial Services Consumer Panel to lay an annual report before Parliament outlining its views on the FCA’s fulfilment of its statutory duty to protect consumers.

BARONESS BOWLES OF BERKHAMSTED
LORD NASEBY

121 Insert the following new Clause –

“FCA annual report: performance metrics

In paragraph 11 of Schedule 1ZA to FSMA 2000 (FCA annual report), in sub-paragraph (1) after paragraph (b) insert –

“(ba) its performance against a set of statistics developed and periodically updated by the National Audit Office in consultation with consumer representatives that together constitute a suite of metrics by which the FCA’s achievement and progress may be objectively evaluated.””

Member’s explanatory statement

This amendment is to ensure independent measures against which the FCA reports.

BARONESS BOWLES OF BERKHAMSTED

122 Insert the following new Clause –

“Efficiency report

- (1) FSMA 2000 is amended as follows.
- (2) In paragraph 11 of Schedule 1ZA (FCA annual report), after sub-paragraph (2) insert –

“(2A) The report must include how they have undertaken this efficiency comparison, including the periodicity of the comparison and its terms of reference and detailed outcome.”
- (3) In paragraph 19 of Schedule 1ZB (PRA annual report), after sub-paragraph (2) insert –

“(2A) The report must include how they have undertaken this efficiency comparison, including the periodicity of the comparison and its terms of reference and detailed outcome.””

Clause 41

LORD HOLMES OF RICHMOND
BARONESS NOAKES

123 Page 57, line 22, at end insert –

“(c) be provided with any information or data that the Panel requires in order to fulfil its duties,

Clause 41 - continued

- (d) publish the agendas and minutes of meetings of the Panel, and
- (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the FCA's activities and the range of representations made by Panel members to those recommendations."

Member's explanatory statement

This amendment would require the FCA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel's recommendations were made publicly available.

LORD LILLEY

- 124** Page 57, line 26, leave out "the chair" and insert "all members of the FCA Cost Benefit Analysis Panel"

Member's explanatory statement

This amendment and Lord Lilley's other amendments to Clause 41 ensure there is an independent evaluation of the regulators' cost benefit analyses.

- 125** Page 57, line 27, leave out "such" and insert "independent"

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 126** Page 57, line 28, after "persons" insert "who are not employees of the FCA"

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 127** Page 57, line 28, after "with" insert "appropriate"

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 128** Page 57, line 29, leave out "as it considers appropriate"

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

LORD HOLMES OF RICHMOND
BARONESS NOAKES

- 129** Page 57, line 29, at end insert –
“(7A) The Panel must include at least two representatives of FCA authorised firms.”

Clause 41 - continued

130 Page 57, leave out lines 35 and 36 and insert –

“(11) The FCA is required to publish a response to these representations within 30 days, including a statement of actions it will take as a result of the recommendations.”

Member’s explanatory statement

This amendment would require the FCA to publish their responses and actions to the CBA Panel’s recommendations within 30 days.

LORD TUNNICLIFFE

131 Page 57, line 36, at end insert –

“(12) The FCA Cost Benefit Analysis Panel must –
 (a) include at least three individuals with experience and expertise in the field of economic crime, with one drawn from the public, private and third sectors respectively, and
 (b) consider any economic crime risks posed by proposed rules.”

Member’s explanatory statement

This amendment would require the FCA’s Cost Benefit Analysis Panel to include experts in economic crime, and consider this as part of the FCA’s rule-making.

LORD HOLMES OF RICHMOND
 BARONESS NOAKES

132 Page 58, line 15, at end insert –

“(c) be provided with any information or data that the Panel requires in order to fulfil its duties,
 (d) publish the agendas and minutes of meetings of the Panel, and
 (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the PRA’s activities and any dissenting representations made by Panel members to those recommendations.”

Member’s explanatory statement

This amendment would require the PRA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel’s recommendations were made publicly available.

LORD LILLEY

133 Page 58, line 19, leave out “the chair” and insert “all members of the PRA Cost Benefit Analysis Panel”

Member’s explanatory statement

See explanatory statement for the amendment at page 57, line 26.

134 Page 58, line 20, leave out “such” and insert “independent”

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 135 Page 58, line 21, after “persons” insert “who are not employees of the PRA”

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 136 Page 58, line 21, after “with” insert “appropriate”

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

- 137 Page 58, line 22, leave out “as it considers appropriate”

Member's explanatory statement

See explanatory statement for the amendment at page 57, line 26.

LORD HOLMES OF RICHMOND
BARONESS NOAKES

- 138 Page 58, line 22, at end insert –

“(7A) The Panel must include at least two representatives of PRA authorised firms.”

- 139 Page 58, leave out lines 28 and 29 and insert –

“(11) The PRA is required to publish a response to these representations within 30 days, including a statement of actions it will take as a result of the recommendations.”

Member's explanatory statement

This amendment would require the PRA to publish their responses and actions to the CBA Panel's recommendations within 30 days.

LORD TUNNICLIFFE

- 140 Page 58, line 32, at end insert –

“(13) The PRA Cost Benefit Analysis Panel must –
(a) include at least three individuals with experience and expertise in the field of economic crime, with one drawn from the public, private and third sectors respectively, and
(b) consider any economic crime risks posed by proposed rules.”

Member's explanatory statement

This amendment would require the PRA's Cost Benefit Analysis Panel to include experts in economic crime, and consider this as part of the PRA's rule-making.

Clause 44

BARONESS BOWLES OF BERKHAMSTED

141 Page 61, line 25, at end insert –

“(4) Each panel must include representation of the public interest, and members who represent the public interest must not have had, in the previous 5 years, or while sitting on the panel, any significant financial interest in or material business relationship with firms in the relevant regulated sector.”

142 Page 62, line 28, at end insert –

“(5D) Each panel must include representation of the public interest, and members who represent the public interest must not have had, in the previous 5 years, or while sitting on the panel, any significant financial interest in or material business relationship with firms in the relevant regulated sector.”

After Clause 44

BARONESS BOWLES OF BERKHAMSTED

143 Insert the following new Clause –**“Practitioner Panel parliamentary appointments**

(1) FSMA 2000 is amended as follows.

(2) In section 1N (the FCA Practitioner Panel), at the end insert –

“(6) The House of Commons and the House of Lords may each appoint one member, subject to approval by the relevant committee of the respective House, or where there is more than one relevant committee, by joint agreement between those committees.”

(3) In section 2M (the PRA Practitioner Panel), at the end insert –

“(6) The House of Commons and the House of Lords may each appoint one member, subject to approval by the relevant committee of the respective House, or where there is more than one relevant committee, by joint agreement between those committees.””

Clause 45

BARONESS BOWLES OF BERKHAMSTED

144 Page 64, line 19, at end insert –

“(j) the principle that the Bank should exercise its supervisory and approval interactions in a manner that is efficient from the perspective of regulated entities and in comparison with regulators in other comparable countries.”

Clause 46

BARONESS BOWLES OF BERKHAMSTED

145 Page 67, line 22, after “Act” insert “or a thematic review”

Clause 46 - continued

- 146 Page 67, line 31, at end insert –
“or if a relevant Parliamentary Committee has requested a review”
- 147 Page 68, line 8, at end insert “and the Treasury Committee of the House of Commons”
- 148 Page 68, line 16, at end insert –
“(10) The Treasury must establish a rolling programme of thematic reviews and report annually to Parliament on that programme and on any changes to the programme in the light of reviews carried out under subsection (1).
(11) The Treasury must in its annual report to Parliament set out the work programme for the next three years, including all the terms of reference, indicative timetables for completion and reporting and how the work will be undertaken and by whom.”

After Clause 46

BARONESS BOWLES OF BERKHAMSTED
BARONESS NOAKES
VISCOUNT TRENCHARD

- 149 Insert the following new Clause –
“Recommendations to FCA and PRA: systemic risk
In section 9Q of the Bank of England Act 1995 (recommendations to FCA and PRA), after subsection (2) insert –
“(2A) The Financial Policy Committee may make recommendations to the Pensions Regulator, FCA and PRA about financial stability and systemic risk from investment strategies in Pension Funds, including concentration, risk modelling, margin, collateral and stress testing.
(2B) The Financial Policy Committee may request a joint annual report from the Pensions Regulator, PRA and FCA about investment strategies in Pension Funds, and the outcomes of any risk modelling and stress testing, and to highlight aspects of investment or otherwise that may present a risk to financial stability or systemic risk.
(2C) The report must be sent to relevant Parliamentary Committees.””

Schedule 7

LORD TUNNICLIFFE

- 150 Page 156, line 37, after “Commons” insert “and the chairs of the Economic Affairs and Industry and Regulators Committees of the House of Lords”

Schedule 7 - continued

BARONESS PENN

- 151 Page 156, leave out line 43 and insert –
 “(b) demonstrate that the Regulator has had regard to the regulatory principles in section 53 when preparing the proposals,”

Member’s explanatory statement

This amendment ensures that the notification provisions align with the duty in section 49(3) of the Financial Services (Banking Reform) Act 2013 for the Payment Systems Regulator to have regard to the regulatory principles set out in section 53 of that Act.

LORD TUNNICLIFFE

- 152 Page 157, line 6, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”
- 153 Page 157, line 8, after “Commons” insert “and the Economic Affairs and Industry and Regulators Committees of the House of Lords”
- 154 Page 157, line 13, after “Commons” insert “or the House of Lords”
- 155 Page 157, line 17, after “Commons” insert “or the House of Lords”

After Schedule 7

BARONESS NOAKES
 VISCOUNT TRENCHARD
 BARONESS BOWLES OF BERKHAMSTED

- 156 Insert the following new Schedule –

“SCHEDULE 7A

THE FINANCIAL SERVICES REGULATORS COMMITTEE OF PARLIAMENT

Tenure of office

- 1 (1) Subject to what follows, a person appointed as a member of the FSRC during a Parliament holds office for the duration of that Parliament.
- (2) A member of the FSRC vacates office if –
- (a) the person ceases to be a member of the House of Parliament by virtue of which the person is a member of the FSRC,
 - (b) the person becomes a Minister of the Crown, or
 - (c) a resolution for the person’s removal is passed in the House of Parliament by virtue of which the person is a member of the FSRC.
- (3) A member of the ISC may resign at any time by notice given to –
- (a) the Chair of the FSRC, or
 - (b) in the case of the member who is the Chair of the FSRC, the Speaker of the House of Parliament by virtue of which the person is a member of the FSRC.

After Schedule 7 - continued

- (4) A person who ceases to be a member of the FSRC is eligible for reappointment.
- (5) Sub-paragraph (2) does not affect the validity of anything done between the occurrence of a vacancy and the vacancy being filled.
- (6) Anything which, immediately before the end of a Parliament, is in the process of being done or omitted to be done by or in relation to the FSRC may be continued by or in relation to the FSRC in the new Parliament.
- (7) Anything done or omitted to be done by or in relation to the FSRC in a Parliament (or treated as so done or omitted) is, if in force or effective immediately before the end of that Parliament, to have effect as if done or omitted by or in relation to the FSRC in the new Parliament so far as that is required for continuing its effect in that Parliament.

Procedure

- 2 (1) The FSRC may determine its own procedure; but this is subject to sub-paragraphs (2) to (5).
- (2) If on any matter there is an equality of voting among the members of the FSRC, the Chair of the FSRC has a second or casting vote.
- (3) The Chair of the FSRC may appoint another member of the FSRC to act, in the Chair's absence, as the chair of the FSRC at any meeting of it.
- (4) A person appointed under sub-paragraph (3) does not enjoy the right conferred on the Chair of the FSRC by sub-paragraph (2).
- (5) The quorum of the FSRC is three.
- (6) The FSRC may take evidence on oath, and for that purpose may administer oaths.

Funding and other resources

- 3 A Minister of the Crown—
 - (a) may make payments to either House of Parliament in respect of any expenditure incurred, or to be incurred, by either House in relation to the FSRC,
 - (b) may provide staff, accommodation or other resources to either House of Parliament for the purposes of the FSRC,
 - (c) may make payments, or provide staff, accommodation or other resources, to the FSRC, or
 - (d) may otherwise make payments, or provide staff, accommodation or other resources, to any person for the purposes of the FSRC.”

Clause 50

BARONESS BOWLES OF BERKHAMSTED

157

Page 74, line 5, at end insert—

“(4BA) Where no consent is given, the indication of a response must be included, giving information as to the category of the respondent, including whether relevant financial services industry, commercial financial services user, public or other.”

Clause 50 - continued

158 Page 74, line 19, at end insert –

“(4BA) Where no consent is given, the indication of a response must be included, giving information as to the category of the respondent, including whether relevant financial services industry, commercial financial services user, public or other.”

After Clause 50

BARONESS BOWLES OF BERKHAMSTED

159 Insert the following new Clause –

“Systemic risk

While maintaining commitment to developing international standards, the Financial Policy Committee of the Bank of England, PRA and FCA must put in place systems and resources for monitoring and issuing directions relating to financial stability and the mitigation of systemic risk, including systemic risk outside firms that accept deposits, where there are significant or specific risks to financial stability or the financial system of the United Kingdom, including defined benefit pension schemes.”

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED

160 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.

161 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.

162 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.

163 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

After Clause 50 - continued

- (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.

164 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.
- (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.

165 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.

166 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

167 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.

After Clause 50 - continued

- (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.

BARONESS WORTHINGTON
BARONESS DRAKE
BARONESS SHEEHAN

168

Insert the following new Clause—

“PRA duties

Review of capital adequacy requirements risk weights and solvency capital requirements

- (1) Within six months of the day on which this Act is passed the PRA must complete a review of the risk weighting and capital requirements applied to loans, guarantees or investment via shares or securities in—
 - (a) group undertakings engaged in existing fossil fuel exploitation and production,
 - (b) group undertakings carrying out new fossil fuel exploration, exploitation and production, and
 - (c) group undertakings otherwise at significant risk from the low carbon transition, including but not limited to those engaged in fossil fuel-based power generation, agriculture, automotive engineering, aviation and heavy industry.
- (2) In conducting this review, the PRA must have regard to—
 - (a) the full implications of climate change for the risk of investments including physical climate risks, transitional climate risks and climate liability risks,
 - (b) the likelihood of assets becoming wholly or partially stranded before the end of their normal cycle,
 - (c) the impact of climate change and climate change-related disruption on financial stability, and
 - (d) the advice of the Climate Change Committee.
- (3) The Treasury must lay before Parliament the outcome of this review within one month of its completion.”

Member's explanatory statement

This amendment requires the PRA to complete a review of the risk weighting and capital requirements of banks and insurers in relation to firms engaged in financing fossil fuel exploration, exploitation and production alongside other climate-risk exposed sectors, taking account of the climate risk on those investments and on financial stability, the likelihood of the assets becoming stranded, and the advice of the climate change committee.

LORD LILLEY
VISCOUNT TRENCHARD

169 Insert the following new Clause –

“Regulators' treatment of applicants to the Tribunal

- (1) FSMA 2000 is amended as follows.
- (2) In section 133 (proceedings before Tribunal: general provision) –
 - (a) for subsection (1) substitute –
 - “(1) This section applies in the case of a reference or appeal to the Tribunal (whether made under this or any other Act) in respect of –
 - (a) a decision of the FCA or the PRA;
 - (b) a decision of the Bank of England;
 - (c) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008, the Banking Act 2009 or the Financial Services and Markets Act 2023; or
 - (d) a decision of the Financial Services Chamber of the First Tier Tribunal.”;
 - (b) for subsection (2) substitute –
 - “(2) In this section –
 - “relevant decision” means a decision mentioned in subsection (1)(a), (b), (c) or (d);
 - “the decision-maker”, in relation to a relevant decision, means the person who made the relevant decision; and
 - “Tribunal” means the Upper Tribunal.”;
 - (c) for subsection (6A) substitute –
 - “(6A) The findings mentioned in subsection (6)(b) are limited to findings as to –
 - (a) issues of fact or law;
 - (b) the matters to be, or not to be, taken into account in making the decision;
 - (c) the procedural or other steps to be taken in connection with the making of the decision; and
 - (d) such matters as the Tribunal thinks fit in order to assist the decision-maker to act in accordance with the predictability and consistency objective.”;
 - (d) in subsection (8) for “the” substitute “a”.
 - (3) In section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) –
 - (a) in subsection (1) after “133(5)”, insert “or 133(6)”;
 - (b) after subsection (1) insert –
 - “(1A) In determining a reference or appeal in respect of any decision of the FCA or the PRA, the Tribunal must –
 - (a) under section 133(5) and (6) consider whether the decision-maker has acted in accordance with the predictability and consistency objective; and
 - (b) under section 133(5)(a) make determinations in accordance with the predictability and consistency objective.

After Clause 50 - continued

- (1B) On any reference or appeal before the Tribunal the burden is on the decision-maker to establish that it has acted in accordance with the predictability and consistency objective.”
- (4) In section 133B (offences), in subsections (1) and (2), in each case it occurs, for “Tribunal” substitute “Upper Tribunal”.
- (5) After section 133B insert –
- “133C Deference to judgments of firms**
- (1) This section applies where a regulator has taken a supervisory decision which has the effect of overriding a decision of a firm.
- (2) Where this section applies, the firm may apply to the Upper Tribunal for a declaration that the firm's judgment is reasonable.
- (3) Any application for a declaration made under subsection (2) must be made within three business days of the regulator's decision.
- (4) The Upper Tribunal must make a decision on an application for a declaration as soon as possible after receipt of a complete application.
- (5) In considering whether to grant the declaration, the Upper Tribunal must consider whether, in all the circumstances, the decision was taken in good faith and was reasonable at the time the firm took it and at the time of the supervisory decision; but it may only grant the application if the decision remains reasonable at the hearing of the application.
- (6) The circumstances that the Upper Tribunal must consider under subsection (4) include –
- (a) the circumstances relating to the firm and its judgment;
 - (b) any relevant customer impacted by the firm's judgment;
 - (c) the relevant regulatory rules, standards and guidance; and
 - (d) the approach taken by the relevant regulator to the matter.
- (7) Where the Upper Tribunal grants a declaration pursuant to subsection (2), neither the firm nor its senior managers may be held liable for the exercise of such judgement in relation to the acts or decisions that were the subject of the supervisory decision referred to in subsection (1).
- (8) Where an application is made pursuant to subsection (2), the burden is on the firm to prove that its decision is reasonable and was taken in good faith.”
- (6) In section 134 (legal assistance scheme), in subsections (1) and (3), in each place it occurs, for “Tribunal” substitute “Upper Tribunal”.”

Member's explanatory statement

This amendment requires the Upper Tribunal to consider whether the regulators acted in accordance with the predictability and consistency objective in relation to conduct forming the subject of a regulatory decision. It also provides that where a firm exercises judgment in complying with a regulatory rule, and does this reasonably and in good faith, but its supervisor disagrees, the firm would be entitled to apply to the Upper Tribunal for a declaration that the firm's decision was reasonable.

170 Insert the following new Clause—

“Actions for damages

- (1) FSMA 2000 is amended as follows.
- (2) In section 138D (actions for damages)—
 - (a) in subsections (1), (2) and (4), in each place it occurs, for “private person” substitute “qualifying person”;
 - (b) in subsection (4), for “prescribed cases” substitute “cases prescribed by order of the Treasury”;
 - (c) for subsection (6) substitute—
 - “(6) In this section, “qualifying person” means—
 - (a) a person who is an “eligible complainant” for the purposes of the adjudication scheme established under Part XVI of this Act or any successor scheme; and
 - (b) persons provided for in regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (S.I. 2001/2256) or such persons as may be prescribed by the Treasury from time to time.”;
 - (d) after subsection (6) insert—
 - “(7) Actions brought by a qualifying person or a firm in respect of rights enjoyed by qualifying persons under subsection (1) and (2), including any matter on which an adjudicator has issued an interim-binding decision under the adjudication scheme under Part XVI, must be commenced in the Financial Services Chamber of the First Tier Tribunal.
 - (8) The First Tier Tribunal must apply to the actions before it—
 - (a) the rules under subsections (1) and (2), save that the First Tier Tribunal must treat the rules in the PRIN section of the FCA Handbook as being actionable at the suit of any eligible complainant;
 - (b) any relevant legislation of any part of the United Kingdom; and
 - (c) the relevant common law.
 - (9) The powers of the First Tier Tribunal in disposing of any action before it are those enjoyed by adjudicators under section 229 of this Act and are subject to the same limits as set by the FCA under that section.
 - (10) The Treasury by order under this subsection may make alternative provision to that in subsection (9) and has the powers of the FCA under section 229 of this Act for that purpose.
 - (11) Notwithstanding subsection (7) above, persons provided for in regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (S.I. 2001/2256) may bring actions in the courts under subsections (1) and (2) for so long as those regulations remain in force.”

Member's explanatory statement

These amendments provide that a newly formed Financial Services Chamber of the First Tier Tribunal will hear actions relating to firms' contravention of PRA and FCA rules, including matters where the new adjudication scheme issued an interim-binding decision. Actions under this section may be brought by a 'qualifying person', who is an eligible complainant for the purposes of the adjudication scheme, and anyone else prescribed as such by the Treasury.

171 Insert the following new Clause –

“Application to the Tribunals to quash PRA and FCA rules

- (1) FSMA 2000 is amended as follows.
- (2) In section 404D (applications to Tribunal to quash rules or provision of rules) –
 - (a) for subsection (1) substitute –
 - “(1) Any person may apply to the Upper Tribunal for a review of any rule made under section 404.
 - (1A) An authorised person may apply to the Upper Tribunal for a review of any rule made by the PRA or the FCA under this Act.”;
 - (b) in subsection (2)(b), after “section 404” insert “or by the PRA or FCA under this Act”.

Member's explanatory statement

This amendment provides that authorised persons may make applications to the Upper Tribunal for a review of rules made by the PRA or the FCA. The Tribunal should determine the application by applying the principles applicable for judicial review and may make an order quashing those rules.

172 Insert the following new Clause –

“The adjudication scheme

- (1) FSMA 2000 is amended as follows.
- (2) In section 225 (the scheme and the scheme operator) –
 - (a) in subsections (3) and (4) for “ombudsman” substitute “adjudication”;
 - (b) after subsection (4) insert –
 - “(5) The FCA, acting in conjunction with the scheme operator, may make further rules relating to the procedures applicable to the adjudication scheme and the powers of the adjudicator under the adjudication scheme, including for the adjudicator to adopt adversarial or inquisitorial procedures in the determination of a complaint as they consider appropriate.”
- (3) After section 225 insert –
 - “225A Transitional provisions**
 - (1) The adjudication scheme established under section 225 of this Act comes into force in accordance with provision made by the Secretary of State by order (the “FAS commencement date”).
 - (2) Where a dispute or proceeding relevant to this Part arises prior to the FAS commencement date, it is to be dealt with under the ombudsman scheme as previously established under this Part.
 - (3) Where a dispute or proceeding relevant to this Part arises on or after the FAS commencement date, it is to be dealt with under the adjudication scheme in accordance with this Part.

After Clause 50 - continued

- (4) Where the acts or omissions to which a complaint relates took place both prior to and on or after the FAS commencement date, any dispute or proceeding brought under this Part is to be dealt with under the adjudication scheme in accordance with this Part.”
- (4) In section 226 (compulsory jurisdiction) –
- (a) in subsections (1) and (6) for “ombudsman” substitute “adjudication”;
- (b) after subsection (3) insert –
- “(3A) “Compulsory jurisdiction rules” must have the effect that the consumer is able effectively to have a complaint determined under the scheme without the need for legal representation and must include within them provision for –
- (a) the scheme operator to refer any complaint to an adjudicator within seven days of its receipt by the scheme operator;
- (b) the adjudicator to make a determination within 56 days of a complaint being referred to the adjudicator or such longer period as is agreed by the parties after the complaint was so referred;
- (c) the adjudicator to extend the period of 56 days by up to 56 days with the consent of the complainant;
- (d) a duty on the adjudicator to act impartially; and
- (e) the adjudicator to be able to take the initiative in ascertaining the facts and the law and rules.”;
- (c) for subsection (4), substitute –
- “(4) Only the following activities may be specified –
- (a) activities which are regulated activities;
- (b) activities which could be made regulated activities by an order under section 22;
- (c) unregulated lending activities which are carried on by authorised persons; or
- (d) activities which are carried on by payment service providers which are not payment services, each as defined in the Payment Services Regulations 2017.”
- (5) In section 227 (voluntary jurisdiction), in subsections (1), (7), (9), (10), (13) and (14) for “ombudsman” substitute “adjudication”.
- (6) In section 228 (determination under the compulsory jurisdiction) –
- (a) for subsection (2) substitute –
- “(2) A complaint that relates to an activity specified under sections 226(4)(a) and 226(4)(b) of this Act is to be determined by the adjudicator through application of –
- (a) rules of the PRA and the FCA referred to in section 138D, save that the adjudicator must treat those rules in the PRIN section of the FCA Handbook as being actionable at the suit of any eligible complainant;
- (b) any relevant legislation of the United Kingdom or any part thereof, including the Consumer Rights Act 2015; and
- (c) the relevant common law (together “the law and rules”).

After Clause 50 - continued

- (2A) A complaint that relates to an activity specified under sections 226(4)(c) and 226(4)(d) of this Act is to be determined by the adjudicator through application of the rules in the PRIN section of the FCA Handbook, as if the activity complained about were a regulated activity.”;
- (b) in subsections (3), (6), (7), (8) and (9), for “ombudsman” substitute “adjudicator”;
- (c) for subsection (4) substitute—
- “(4) The statement must in at least summary form—
- (a) set out the parties' contentions;
 - (b) set out the relevant law and rules;
 - (c) decide contested issues of fact so far as is necessary;
 - (d) apply the law and rules to the facts as found so far as is necessary;
 - (e) give the adjudicator's reasons for his or her determination;
 - (f) be signed by the adjudicator; and
 - (g) require the complainant to notify the adjudicator, before a date specified in the statement, whether the complainant accepts or rejects the determination.
- (5) If the complainant notifies the adjudicator that he or she accepts the determination, it is binding on the respondent and the complainant until—
- (a) either party has applied for a final determination of the complaint before the First Tier Tribunal; and
 - (b) the First Tier Tribunal has determined it.”;
- (d) after subsection (5) insert—
- “(5A) A complainant is entitled to apply to the First Tier Tribunal for a final determination of an interim-binding determination under subsections (2) and (5) above as of right.
- (5B) A respondent is entitled to apply to the First Tier Tribunal for a final determination of an interim-binding determination under subsections (2) and (5) above upon permission of the First Tier Tribunal and upon satisfying such conditions as the First Tier Tribunal thinks fit for the protection of the complainant in all the circumstances of the case, including, without limitation—
- (a) requiring the respondent to pay such costs of the complainant as the First Tier Tribunal thinks fit;
 - (b) requiring undertakings from the respondent, including that the complainant retains the benefit of the interim-binding award at subsection (4) above; and
 - (c) inviting a suitable party to intervene to argue the matter before it.”
- (7) In section 229 (awards)—
- (a) for subsection (2) substitute—
- “(2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include compensation for loss or damage suffered by the complainant (“a money award”).”;

After Clause 50 - continued

- (b) in subsection (4), for “regarded as fair compensation” substitute “awarded as compensation”;
- (c) in subsection (5) –
 - (i) for “ombudsman” substitute “adjudicator”;
 - (ii) for “fair compensation” substitute “compensation according to the rules and law”.
- (8) In section 230 (costs) in subsections (1), (4) and (5) for “ombudsman” substitute “adjudicator”.
- (9) In section 230A (reports of determinations) in subsection (2) for “ombudsman” substitute “adjudicator”.
- (10) In section 231 (adjudicator's power to require information) –
 - (a) in the title, for “Ombudsman” substitute “Adjudicator's”;
 - (b) in subsections (1), (3), (4) and (5) for “ombudsman” substitute “adjudicator”.
- (11) In subsection 232 (powers of court where information required) in subsection (1) for “ombudsman” substitute “adjudicator”.
- (12) In subsection 234 (industry funding) in subsection (1) for “ombudsman” substitute “adjudication”.
- (13) In subsection 234B (transfers of liability) in subsection (1) for “ombudsman” substitute “adjudication”.
- (14) In section 1C (consumer protection objective) in subsection (1)(h) for “ombudsman” substitute “adjudication”.

Member's explanatory statement

This amendment would require the Financial Ombudsman Service to apply adjudication to the disputes which come before it. Either party would have the right to bring its case to the First Tier Tribunal for final determination.

173

Insert the following new Clause –

“Role of the Financial Regulators Complaints Commissioner

- (1) The Financial Services Act 2012 is amended as follows.
- (2) In section 84 (arrangements for the investigation of complaints) –
 - (a) for subsection (1) substitute –
 - “(1) The regulators must –
 - (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with –
 - (i) the exercise of, or failure to exercise, any of their relevant functions (see section 85), or
 - (ii) whether they have exercised, or failed to exercise, their general functions in a way which is incompatible with –
 - (A) in the case of the FCA, the FCA’s strategic, operational or secondary objectives under FSMA 2000, and

After Clause 50 - continued

- (B) in the case of the PRA, the PRA's general, insurance and secondary objectives, and any additional objectives, under FSMA 2000, including complaints by authorised persons and senior managers regarding the regulators' supervision of them, and
- (b) appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.";
- (b) after subsection (5) insert—
- “(6) In this Part —
- (a) "authorised person" has the same meaning as in FSMA 2000;
- (b) "senior manager" has the same meaning as in FSMA 2000;
- (c) "general functions" has the same meaning as in section 1B or 2J, as applicable, of FSMA 2000.”
- (3) In section 86 (consultation in relation to, and publication of, complaints scheme)—
- (a) after subsection (1) insert—
- “(1A) The complaints scheme may not include any provision that limits, excludes or caps the regulators' liability under the complaints scheme.”;
- (b) in subsection (2) after “draft” insert “complaints scheme”.
- (4) In section 87 (investigation of complaints)—
- (a) for subsection (5) substitute—
- “(5) The complaints scheme must confer on the investigator the power, if the investigator thinks it appropriate, to take either or both of the following steps in relation to the regulator to which a complaint relates—
- (a) recommend that the regulator makes a compensatory payment to the complainant in such amount as the investigator in its discretion deems appropriate, or
- (b) to the extent that the remedy sought by the complainant or considered appropriate by the investigator does not involve the making of a compensatory payment to the complainant, recommend or require that the regulator remedy the matter complained of on any basis specified by the investigator or take other appropriate steps to rectify its conduct in that matter.”;
- (b) after subsection (5) insert—
- “(5A) There is no limit on the quantum of compensation that the investigator may recommend to be paid under subsection (5)(a).
- (5B) In determining the amount of any compensatory payment to be recommended under subsection (5)(a), the investigator must take into account—

After Clause 50 - continued

- (a) whether the regulator that is the subject of the complaint was the primary or secondary cause of loss (the fact that a regulator is found to be a secondary cause of loss may reduce but does not absolve them from liability or responsibility under the complaints scheme); and
 - (b) the fact that any compensation payment recommended to a regulator under subsection (5)(a) must ultimately be funded by levies upon the industry.
- (5C) Where the investigator requires that the regulator remedies a matter or takes a step under subsection (5)(b), the investigator is entitled to order the quashing of any declaration, decision or guidance, the revocation or issuance of any statement or the amendment of any rule, guidance or other publication, and the relevant regulator must follow such requirement, unless it successfully overturns the requirement pursuant to subsection (6).”;
- (c) for subsection (6) substitute—
 - “(6) In a case where—
 - (a) the investigator has made a manifest error in its decision under subsection (5), or
 - (b) the investigation concerns a matter that is of particular importance for the market,
 the complainant and the regulator to which a complaint relates are entitled to refer the investigator's decision to the Tribunal.
 - (6A) In the case of a referral by a regulator, the costs of any such proceedings, including all the costs of the complainant, must be borne entirely by the regulator.”;
 - (d) omit subsection (7).”

Member’s explanatory statement

This amendment would make the Financial Regulators Complaints Commissioner’s decisions legally binding on the regulators (other than as to damages payable by the regulators, which would remain a recommendation and ex gratia) and would permit complaints to be made where the regulators have failed to exercise their general functions in accordance with their statutory objectives. The Financial Regulators Complaints Commissioner’s binding decisions could be referred to the Tribunal.

174

Insert the following new Clause—

“Responsibility of senior managers

- (1) FSMA 2000 is amended as follows.
- (2) In section 66A (misconduct: action by the FCA)—
 - (a) in subsection (1), at the beginning insert “Subject to subsection (7A).”;
 - (b) for subsection (5) substitute—
 - “(5) Condition C is that—
 - (a) the person has at any time been a senior manager in relation to an authorised person,

After Clause 50 - continued

- (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person,
 - (c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred, and
 - (d) the senior manager has contributed to the contravention of the relevant requirement by that authorised person.”;
- (c) after subsection (7) insert—
- “(7A) A person is not liable under this section where they acted reasonably and in good faith at the time that any of conditions A to C is met in relation to that person, and a declaration to that effect has been provided under section 133C of this Act.”
- (3) In section 66B (misconduct: action by the PRA)—
- (a) in subsection (1), at the beginning insert “Subject to subsection (7A),”;
 - (b) for subsection (5) substitute—
 - “(5) Condition C is that—
 - (a) the person has at any time been a senior manager in relation to an authorised person,
 - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person,
 - (c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred, and
 - (d) the senior manager has contributed to the contravention of the relevant requirement by that authorised person.”
- (4) After subsection (7), insert—
- “(7A) A person is not liable under this section where they acted reasonably and in good faith at the time that any of conditions A to C is met in relation to that person, and a declaration to that effect has been provided under section 133C of this Act.””

Member’s explanatory statement

This clarifies the standards for senior managers and permits a senior manager to obtain a declaration from the First Tier Tribunal that they acted reasonably and in good faith, which protects against liability for misconduct.

BARONESS LAWLOR

175

Insert the following new Clause—

“The Financial Services (Regulator Accountability) Committee of Parliament

- (1) There is to be a body known as the Financial Services (Regulator Accountability) Committee of Parliament (“the Committee”).
- (2) The Committee is to consist of 12 members drawn equally from the Members of the House of Commons and the members of the House of Lords.
- (3) Each member of the Committee is to be appointed by the House of Parliament from which the member is drawn.

After Clause 50 - continued

- (4) A member of the Committee is to be its Chair, chosen by its members.
- (5) The main function of the Committee is to provide oversight of FCA and PRA (the “regulators”) in fulfilling their functions under FSMA 2000 of reviewing, revoking, modifying and applying rules.
- (6) The Committee must at regular intervals consider the regulators' proposed changes with regard to revoking, modifying and adapting EU-derived legislation.
- (7) The Committee may where appropriate receive legal advice to consider the regulators' consistency with the law, and their transparency and predictability in applying the law.
- (8) The Committee must publish its findings and lay its reports before Parliament.”

Member’s explanatory statement

The amendment would allow for scrutiny of regulators' decisions on EU rules before application, whether rules are consistent with the law, transparent and predictable.

Schedule 8

BARONESS TYLER OF ENFIELD
BARONESS KRAMER

176

Page 162, line 7, at end insert –

- “(1A) When exercising its functions under this Part, the FCA may issue a direction to a designated person, for the purpose of establishing a banking hub.
- (1B) A designated person must comply with a direction under subsection (1A).
- (1C) A “banking hub” is a facility which –
- (a) provides cash access and other basic banking services,
 - (b) is facilitated jointly by multiple providers of such services,
 - (c) contains private consultation spaces for users of cash access services, and
 - (d) is established for the purpose of ensuring reasonable provision of cash access services where there would otherwise be a local deficiency of such provision.”

Member’s explanatory statement

This amendment would require designated persons to comply with direction given by the FCA for the purposes of establishing banking hubs.

BARONESS TYLER OF ENFIELD

177

Page 162, line 22, at end insert –

- “(c) undertake other banking activities often associated with a current account, which the FCA considers to be significant.”

Schedule 8 - continued

- 178 Page 163, line 18, at end insert –
 “(d) not close a cash access service in a specific location until alternatives have been installed.”

BARONESS NOAKES

- 179 Page 165, line 47, at end insert –
“131Z3 Expiry
 (1) This Part (subject to subsection (2)) expires at the end of the period of 10 years beginning with the day that it is brought into force.
 (2) The Treasury may by regulations provide that any provision of this Part –
 (a) does not expire at the time that it would otherwise expire, and
 (b) expires instead at such later time as is specified in the regulations.
 (3) Regulations under subsection (2) are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment sunsets the powers relating to cash access after 10 years unless the Treasury provides for their extension.

After Clause 52

LORD TUNNICLIFFE
 BARONESS TYLER OF ENFIELD
 LORD NASEBY
 BARONESS ALTMANN

- 180 Insert the following new Clause –
“Local community access to essential in-person banking services
 (1) The Treasury and the FCA must jointly undertake a review of the state of access to essential in-person banking services for local communities in the United Kingdom, and jointly prepare a report on the outcome of the review.
 (2) “Essential in-person banking services” include services which are delivered face-to-face and to which local communities require regular access, including services provided in banks, banking hubs, or other service models.
 (3) The report mentioned in subsection (1) must be laid before the House of Commons and the House of Lords as soon as practicable after the review has been undertaken.
 (4) The report mentioned in subsection (1) must propose a minimum level of access to essential in-person banking services which must be provided by banks and building societies in applicable local authority areas in the United Kingdom, for the purpose of ensuring that local communities have adequate access to essential in-person banking services.

After Clause 52 - continued

- (5) The applicable local authority areas mentioned in subsection (4) are local authority areas in which, in the opinion of the FCA, local communities have a particular need for the provision of essential in-person banking services.
- (6) In any applicable local authority area in which, according to the results of the review undertaken under subsection (1), access falls below the minimum level of access mentioned in subsection (4), the FCA may give directions for the purpose of ensuring that essential in-person banking services meet the minimum level of access required under subsection (4).
- (7) A direction under subsection (6) may require a minimum level of provision of essential in-person banking services through mandating, for example—
 - (a) a specified number of essential in-person banking services within a geographical area, or
 - (b) essential in-person banking services to operate specific opening hours.”

Member’s explanatory statement

This new Clause would require the Treasury and FCA to conduct and publish a review of community need for, and access to, essential in-person banking services, and enable the FCA to ensure areas in need of essential in-person banking service have a minimum level of access to such services.

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD

181

Insert the following new Clause—

“Essential banking services access policy statement

- (1) The Treasury must lay before the House of Commons and the House of Lords an essential banking services access policy statement within six months of the passing of this Act.
- (2) An “essential banking services access policy statement” is a statement of the policies of His Majesty’s Government in relation to the provision of adequate levels of access to essential in-person banking services in the United Kingdom.
- (3) “Essential in-person banking services” include services which are delivered face-to-face, and may include those provided in banks, banking hubs, or other service models.
- (4) The policies mentioned in subsection (2) may include those which relate to—
 - (a) ensuring adequate availability of essential in-person banking services,
 - (b) ensuring adequate provision of support for online banking training and internet access, for the purposes of ensuring access to online banking, and
 - (c) expectations of maximum geographical distances service users should be expected to travel to access essential in-person banking services in rural areas.
- (5) The FCA must have regard to the essential banking services access policy statement when fulfilling its functions.”

Member's explanatory statement

This new Clause would require the Treasury to publish a policy statement setting out its policies in relation to the provision of essential in-person banking services, including policies relating to availability of essential in-person banking services, support for online banking, and maximum distances people can expect to travel to access services.

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD
BARONESS ALTMANN

182 Insert the following new Clause—

“Access to cash: guaranteed minimum provision for consumers

- (1) The Treasury must, by regulations, make provision to guarantee a minimum level of access to free of charge cash access services for consumers across the United Kingdom.
- (2) The minimum level of access referred to in subsection (1) must be specified in the regulations.
- (3) Regulations under this section are subject to the affirmative procedure.”

183 [*Withdrawn*]

LORD TUNNICLIFFE
BARONESS TYLER OF ENFIELD
LORD HOLMES OF RICHMOND
BARONESS ALTMANN

184 Insert the following new Clause—

“Duty to collect data on cash acceptance

- (1) The FCA must monitor, collect and publish data in relation to levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (2) The FCA must publish a report, as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (3) The FCA can, by written notice, require a retailer or service provider to provide to the FCA information that it may reasonably require for the purposes of exercising its duties under subsections (1) and (2).”

Member's explanatory statement

This amendment would require the FCA to monitor and report on levels of cash acceptance across the UK.

BARONESS TWYXCROSS

185 Insert the following new Clause—

“Public consultation on cash provision

Within the period of 12 months beginning with the day on which this Act is passed, the FCA must have issued and responded to a UK-wide consultation on regional experience of cash provision.”

LORD HOLMES OF RICHMOND

186 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.

187 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

188 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.”

LORD HOLMES OF RICHMOND

189 Insert the following new Clause—

“UK cash network: critical national infrastructure

- (1) Within six months of the passing of this Act, the Treasury must designate the UK cash network as critical national infrastructure.
- (2) “UK cash network” means the infrastructure to make available cash access and distribution services throughout the United Kingdom by financial service providers.”

Member’s explanatory statement

This amendment would require the Government to designate the UK cash infrastructure as Critical National Infrastructure.

LORD SIKKA

189A Insert the following new Clause—

“Access to physical banking services

- (1) The section applies to the closure of any physical branch by a licenced deposit-taker regulated by the FCA.
- (2) The FCA must ensure that, at least six calendar months before the intended closure of a physical branch, the deposit-taker has given a written notice to all affected customers of its intention to close that branch.
- (3) The notice must be accompanied by a statement setting out the financial and non-financial position of the branch and reasons for its possible closure.
- (4) Within 28 days of the receipt of a valid notice, customers may lodge their objections, if any, with the FCA.
- (5) At least three months before the intended closure date, under the supervision of the FCA, customers of the deposit-taker must vote on the proposal to close a physical branch.
- (6) The closure must be approved by the FCA, and in doing so it must provide evidence showing that after the closure the local community’s access to physical banking services is not impaired.
- (7) The cost of the steps described in subsections (2) to (6), including the provision of any alternative form of physical banking services, must be met by a levy upon all deposit-taking institutions.”

Schedule 9

BARONESS NOAKES

190 Page 180, line 20, at end insert –

“206Z7 Expiry

- (1) This Part (subject to subsection (2)) expires at the end of the period of 10 years beginning with the day that it is brought into force.
- (2) The Treasury may by regulations provide that any provision of this Part –
 - (a) does not expire at the time that it would otherwise expire, and
 - (b) expires instead at such later time as is specified in the regulations.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment sunsets the powers relating to cash distribution after 10 years unless the Treasury provides for their extension.

Schedule 11

BARONESS PENN

191 Page 213, line 3, leave out “financial”

Member’s explanatory statement

This amendment would enable the Bank to direct a central counterparty’s parent company to establish a separate holding company as a parent of the subsidiary, rather than requiring that holding company to be a separate financial holding company.

192 Page 213, leave out lines 23 and 24

Member’s explanatory statement

This amendment is consequential on the amendment at page 213, line 3 and omits the definition of “financial holding company” as it is no longer required.

193 Page 231, line 3, at end insert –

“(ia) paragraph 34(6)(d),”

Member’s explanatory statement

This amendment would ensure that paragraph 34(6)(d) of Schedule 11 is read as including onward bridge central counterparties for the purpose of being able to convert liabilities owed by a central counterparty into securities issued by an onward bridge central counterparty.

194 Page 234, line 2, leave out from “cover” to end of line 4 and insert “the CCP’s potential future exposure in the event of default by those members”

Member's explanatory statement

This amendment would correct the definition of "initial margin requirements" so that it refers to the counterparty exposure that would arise if the clearing member lodging the initial margin defaulted.

195 Page 285, line 6, after "paragraph" insert "121 or"

Member's explanatory statement

This amendment would ensure that paragraph 127 of Schedule 11, regarding the admissibility of statements made to investigators, applies to statements made to investigators appointed under paragraph 121 of Schedule 11 as well as to those appointed under paragraph 122.

After Clause 65

LORD HOLMES OF RICHMOND

196 Insert the following new Clause –

"Determination of applications

- (1) FSMA 2000 is amended as follows.
- (2) In section 61 (determination of applications), after subsection (2) insert –
 - “(2ZA) In determining the application, the regulator must –
 - (a) assign a new application to a case handler within 5 working days of the application being made,
 - (b) complete an initial application review within 10 working days of allocation to a case handler, and
 - (c) allow a period of no more than 15 working days from receiving the application, to make requests for additional information.
 - (2ZB) The regulators must publish monitoring data on an annual basis regarding the following –
 - (a) the proportion of cases which required escalation to sponsoring firms, including summary trend data on the reasons for escalation,
 - (b) the average time it takes to assign a case handler, and
 - (c) the average number of days it takes to complete an application in full.”

Member's explanatory statement

This amendment would add to the regulators' authorisation KPIs within the Financial Services and Markets Act 2000 and require them to publish monitoring data related to the determination of authorisations.

LORD SHARKEY
VISCOUNT TRENCHARD

197 Insert the following new Clause –

"Duty of the FCA with regard to interest rates for mortgage prisoners

After section 137FD of FSMA 2000 insert –

"137FE FCA general rules: interest rate for mortgage prisoners

After Clause 65 - continued

- (1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration to introduce a cap on the standard variable rates charged to mortgage prisoners and to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA.
- (2) In subsection (1) –
 - “mortgage prisoner” means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following types of firms –
 - (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending, and
 - (b) unregulated entities, or firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration;
 - “new fixed interest rate deals” means the ability for the consumer to fix the rate of interest payable on a regulated mortgage contract for periods of 2 years and 5 years;
 - “standard variable rate” means the reversion rate which is a variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.
- (3) The general rules made under subsection (1) must set the level of the cap on the standard variable rate at a level no more than 2 percentage points above the Bank of England base rate.
- (4) The general rules made under subsection (1) must make new fixed interest rate deals available to mortgage prisoners who –
 - (a) are up to date with payments or have aggregate arrears of no more than one monthly payment in the past 12 months,
 - (b) have a remaining term of 2 years or more,
 - (c) have an outstanding loan amount of at least £10,000, and
 - (d) have not received consent to let the property.
- (5) When specifying the interest rates for new fixed interest rate deals required by subsection (1) the FCA must specify rates for a range of loan-to-valuation ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
- (6) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made no later than six months after this Act is passed.”

Member’s explanatory statement

This new Clause would require the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners and, under specified circumstances, ensure their access to fixed rate interest deals.

BARONESS BOWLES OF BERKHAMSTED

198 Insert the following new Clause—

“Passing off

After section 24 of FSMA 2000 insert—

“24A Passing off

A person (whether an authorised person or not) commits an offence if their actions, or omissions, may suggest to a reasonable person that their activities, in whole or part, are authorised under the provisions of the Act, and related instruments, when this is not the case.”

LORD RANDALL OF UXBRIDGE

LORD TUNNICLIFFE

BARONESS BOYCOTT

BARONESS SHEEHAN

199 Insert the following new Clause—

“Forest risk commodities

- (1) FSMA 2000 is amended in accordance with subsection (2).
- (2) After section 410 insert—

“Forest risk commodities

410ZA Forest risk commodities

- (1) A person must not carry on a regulated activity in the United Kingdom that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity unless relevant local laws were complied with in relation to that commodity.
- (2) A person that intends to carry on a regulated activity that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity must establish and implement a due diligence system in relation to that regulated activity to ensure compliance with relevant local laws.
- (3) In this section, “due diligence system” means a system for—
 - (a) identifying and obtaining information about the commercial activities of any beneficiary of the regulated activity and of their group regarding the use of a forest risk commodity,
 - (b) assessing the risk that relevant local laws were not complied with, or that free, prior and informed consent was not obtained from local communities, or from indigenous people in accordance with their rights under international law, in relation to that commodity, and
 - (c) mitigating that risk.
- (4) A person that carries on a regulated activity in the United Kingdom that directly or indirectly supports a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity is subject to—
 - (a) the reporting requirements under paragraph 4 of Schedule 17 to the Environment Act 2021 (“the Environment Act”) in relation to the due diligence system required under sub-paragraph (2), and

After Clause 65 - continued

- (b) Part 2 of Schedule 17 to the Environment Act as though they are a person to whom Part 1 of that Schedule applies.
- (5) Terms used in this section that are defined in Schedule 17 to the Environment Act have the meanings given in that Schedule.”
- (3) In paragraph 17(1) of Schedule 17 to the Environment Act 2021 (use of forest risk commodities in commercial activity), for “and any Part 2 regulations (“relevant provisions”)” substitute “, any Part 2 regulations (“relevant provisions”) and section 410ZA of the Financial Services and Markets Act 2000”.”

LORD LILLEY

200 Insert the following new Clause—

“Independence of Regulatory Decisions Committee and Enforcement Decision Making Committee

- (1) FSMA 2000 is amended as follows.
- (2) In section 395 (FCA’s and PRA’s procedures)—
 - (a) in subsection 1(c) omit the final “and”;
 - (b) in subsection 1(d), at the end insert “, and
 - (e) a decision that is within the remit of the RDC or EDMC as established under sections 395A and 395I.”;
 - (c) in subsection 2(b)(ii) omit the final “and”;
 - (d) in subsection 2(c), at the end insert “, and
 - (d) a decision falling within paragraph (1)(e) that is taken by the RDC or EDMC is implemented by the regulators in such a way as to promote consistent and efficient decision-making.”
- (3) After section 395 insert—

“395A Establishment of the Regulatory Decisions Committee

- (1) The Treasury must establish a body corporate to exercise the functions conferred on the body by or under this Part.
- (2) The body established under subsection (1) is referred to in this Part as the Regulatory Decisions Committee.
- (3) The Regulatory Decisions Committee is in this Part referred to as “the RDC”.
- (4) The Treasury must take such steps as are necessary to ensure that the RDC is, at all times, capable of exercising the functions referred to in subsection (1).
- (5) The RDC is to have the functions conferred on it by or under this Act.

395B Independence of the Regulatory Decisions Committee

- (1) The RDC is not to be subject to direction by any person in relation to the exercise of its functions. In particular, the RDC and any person who is, or is acting as, a member, officer or member of staff of the RDC, is to be independent of the FCA and the PRA.
- (2) Subsection (1) does not prevent compliance with a direction or order of a court.
- (3) In relation to any of its functions—

After Clause 65 - continued

- (a) the RDC is not and is not to be regarded as acting on behalf of the Crown or the FCA, and
- (b) its members, officers and staff are not and are not to be regarded as Crown servants or employees or agents of the FCA.

395C Coordination of the Regulatory Decisions Committee with the FCA

Notwithstanding section 395B, the RDC and FCA must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—

- (a) that each consults the other (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other of any of its objectives;
- (b) that where appropriate each obtains information and advice from the other in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other may be expected to have relevant information or relevant expertise.

395D Objectives and duties of the Regulatory Decisions Committee

- (1) Notwithstanding section 395B, in discharging its functions under this Part, the RDC acts as if it was the FCA and must, so far as is reasonably possible, act in a way which—
 - (a) is compatible with the FCA's general duties under section 1B of this Act, and
 - (b) advances one or more of the consumer protection objectives under section 1C of this Act, the integrity objective under section 1D of this Act, the competition objective under section 1E of this Act, the competitiveness and growth objective under section 1EB of this Act and the predictability and consistency objective under section 1EC of this Act.
- (2) In discharging its functions under this Part, the RDC must have regard to—
 - (a) the regulatory principles in section 3B of this Act;
 - (b) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it;
 - (c) the need for predictability, consistency and accountability in relation to its decision-making process; and
 - (d) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
 - (i) by an authorised person or a recognised investment exchange, or
 - (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime.
- (3) Where, in discharging its functions under this Part, the RDC reviews or makes a decision in relation to—
 - (a) the FCA, or any act or decision made by the FCA; or
 - (b) the PRA, or any act or decision made by the PRA,
 the RDC must consider whether the FCA or PRA (as applicable) has—

After Clause 65 - continued

- (c) complied with the duties and statutory objectives imposed on it under this Act or otherwise when carrying out its decision-making process for the act or decision in question; and
 - (d) applied the applicable regulatory rules in accordance with the predictability and consistency objective.
- (4) Any decision made by the RDC in discharging its functions under this Part must be accompanied by a reasoned account setting out –
- (a) the reasons why that decision was made; and
 - (b) a statement that the decision was made in accordance with the objectives and duties of the RDC as set out in this section.
- (5) The RDC may publish any reasoned account prepared under subsection (4), provided that where the subject of the decision so requests, and the RDC agrees that this would be appropriate, the reasoned account is published on an anonymised basis through the redaction of any personal data or otherwise relating to the subject and any other party.
- (6) Where the proviso to subsection (5) applies, the anonymisation of the reasoned account is final and irreversible, and is deemed to be in compliance with applicable data protection and privacy legislation.

395E Composition and functions of the Regulatory Decisions Committee

- (1) The Treasury must by order specify the composition and functions of the RDC under this Part.
- (2) An order under subsection (1) may –
- (a) confer powers on the RDC;
 - (b) authorise the making of rules or other instruments by the RDC for purposes of, or connected with, any relevant provision;
 - (c) make provision in respect of any information or document which in the opinion of the Treasury or the RDC is relevant for purposes of, or connected with, any relevant provision;
 - (d) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(d) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) “Relevant provision” means this section or any provision made under this section.

395F Making of rules by the Regulatory Decisions Committee

- (1) The RDC may make rules applying to its functions and procedures.
- (2) Before making any rules under subsection (1), the RDC must consult the Treasury and publish a draft of the proposed rules in accordance with section 138J(1) of this Act, with references in that section to the PRA being replaced by a reference to the RDC mutatis mutandis.

395G Consultation by the Regulatory Decisions Committee

The RDC must make and maintain effective arrangements for consulting practitioners and authorised firms on the extent to which its general policies and practices are consistent with its duties under section 395D.

After Clause 65 - continued**395H Immunity from damages of the Regulatory Decisions Committee**

- (1) None of the following is liable in damages for anything done or omitted in the discharge, or purported discharge, of the RDC's functions—
 - (a) the RDC;
 - (b) any person ("P") who is, or is acting as, a member, officer or member of staff of the RDC; or
 - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Subsection (1) does not apply—
 - (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

395I Establishment of the Enforcement Decision Making Committee

- (1) The Treasury must establish a body corporate to exercise the functions conferred on the body by or under this Part.
- (2) The body established under subsection (1) is referred to in this Part as the Enforcement Decision Making Committee.
- (3) The Enforcement Decision Making Committee is in this Part referred to as "the EDMC".
- (4) The Treasury must take such steps as are necessary to ensure that the EDMC is, at all times, capable of exercising the functions referred to in subsection (1).
- (5) The EDMC is to have the functions conferred on it by or under this Act.

395J Independence of the Enforcement Decision Making Committee

- (1) The EDMC is not to be subject to direction by any person in relation to the exercise of its functions. In particular, the EDMC and any person who is, or is acting as, a member, officer or member of staff of the EDMC, is to be independent of the FCA and the PRA.
- (2) Subsection (1) does not prevent compliance with a direction or order of a court.
- (3) In relation to any of its functions—
 - (a) the EDMC is not and is not to be regarded as acting on behalf of the Crown or the PRA, and
 - (b) its members, officers and staff are not and are not to be regarded as Crown servants or employees or agents of the PRA.

395K Coordination of the Enforcement Decision Making Committee with the PRA

Notwithstanding section 395J, the EDMC and PRA must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—

- (a) that each consults the other (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other of any of its objectives;

After Clause 65 - continued

- (b) that where appropriate each obtains information and advice from the other in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other may be expected to have relevant information or relevant expertise.

395L Objectives and duties of the Enforcement Decision Making Committee

- (1) Notwithstanding section 395J, in discharging its functions under this Part, the RDC acts as if it was the PRA and must, so far as is reasonably possible, act in a way which—
 - (a) is compatible with the PRA's general objective under section 2B of this Act, and
 - (b) advances the insurance objective under section 2C of this Act, any additional objectives specified under section 2D of this Act, and the secondary objectives and duties under section 2H of this Act.
- (2) In discharging its functions under this Part, the EDMC must have regard to—
 - (a) the regulatory principles in section 3B of this Act;
 - (b) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it;
 - (c) the need for predictability, consistency and accountability in relation to its decision-making process; and
 - (d) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
 - (i) by an authorised person or a recognised investment exchange, or
 - (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime.
- (3) Where, in discharging its functions under this Part, the EDMC reviews or makes a decision in relation to—
 - (a) the FCA, or any act or decision made by the FCA; or
 - (b) the PRA, or any act or decision made by the PRA,the EDMC must consider whether the FCA or PRA (as applicable) has complied with the duties and statutory objectives imposed on it under this Act or otherwise.
- (4) Any decision made by the EDMC in discharging its functions under this Part must be accompanied by a reasoned account setting out—
 - (a) the reasons why that decision was made; and
 - (b) a statement that the decision has been made in accordance with the objectives and duties of the EDMC as set out in this section.

395M Composition and functions of the Enforcement Decision Making Committee

- (1) The Bank of England may by order, policy statement or similar publication specify the composition and functions of the EDMC under this Part.
- (2) An order under subsection (1) may—
 - (a) confer powers on the EDMC;

After Clause 65 - continued

- (b) authorise the making of rules or other instruments by the EDMC for purposes of, or connected with, any relevant provision;
 - (c) make provision in respect of any information or document which in the opinion of the Bank of England or the EDMC is relevant for purposes of, or connected with, any relevant provision;
 - (d) make such consequential, transitional, or supplemental provision as the Bank of England considers appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(d) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) Policy Statement PS/EDMC2018 ‘Enforcement Decision Making Committee’ published by the Bank of England in August 2018 is to be treated as a policy statement specifying the composition and functions of the EDMC pursuant to subsection (1), other than to the extent that it is subsequently amended, modified, replaced or otherwise superseded from time to time.
- (5) “Relevant provision” means this section or any provision made under this section.

395N Making of rules by the Enforcement Decision Making Committee

- (1) The EDMC may make rules or publish policy statements applying to its functions and procedures.
- (2) Before making any rules or publishing any policy statement under subsection (1), the EDMC must consult the Treasury and publish a draft of the proposed rules or policy statement in accordance with section 138J(1) of this Act, with references in that section to the PRA being replaced by a reference to the EDMC *mutatis mutandis*.
- (3) Policy Statement PS/EDMC2018 ‘Enforcement Decision Making Committee’ published by the Bank of England in August 2018 is to be treated as a policy statement applying to the functions and procedures of the EDMC pursuant to subsection (1), other than to the extent that it is subsequently amended, modified, replaced or otherwise superseded from time to time.

395O Consultation by the Enforcement Decision Making Committee

The EDMC must make and maintain effective arrangements for consulting practitioners and authorised firms on the extent to which its general policies and practices are consistent with its duties under section 395L.

395P Immunity from damages of the Enforcement Decision Making Committee

- (1) None of the following is liable in damages for anything done or omitted in the discharge, or purported discharge, of the EDMC's functions –
 - (a) the EDMC;
 - (b) any person (“P”) who is, or is acting as, a member, officer or member of staff of the EDMC; or

After Clause 65 - continued

- (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Sub-paragraph (1) does not apply –
 - (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.”

Member's explanatory statement

This amendment ensures the independence of the Regulatory Decisions Committee from the Financial Conduct Authority and the Enforcement Decision Making Committee from the Prudential Regulation Authority and requires each Committee to have specific regard to the need for clarity, consistency and predictability of regulatory action. This amendment also provides for the Committees' immunity from damages, requires the Committees to consult practitioners and authorised firms, and provides for the making of further rules in relation to the Committees, their functions and procedures.

BARONESS HAYMAN
 BARONESS ALTMANN
 BARONESS DRAKE
 BARONESS SHEEHAN

201

Insert the following new Clause –

“Investment duties of personal pension providers and investment managers

In FSMA 2000 after section 137FD insert –

“137FE FCA general rules: pension investment and managing investments

- (1) The FCA must publish guidance on the consideration by FCA-regulated persons of –
 - (a) the likely consequences of any decision in the long term,
 - (b) the impact of their investments on society and the environment,
 - (c) the desirability of maintaining a reputation for high standards of business conduct,
 - (d) the need to act fairly as between investors, and
 - (e) public reporting on how they have met the other requirements in this subsection.
- (2) In this section “relevant FCA-regulated persons” means –
 - (a) managers of personal pension schemes within the meaning of an order under section 22,
 - (b) managers of stakeholder pension schemes within the meaning of such an order, or
 - (c) persons managing investments within the meaning of an order under section 22, including the activity described in paragraph 6 of Schedule 2 (managing investments).”

Member's explanatory statement

This amendment will require the FCA in relation to fund managers and personal pension schemes, to issue guidance to which firms must have regard, about consideration of the long term consequences of investment decisions, and the impacts of investments on society and the environment, amongst other considerations – without undermining their fiduciary duty to act in the financial interests of clients.

BARONESS NOAKES

201A Insert the following new Clause –

“Financial Ombudsman Service

(1) FSMA 2000 is amended as follows.

(2) After section 229 insert –

“229A Power of FCA to require Financial Ombudsman Service to refrain from specified action

(1) Where the first, second and third conditions are met, the FCA may give a direction under this section to the Financial Ombudsman Service.

(2) The first condition is that the Financial Ombudsman Service is proposing to exercise any of its powers in relation to the determination of a complaint.

(3) The second condition is that the FCA is of the opinion that the exercise of the power in the manner proposed may have implications beyond the specifics of the complaint in question.

(4) The third condition is that the FCA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence described in subsection (3).

(5) A direction under this section is a direction requiring the Financial Ombudsman Service not to exercise the power or not to exercise it in a specified manner.

(6) The FCA must consult the Financial Ombudsman Service before giving a direction under this section.”

(3) In paragraph 15(1) of Schedule 17 (fees) after “respondent” insert “or relevant party”.”

Member's explanatory statement

This amendment gives power to the FCA to overrule a decision of the FOS where this would have implications which would affect the FCA's ability to regulate effectively and to allow the FOS to make persons other than the complainant make a payment towards the costs of a case.

Clause 68

LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED

202 Page 84, line 27, leave out paragraph (a)

Member's explanatory statement

This amendment would remove the limitation that APP mandatory reimbursement is limited to APP scams made via the Faster Payments system, so that all APP scams must be covered regardless of payment system used.

BARONESS KRAMER

203 Page 84, line 40, at end insert –

“(5A) The relevant requirement referred to in subsection (5) must specify that reimbursement in qualifying cases cannot be refused on the basis that a victim, or victims, ought to have known that the payment order was executed subsequent to fraud or dishonesty.”

Member’s explanatory statement

This amendment would prevent reimbursement for victims of fraudulent or dishonest payments being refused on the basis that that they should have known the payment was fraudulent or dishonest.

LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED

204 Page 85, line 3, at end insert –

“(6A) In complying with the duty imposed by subsection (5) the Payment Systems Regulator must take into consideration the following matters –

- (a) how to ensure that the parameters used to determine whether or not reimbursement should be made are transparent and applied consistently;
- (b) whether the reimbursement liability should be met by the paying or the receiving payment service provider, or shared between them;
- (c) the extent to which mandatory reimbursement is likely to affect the behaviour of consumers to protect themselves against fraud;
- (d) how consumers can appeal against decisions made by payment service providers.”

Member’s explanatory statement

This amendment aims to provide some guidance of matters that the PSR should take into account when designing a mandatory reimbursement scheme.

205 Page 85, line 9, at end insert –

“(8A) At least once every six months after the Payment Systems Regulator has imposed the requirement imposed by subsection (5), it must publish a report that sets out, for each payment service provider subject to the requirement –

- (a) the number and value of APP scams notified to them;
- (b) the percentage by number and value of APP scams that have been reimbursed;
- (c) the percentage by number and value of APP scams appealed and the results of such appeals;
- (d) the percentage by number and value of APP scams that have been rejected;
- (e) the shortest, longest and average time from notification to decision about reimbursement.”

Member's explanatory statement

This amendment aims to introduce transparency into the APP reimbursement process, to ensure that consumers can see whether the rules are being applied consistently, and which institutions are better and worse at reimbursing victims fairly and promptly.

206 Page 85, line 9, at end insert –

- “(8A) At least annually, the Payment Services Regulator must review and report on the impact of the requirement as imposed in accordance with subsection (5) and report on whether it believes the requirement –
- (a) has improved the protection of consumers,
 - (b) has caused any change to the behaviour of consumers in relation to APP fraud, or
 - (c) has caused any change to the behaviour of payment service providers,
- and make such changes to the requirement, or make such new requirements, as the Payments Services Regulator considers necessary to protect consumers from APP fraud, taking account of the impacts identified.”

Member's explanatory statement

This amendment aims to introduce a review process to ensure that the impacts of the mandatory reimbursement scheme are as intended and to amend the requirement if unintended consequences are identified.

207 Page 85, leave out lines 18 to 22

Member's explanatory statement

This amendment is consequential on the first amendment to Clause 68 in the name of Lord Vaux of Harrowden.

After Clause 71

LORD TUNNICLIFFE
BARONESS SHEEHAN

208 Insert the following new Clause –

“Green Finance Strategy update

- (1) The Treasury must lay before the House of Commons and the House of Lords an updated Green Finance Strategy within three months of the passing of this Act.
- (2) The strategy must include –
 - (a) a Green Taxonomy, and
 - (b) Sustainability Disclosure Requirements.
- (3) In preparing the strategy, the Treasury must consult –
 - (a) financial services stakeholders,
 - (b) businesses in the wider economy,
 - (c) the Secretary of State for Business, Energy and Industrial Strategy, and
 - (d) the Secretary of State for Work and Pensions.

After Clause 71 - continued

- (4) In this section a “Green Taxonomy” means investment screening criteria which classify which activities can be defined as environmentally sustainable including, but not limited to –
- (a) climate change mitigation and adaptation,
 - (b) sustainable use and protection of water and marine resources,
 - (c) transitions to a circular economy,
 - (d) pollution prevention and control, and
 - (e) protection and restoration of biodiversity and ecosystems.
- (5) In this section “Sustainability Disclosure Requirements” are the requirements placed on companies, including listed issuers, asset managers and asset owners, to report on their sustainability risks, opportunities and impacts.”

Member’s explanatory statement

This new Clause would require the Treasury to publish an updated Green Finance Strategy. This must include a Green Taxonomy and Sustainability Disclosure Requirements.

LORD TUNNICLIFFE
LORD VAUX OF HARROWDEN

209

Insert the following new Clause –

“National strategy on financial fraud

- (1) The Treasury must lay before the House of Commons and the House of Lords a national strategy on the detection, prevention and investigation of fraud in relation to the provision or use of financial services, and associated financial crime, within six months of the passing of this Act.
- (2) In preparing the strategy, the Treasury must consult –
 - (a) the Secretary of State for the Home Office,
 - (b) the National Economic Crime Centre,
 - (c) law enforcement bodies which the Treasury considers relevant to the strategy,
 - (d) relevant regulators,
 - (e) financial services stakeholders, and
 - (f) digital platforms, telecommunications companies, financial technology companies, and social media companies.
- (3) The strategy must include arrangements for a data-sharing agreement involving –
 - (a) relevant law enforcement agencies,
 - (b) relevant regulators,
 - (c) financial services stakeholders,
 - (d) telecommunications stakeholders, and
 - (e) technology-based communication platforms,

for the purposes of detecting, preventing and investigating fraud in relation to the provision or use of financial services, and associated financial crime, and, in particular, tracking stolen money which may pass through mule bank accounts or platforms operated by other financial services stakeholders.

After Clause 71 - continued

- (4) The strategy must be updated at least every five years.
- (5) In this section “fraud in relation to the provision or use of financial services, and associated financial crime” includes, but is not limited to, authorised push payment fraud, and unauthorised facility takeover fraud and online and offline identity fraud as they relate to the provision or use of financial services.
- (6) In this section, “financial services stakeholders” includes banks, building societies, credit unions, investment firms, Electric Money Institutions, virtual asset providers and exchanges, and payment system operators.”

Member’s explanatory statement

This amendment would compel the Treasury to publish a new national strategy on financial fraud, and update it at least every five years. The strategy would cover detection, prevention and investigation of financial fraud and associated financial crime, and arrangements for a data sharing agreement between law enforcement agencies, regulators and others to track stolen money.

LORD HUNT OF KINGS HEATH
As an amendment to Amendment 209

210 After subsection (3), insert –

“(3A) The strategy must include –

- (a) arrangements specifically aimed at protecting older people from fraud in relation to financial services, and
- (b) support services to help older people who are the victims of fraud with advice and information as to their rights in relation to financial services.”

Member’s explanatory statement

The amendment would add to the original amendment specific provisions in relation to older people who suffer from financial fraud.

LORD DAVIES OF BRIXTON
As an amendment to Amendment 209

211 After subsection (3), insert –

“(3A) The strategy must include –

- (a) arrangements specifically aimed at protecting the mental health of consumers who are subject to, or at risk of, fraud in relation to financial services, and
- (b) support services for consumers whose mental health has been, or is at risk of being, affected by fraud in relation to financial services with advice and information as to their rights.”

Member’s explanatory statement

The amendment would add to the original amendment specific provisions in relation to the effect on the mental health of people who suffer from financial fraud.

LORD TUNNICLIFFE
LORD MITCHELL
THE LORD BISHOP OF ST ALBANS

212 Insert the following new Clause—

“Regulation of buy-now-pay-later firms

- (1) Within 28 days of the passing of this Act, the Secretary of State must by regulations make provision for—
 - (a) buy-now-pay-later credit services, and
 - (b) other lending services that have non-interest-bearing elements,to be regulated by the FCA.
- (2) The regulations must include measures which—
 - (a) ensure all individuals accessing services mentioned in subsection (1) have access to the Financial Services Ombudsman,
 - (b) ensure that individuals applying for services mentioned in subsection (1) are subject to credit checks prior to the service being approved, and
 - (c) ensure that individuals accessing services mentioned in subsection (1) are protected by section 75 of the Consumer Credit Act 1974 (liability of creditor for breaches by supplier).
- (3) The regulations are subject to the affirmative procedure.”

Member’s explanatory statement

This new clause would bring into FCA regulation the non-interest-bearing elements of buy-now-pay-later lending and similar services.

LORD SHARKEY

213 Insert the following new Clause—

“Access to Sharia-compliant financial services including student finance

- (1) Within six months of the passing of this Act, the Treasury must make provision by regulations to facilitate the availability of Sharia-compliant financial services in the United Kingdom, including availability to students who are eligible for the Government’s student finance provision of Sharia-compliant finance products for paying tuition fees and for student maintenance on equitable terms with students accessing the Government’s student finance provision.
- (2) Regulations under this section are subject to the negative procedure.”

Member’s explanatory statement

This is a probing amendment to allow debate on the progress towards provision of Sharia-compliant student funding.

BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN

214 Insert the following new Clause –

“Failure to prevent fraud and facilitation of fraud

- (1) Where a person (P) is a regulated entity or is identified as being responsible for a designated senior management function in an authorised person’s statement of responsibilities under section 60 of FSMA 2000 (application for approval), P is guilty of failing to prevent fraud or facilitation of fraud if a person associated with P commits fraud as defined in the Fraud Act 2006 for the purposes of intending –
 - (a) to obtain or retain business for P, or
 - (b) to obtain or retain an advantage in the conduct of business for P, or
 - (c) to obtain or procure personal advantage for P including through bonuses or incentives.
- (2) It is a defence for P to prove that P had in place procedures that a reasonable person would expect that are designed to prevent persons associated with P from undertaking such conduct.
- (3) An “associated person” means a person who performs services for or on behalf of P and includes employees, agents and subsidiaries.
- (4) Where P is guilty of failing to prevent fraud, the FCA and the PRA have the following powers in relation to that person –
 - (a) a power to require the supply of information;
 - (b) a power to make investigations (including the making of reports);
 - (c) a power of entry into premises controlled by P;
 - (d) powers of inspection, search and seizure with respect to premises controlled by P;
 - (e) a power to make a private or public statement of censure;
 - (f) a power to impose monetary penalties;
 - (g) a power to require restitution for loss or damage.
- (5) The FCA, or PRA in relation to entities it regulates, may also pursue criminal prosecutions.
- (6) A relevant body guilty of a criminal offence under subsection (5) is liable –
 - (a) on conviction on indictment, to a fine,
 - (b) on summary conviction in England and Wales, to a fine, or
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) The Treasury may by regulations make provision about enforcement in connection with the powers included in subsection (4) and may make such modifications to the provision in subsection (4) as the Treasury consider appropriate.”

After Clause 71 - continued

LORD MOYLAN
BARONESS HAYTER OF KENTISH TOWN
LORD HUNT OF KINGS HEATH
LORD SHARKEY

215 Insert the following new Clause—

“Politically exposed persons: UK taxpayers

- (1) Within six months of this Act being passed, the Treasury must take all reasonable steps to make regulations to amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) so as to secure that, for the purposes of the regulation of financial services, individuals who are ordinarily resident for tax purposes in the United Kingdom are not treated as politically exposed persons, or as family members or close associates of a politically exposed person.
- (2) Regulations under this section are subject to the affirmative procedure.”

BARONESS KRAMER

216 Insert the following new Clause—

“Limitation on the powers of the PRA

The PRA may not accept an application from any insurance undertaking, reinsurance undertaking or third-country insurance undertaking for the application of a matching adjustment to a risk-free interest rate term structure for a portfolio of assets with a rating of less than BBB by Standard and Poors Global Ratings or its equivalent.”

Member’s explanatory statement

This amendment seeks to prevent a matching adjustment being applied to a portfolio of high-risk and/or illiquid assets.

217 Insert the following new Clause—

“Distribution of the proceeds of fines

The Treasury must distribute any proceeds of fines levied by the courts for breaches of FSMA 2000 (as amended) and related regulations to the FCA, the PRA and the National Crime Agency.”

Member’s explanatory statement

The purpose is to provide resources to the regulators and the enforcement agency from the proceeds of fines for wrongdoing in financial services and thereby to increase their regulatory and enforcement capacity.

LORD HOLMES OF RICHMOND

218 Insert the following new Clause—

“Digital identification

- (1) Within six months of the passing of this Act, the Secretary of State must publish the Government’s plans for the development and deployment of a distributed digital identification (“Digital ID”) for individuals and corporate entities in the financial sector.
- (2) The digital IDs should be—
 - (a) scalable,
 - (b) flexible, and
 - (c) inclusive.
- (3) The Secretary of State must also undertake a public engagement campaign around Digital IDs to raise awareness and participation in the process with regard to the financial sector.
- (4) In this section—

“digital ID” means a set of attributes related to an entity, as according to the International Organization for Standardization and International Electrotechnical Commission framework 24760-1;

“flexible” means capable of resilience and workable as technologies develop and evolve;

“inclusive” means capable of including all entities and individuals, not least, in respect of their protected characteristics as set out in the Equality Act 2010;

“scalable” means capable of national deployment.”

219 Insert the following new Clause—

“SME rights of action for breaches of FCA handbook

- (1) The Secretary of State must by regulations make provision to allow small and medium-sized enterprises rights of action for breaches of the FCA handbook.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.
- (3) The Secretary of State must lay draft regulations before each House of Parliament for the purposes of subsection (1) within the period of three months beginning with the day on which this Act is passed.”

Member’s explanatory statement

This amendment would create a right of action for SMEs for breaches of the FCA handbook which is currently not available to them.

220 Insert the following new Clause—

“Ethical use of artificial intelligence by companies in the financial sector

- (1) The Secretary of State must by regulations provide that companies operating in the financial services sector who make use of artificial intelligence must ensure its use is in line with guidance published by the Centre for Data Ethics and Innovation.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”

Member's explanatory statement

This amendment would require firms operating in financial services to ensure that their use of AI is ethical and in line with guidance from the CDEI.

221 Insert the following new Clause –

“Designated artificial intelligence officer

- (1) The Secretary of State must by regulations provide that companies operating in the financial services sector who use artificial intelligence (“AI”) must have a designated AI officer.
- (2) The AI officer under subsection (1) has responsibility for ensuring the –
 - (a) safe,
 - (b) ethical,
 - (c) unbiased, and
 - (d) non-discriminatoryuse of AI.
- (3) The AI officer under subsection (1) also has responsibility to ensure that data used in any AI technology is unbiased.
- (4) Regulations under this section are subject to the affirmative procedure.”

Member's explanatory statement

This amendment would require firms in the financial services sector to have a designated AI officer.

222 Insert the following new Clause –

“Regional mutual banks

- (1) The Secretary of State must report to each House of Parliament, within three months of the day on which this Act is passed, on existing barriers to establishing regional mutual banks in the United Kingdom.
- (2) The report must consider –
 - (a) current capital adequacy requirements,
 - (b) other limiting features of the current regime,
 - (c) regional mutual bank structures in jurisdictions outside the United Kingdom and the adoption and adaptation to the United Kingdom of best practice, and
 - (d) the use of dormant assets as seed capital for the establishment of such regional mutual banks.”

Member's explanatory statement

This amendment would require the Secretary of State to report to Parliament on barriers facing the establishment of regional mutual banks in the UK.

EARL ATTLEE

223 Insert the following new Clause—

“Money laundering regulations: exports to Ukraine

- (1) Within three months of this Act being passed, the Treasury must take all reasonable steps to make regulations to amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) so as to secure that they do not prevent a supplier of financial services to a relevant person from supplying financial services in the relevant conditions.
- (2) For the purposes of this section, a relevant person is a small or medium-sized enterprise which exports armoured vehicles or other military equipment to Ukraine for the use of Ukrainian defence forces, or the agent of such an exporter.
- (3) For the purposes of this section, the relevant conditions are that an export licence has been granted to a relevant person under the Export Control Act 2002 for the export of items on the United Kingdom Military List of controlled goods to Ukraine for the use of Ukrainian defence forces, and the relevant person is in the process of supporting the export of those items for which the licence has been granted.
- (4) Regulations under this section are subject to the affirmative procedure.”

BARONESS HAYTER OF KENTISH TOWN

224 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

225 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.

226 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
VISCOUNT TRENCHARD

227 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.
- (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

228 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

BARONESS BENNETT OF MANOR CASTLE

229 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.

LORD SIKKA

230 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 –
 - (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;

After Clause 71 - continued

- (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.

231 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

232 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;

After Clause 71 - continued

- (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.

BARONESS WHEATCROFT
 BARONESS HAYMAN
 BARONESS NORTHOVER

233

Insert the following new Clause—

“Sustainability disclosure requirements

- (1) The FCA must, by the end of 2023, make general rules requiring relevant FCA-regulated persons to make sustainability disclosures in respect of their firms.
- (2) The PRA must, by the end of 2023, make general rules requiring relevant PRA-regulated persons to make sustainability disclosures in respect of their firms.
- (3) A Minister of the Crown must, by the end of 2023, make regulations requiring other relevant persons to make sustainability disclosures in respect of their schemes.
- (4) Sustainability disclosures must include information on—
 - (a) their governance of sustainability-related risks, opportunities, and impacts;
 - (b) their assessment of the actual and potential sustainability-related risks, opportunities and impacts for their firm’s or scheme’s operations, investments, loans and strategy;
 - (c) the processes used to identify, assess, and manage sustainability-related risks, opportunities, and impacts;
 - (d) the metrics and targets used to assess, manage and report on sustainability-related risks, opportunities, and impacts, including the proportion of the firm’s or scheme’s revenue, investments and loans which are sustainable.
- (5) In this section—
 - (a) “relevant FCA-regulated persons” means—

After Clause 71 - continued

- (i) issuers of securities admitted to the official list,
 - (ii) managers of personal pension schemes within the meaning of an order under section 22 of FSMA 2000 (regulated activities),
 - (iii) managers of stakeholder pension schemes within the meaning of such an order, or
 - (iv) persons managing investments within the meaning of such an order, including the activity described in paragraph 6 of Schedule 2 (managing investments);
- (b) “relevant PRA-regulated persons” means –
- (i) persons accepting deposits within the meaning of an order under section 22 of FSMA 2000, or
 - (ii) persons effecting or carrying out a contract of insurance within the meaning of such an order;
- (c) “other relevant persons” means –
- (i) trustees of occupational pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 (categories of pension schemes) with £1bn or more in assets other than public service pension schemes;
 - (ii) an administering authority of the local government pension scheme.
- (6) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment requires the FCA, the PRA and Ministers to make rules and regulations by the end of 2023 requiring sustainability-related disclosures for listed firms, fund managers and personal pension providers, banks and insurers, and local government pension schemes and occupational pension schemes other than public service pension schemes respectively.

LORD FORSYTH OF DRUMLEAN

LORD JUDGE

LORD KIRKHOPE OF HARROGATE

VISCOUNT TRENCHARD

234

Insert the following new Clause –

“Review of guidance relating to politically exposed persons

In FSMA 2000 after section 1R (duty to consider representations made by the Panels) insert –

“Guidance relating to politically exposed persons

1RA Duty of FCA to review guidance on politically exposed persons

- (1) Within six months of the passing of the Financial Services and Markets Act 2023, the FCA must review its guidance on the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) relating to politically exposed persons.
- (2) The review must consider how regulatory burdens might be reduced on politically exposed persons who present low risk of financial crime.
- (3) Following the review the FCA must lay a report, and any consequentially revised guidance, before Parliament.”

After Clause 71 - continued

BARONESS HAYMAN
BARONESS NORTHOVER
BARONESS ALTMANN
BARONESS WHEATCROFT

235 Insert the following new Clause—

“Green taxonomy

- (1) The Treasury must make regulations by the end of 2023 on technical screening criteria for each economic activity included in a green taxonomy.
- (2) The technical screening criteria must set out, for each environmental objective, based on the best available scientific evidence—
 - (a) activities which make a substantial contribution to that objective;
 - (b) activities which make a transitional contribution to that objective;
 - (c) activities which do no significant harm to that objective;
 - (d) the minimum safeguards that those activities must meet.
- (3) The environmental objectives referred to in subsection (2) are—
 - (a) climate change mitigation;
 - (b) climate change adaptation;
 - (c) sustainable use and protection of water and marine resources;
 - (d) transition to a circular economy;
 - (e) pollution prevention and control;
 - (f) protection and restoration of biodiversity and ecosystems.
- (4) Before making regulations in respect of environmental objectives in subsection (3)(a) and (b), the Treasury must seek the advice of the Climate Change Committee.
- (5) Before making regulations in respect of environmental objectives in subsection (3)(c) to (f), the Treasury must seek the advice of the Office of Environmental Protection.
- (6) The economic activities described in subsection (1) are to be prescribed in the regulations.
- (7) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment requires the Treasury to make regulations for each of six technical screening criteria included in the UK taxonomy, seeking the advice of the Climate Change Committee and the Office of Environmental Protection as appropriate.

BARONESS HAYMAN
BARONESS SHEEHAN
BARONESS WHEATCROFT

236 Insert the following new Clause—

“Net zero transition plans

- (1) The Financial Conduct Authority must, by the end of 2023, make general rules requiring relevant FCA-regulated persons to publish net zero transition plans in respect of their firms.
- (2) The Prudential Regulation Authority must, by the end of 2023, make general rules requiring relevant PRA-regulated persons to publish net zero transition plans in respect of their firms.
- (3) A Minister of the Crown must, by the end of 2023, make regulations requiring other relevant persons to publish net zero transition plans in respect of their schemes.
- (4) Net zero transition plans must include information on—
 - (a) the person’s ambitions to mitigate and adapt to the changing climate and to take advantage of the opportunities from the transition to a low greenhouse gas emission economy in line with the Paris Agreement goal or subsequent goal;
 - (b) short, medium and long-term actions which will be undertaken to achieve the ambitions set out in paragraph (a), and how those steps will be financed;
 - (c) targets for the reduction of greenhouse gas emissions from the firm’s or scheme’s operations, investments, loans, supply chain and products;
 - (d) how achievement of the ambitions in paragraph (a) will be overseen and reported on by the persons and how they will be held accountable by their firm’s or scheme’s members;
 - (e) measures to be taken to address material risks to the natural environment which arise as part of these actions, and to take advantage of opportunities to enhance the natural environment.
- (5) In this section
 - (a) “relevant FCA-regulated persons” means—
 - (i) issuers of securities admitted to the official list,
 - (ii) managers of personal pension schemes within the meaning of an order under section 22 of FSMA 2000 (regulated activities),
 - (iii) managers of stakeholder pension schemes within the meaning of such an order, or
 - (iv) persons managing investments within the meaning of such an order, including the activity described in paragraph 6 of Schedule 2 (managing investments);
 - (b) “relevant PRA-regulated persons” means—
 - (i) persons accepting deposits within the meaning of an order under section 22 of the Act, or
 - (ii) persons effecting or carrying out a contract of insurance within the meaning of such an order;
 - (c) “other relevant persons” means—

After Clause 71 - continued

- (i) trustees of occupational pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 (categories of pension schemes) with £1bn or more in assets other than public service pension schemes;
 - (ii) an administering authority of the local government pension scheme;
 - (d) “the Paris Agreement goal” means the goal of holding the increase in the average global temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels referred to in Article 2(1)(a) of the agreement done at Paris on 12 December 2015.
- (6) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This amendment requires the FCA, the PRA and Ministers to make rules and regulations requiring production of net zero transition plans in relation to fund managers and personal pension schemes, banks and insurers, and local government pension schemes and occupational pension schemes other than public service pension schemes respectively.

BARONESS HAYMAN
BARONESS ALTMANN
BARONESS SHEEHAN
BARONESS WHEATCROFT

237

Insert the following new Clause –

“Investment duties of occupational pension scheme trustees

- (1) Section 36 of the Pensions Act 1995 (choosing investments) is amended as follows.
- (2) After subsection (1A) insert –
 - “(1B) In complying with requirements imposed by this section and by the regulations, a trustee or manager must have regard to guidance prepared from time to time by the Secretary of State.
 - (1C) The Secretary of State must prepare guidance on the consideration by trustees and managers of –
 - (a) the likely consequences of any decision in the long term,
 - (b) the impact of their investments on society, climate and nature,
 - (c) the desirability of the trustees maintaining a reputation for high standards of business conduct,
 - (d) the need to act fairly as between beneficiaries and members of the scheme.”

Member’s explanatory statement

This amendment will require the Secretary of State for DWP in relation to occupational pension schemes, to issue guidance to which trustees must have regard, about consideration of the long term consequences of investment decisions, and the impacts of investments on society and the environment, amongst other considerations – without undermining their fiduciary duty to act in the financial interests of beneficiaries.

LORD HOLMES OF RICHMOND

238 Insert the following new Clause—

“Know Your Customer regulations review

Within six months of the passing of this Act, the Treasury must commission a review of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) insofar as they apply to customers of financial services, with the aim of—

- (a) enabling greater inclusion,
- (b) enabling greater efficiency, and
- (c) removing outdated measures.”

239 Insert the following new Clause—

“Access to digital financial services: review

- (1) Within three months of the passing of this Act, the Treasury must commission a review of access to digital financial services.
- (2) The review must consider, but is not limited to—
 - (a) the levels of access that individuals and small and medium-sized enterprises have in relation to—
 - (i) digital payments, and
 - (ii) mobile and internet applications and platforms;
 - (b) the level of digital skills needed to enable digital financial services transactions to be undertaken;
 - (c) the levels of broadband and mobile connectivity needed to support digital financial services transactions.
- (3) The review must consider the barriers to individual and small and medium-sized enterprises in accessing digital financial services and publish recommendations on how these will be addressed.”

Member’s explanatory statement

This amendment would require the Government to commission a review into access to digital financial services. It would follow on from and adopt similar but not identical aims to the Access to Cash Review, published in 2019.

BARONESS NORTHOVER
BARONESS KRAMER

240 Insert the following new Clause—

“Reporting requirement: green agenda

- (1) Within six months of the passing of this Act, and every twelve months thereafter, the PRA and FCA must jointly lay before the House of Commons a report setting out their assessment of—
 - (a) the ways in which the PRA and FCA have incentivised and promoted green finance for the period covered by the report,
 - (b) the impact of the UK financial system in incentivising green investment for the period covered by the report, and
 - (c) the ways in which the PRA and FCA have supported the Secretary of State’s ability to meet the duty set out in section 1 of the Climate Change Act 2008.

After Clause 71 - continued

- (2) For the purposes of this section, “green finance” means financial products or services which aim to reduce emissions, and enhance sinks of greenhouse gases, and to reduce vulnerability of, and maintain and increase the resilience of, human and ecological systems to negative climate change impacts.”

Member’s explanatory statement

This new Clause would place a requirement on the PRA and FCA to report on ways in which they have promoted and incentivised green finance and green investment.

LORD MOYLAN

241 Insert the following new Clause –

“Investor access to regulated non-equity securities: bonds

- (1) The Treasury may by regulations make provision to allow investors to purchase bonds in denominations of £1,000 or less, with the ability to trade these on a recognised investment exchange within the meaning of section 285 of FSMA 2000.
- (2) In this section, “bond” means a tradable debt or debt and equity hybrid instrument, whether or not coupon-bearing and irrespective of maturity date.
- (3) The power to make regulations under this section includes power to modify any enactment.
- (4) The power under subsection (3) includes power to modify the definition of “bond” in subsection (2).
- (5) Regulations under this section are subject to the affirmative procedure.
- (6) Before making regulations under this section, the Treasury must consult the FCA.”

BARONESS ALTMANN

241A Insert the following new Clause –

“Climate and nature sustainable infrastructure and growth partnerships

- (1) The FCA must make rules permitting relevant persons to join together with other relevant persons to jointly manage investments within the meaning of an order under section 22 of FSMA 2000 (regulated activities), including the activity described in paragraph 6 of Schedule 2 (managing investments), for specific purposes, in the form of the establishment and management of climate and nature sustainable infrastructure and growth partnerships.
- (2) The rules under subsection (1) must ensure that the procedure for authorisation for such partnerships, permission to carry on regulated activities in relation to such partnerships, and the rules regulating the performance of regulated activities of such partnerships, are subject to regulatory burdens arising from the FCA which are reduced relative to those in place for the management of other investments within the meaning of such an order.
- (3) The specific purposes referred to in subsection (1) are –
- (a) facilitating compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target);

After Clause 71 - continued

- (b) adapting to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008 (report on impact of climate change);
 - (c) facilitating compliance with section 5 of the Environment Act 2021 (environmental targets);
 - (d) contributing to the conservation and enhancement of the natural environment;
 - (e) without detriment to the purposes in paragraphs (a) to (d), boosting sustainable long-term growth.
- (4) The rules must stipulate that climate and nature sustainable infrastructure and growth partnerships must only accept contributions from current and former beneficiaries of, and clients of, relevant persons.
- (5) The rules must stipulate that the chair, other directors and the first chief executive officer of climate and nature sustainable infrastructure and growth partnerships must be solely appointed by relevant persons.
- (6) Relevant persons are –
- (a) trustees of occupational pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 with £1 billion or more in assets other than public service pension schemes,
 - (b) administering authorities of local government pension schemes, and
 - (c) managers of personal pension schemes within the meaning of an order under section 22 of FSMA 2000.”

Member’s explanatory statement

This amendment proposes to make it easier for personal and LGPS pension schemes, and occupational pension schemes other than public service pension schemes, to jointly establish fund managers for the specific purpose of investing for climate and nature protection via a lighter-touch regime, as long as those funds are only open to beneficiaries and clients of those schemes and the managers are appointed by participating schemes. This is intended to unlock institutional funding in climate and nature projects by schemes which do not otherwise have the capacity to invest.

BARONESS FOX OF BUCKLEY**241B**

Insert the following new Clause –

“Freedom of expression protections for payment service users

- (1) Within six months of this Act being passed, the Secretary of State must, by regulations, make provision preventing payment service providers from refusing or discontinuing access to payment services on account of a person exercising their freedom of expression.
- (2) In this section –
- a “payment service provider” and a “payment service” have the meanings given by regulation 2(1) of the Payment Services Regulations 2017 (S.I. 2017/752), and
 - a “person” means a payment service user as defined by regulation 2(1) of those Regulations.”

After Clause 71 - continued

BARONESS KRAMER
LORD TUNNICLIFFE

241C Insert the following new Clause –

“Protection of banking reform: ring-fencing

- (1) Part 1 of the Financial Services (Banking Reform) Act 2013 (ring-fencing) and amendments made by it to FSMA 2000 may not be modified or revoked except by an Act of Parliament.
- (2) No change or revocation may be made by secondary legislation or by the PRA to the requirements for ring-fenced bodies that departs from the principles set out in the final report of the Parliamentary Commission on Banking Standards.
- (3) This section may not be amended except by an Act of Parliament.”

Member’s explanatory statement

This probing amendment would prevent the Government from making substantive changes to the policy on ring-fencing by statutory instrument, and would prevent ring-fencing policy from being amended in a way that departs from the report from the Parliamentary Commission on Banking Standards.

241D Insert the following new Clause –

“Protection of banking reform: SMCR

- (1) Part 4 of the Financial Services (Banking Reform) Act 2013 (conduct of persons working in financial services sector) and amendments made by it to FSMA 2000 may not be modified or revoked except by an Act of Parliament.
- (2) No change or revocation may be made by regulation or by the FCA to the senior managers and certification regime, or other rules for the conduct of persons working in the financial services sector, that depart from the principles set out in the final report of the Parliamentary Commission on Banking Standards.
- (3) This section may not be amended except by an Act of Parliament.”

Member’s explanatory statement

This probing amendment would prevent the Government from making substantive changes to the policy on the SMCR by statutory instrument, and would prevent SMCR policy from being amended in a way that departs from the report from the Parliamentary Commission on Banking Standards.

Clause 76

BARONESS PENN

242 Page 89, line 36, after “Act” insert “, or under any other enactment,”

Member’s explanatory statement

This amendment and the amendment at page 89, line 37, would allow any provision that may be made by regulations subject to the negative procedure under this Act, or under any other enactment, to be made in regulations under this Act subject to the affirmative procedure.

243 Page 89, line 37, after “regulations” insert “, made under or by virtue of this Act,”

Member’s explanatory statement

See the explanatory statement for the amendment at page 89, line 36.

Clause 78

BARONESS NOAKES

244 Page 90, line 30, at beginning insert “Subject to subsection (3A),”

Member’s explanatory statement

This amendment ensures that retained EU law will cease to have effect no later than 31 December 2026.

245 Page 90, line 31, at end insert –

“(3A) Except to the extent that section 1 has already come into force, section 1 comes into force on 31 December 2026.”

Member’s explanatory statement

This amendment ensures that retained EU law will cease to have effect no later than 31 December 2026.

Financial Services and Markets Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

26 January 2023
