

Financial Services and Markets Bill

SIXTH
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 50

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN
LORD HUNT OF KINGS HEATH

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.

After Clause 50 - continued

- (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.

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN

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.

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN
LORD TYRIE

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.

After Clause 50 - continued

- (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.

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN
LORD NASEBY

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
 - (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.

LORD BRIDGES OF HEADLEY
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN

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 –

After Clause 50 - continued

- (a) overseeing the performance of the FCA from a consumer perspective, including undertaking annual appraisals and commissioning or undertaking periodic reviews as appropriate, and
- (b) appointing, reviewing annually the performance of, and where appropriate dismissing—
 - (i) the Chair and Chief Executive of the FCA (jointly with the Treasury),
 - (ii) the non-executive directors of the FCA appointed by the Department for Business, Energy and Industrial Strategy,
 - (iii) members and Chair of the Financial Services Consumer Panel,
 - (iv) the investigator appointed under section 84(1)(b) of the Financial Services Act 2012,
 - (v) the directors of the Financial Ombudsman Service and its Independent Assessor,
 - (vi) the directors of the Financial Services Compensation Scheme, and
 - (vii) such of its own employees as the FRSC requires to perform its statutory role.
- (4) The FRSC is to be funded by a 1% levy on the FCA's revenue.
- (5) Membership of the FRSC must be selected through open competition and consist of individuals representing the interests of financial services consumer groups.
- (6) The Secretary of State may by regulations, following consultation with consumer groups, make further provision for the FRSC's responsibilities, powers, constitution and membership.
- (7) Any reports published by the FRSC must be laid before Parliament."

Member's explanatory statement

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

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

After Clause 50 - continued

- (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
 LORD SANDHURST
 LORD ROBOROUGH

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);

After Clause 50 - continued

“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.
 - (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.

After Clause 50 - continued

- (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

After Clause 50 - continued

- (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.”;

After Clause 50 - continued

- (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.
 - (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;

After Clause 50 - continued

- (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”).
- (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;

After Clause 50 - continued

- (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”).”;
 - (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”;

After Clause 50 - continued

- (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
- (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;

After Clause 50 - continued

- (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 –
- (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 –

After Clause 50 - continued

- “(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,
 - (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—

After Clause 50 - continued

- (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.
- (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.”

- 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.
- (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
LORD NASEBY

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]

After Clause 52 - continued

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
LORD NASEBY

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
LORD NASEBY

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.

After Clause 65 - continued

- (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

- (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—

After Clause 65 - continued

- (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.

After Clause 65 - continued

- (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
 - (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
LORD SANDHURST
LORD ROBOROUGH

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

After Clause 65 - continued

- (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—
 - (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

After Clause 65 - continued

- (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—
- (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;

After Clause 65 - continued

- (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.

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”.

After Clause 65 - continued

- (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;
- (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

After Clause 65 - continued

- (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;
 - (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

After Clause 65 - continued

- (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
 - (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.

After Clause 65 - continued

- (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 –

Clause 68 - continued

- (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
THE LORD BISHOP OF ST ALBANS

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.
- (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.
- (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).

After Clause 71 - continued

- (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);

After Clause 71 - continued

- (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.”

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-discriminatory
 use 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

After Clause 71 - continued

- (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
BARONESS ALTMANN

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.

After Clause 71 - continued

- (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.”

After Clause 71 - continued

BARONESS KRAMER
BARONESS TYLER OF ENFIELD
LORD NASEBY

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
THE LORD BISHOP OF ST ALBANS

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

After Clause 71 - continued

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

Member’s explanatory statement

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

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.

After Clause 71 - continued

- (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;
 - (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—
 - (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.”

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.

After Clause 71 - continued

- (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.

After Clause 71 - continued

- (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 –
 - (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.

After Clause 71 - continued

- (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.
- (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
BARONESS KRAMER

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.”

After Clause 71 - continued

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);
 - (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.”

BARONESS KRAMER

LORD TUNNICLIFFE

THE LORD ARCHBISHOP OF CANTERBURY

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.

After Clause 71 - continued

- (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.

LORD LEONG

241E Insert the following new Clause –

“Regulation of factoring companies

- (1) Within one year of the passing of this Act, the Secretary of State must by regulations make provision for factoring companies to be regulated by the FCA.
- (2) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This new clause would bring factoring companies, those which provide, arrange or facilitate invoice discounting or factoring, into FCA regulation.

LORD BRIDGES OF HEADLEY

241F Insert the following new Clause –

“Bank of England: digital currency

- (1) The Treasury may by regulations provide for the Bank of England to issue digital currency.
- (2) Regulations under section (1) are subject to the affirmative procedure.
- (3) In relation to any statutory instrument laid before Parliament in draft which contains regulations under subsection (1), if each House of Parliament passes a resolution that the regulations have effect with a specified amendment, the regulations have effect as amended.
- (4) The Bank of England may not issue digital currency except in accordance with regulations under subsection (1).”

Member’s explanatory statement

The Treasury and Bank of England are currently consulting on issuing a ‘digital pound’ as a Central Bank Digital Currency. This amendment would require the issue of such currency to be subject to be voted on and amended in both Houses of Parliament.

LORD TUNNICLIFFE
LORD NASEBY

241FA Insert the following new Clause –

“Defined contribution and defined benefit pension funds investment review

- (1) The Treasury must publish a review of how to incentivise defined contribution (DC) and defined benefit (DB) pension funds to invest in high-growth firms and a diverse range of long-term assets in the United Kingdom, which must include green infrastructure.
- (2) In carrying out the review, the Treasury must consult –
 - (a) the Department for Work and Pensions,
 - (b) the Department for Business and Trade,
 - (c) the Pensions Regulator,
 - (d) the FCA,
 - (e) the PRA,
 - (f) pension trustees, and
 - (g) relevant financial services stakeholders.
- (3) The review must consider the merits of –
 - (a) amending the definition of “specified scheme” within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) so as to increase the threshold of such DC schemes in respect of which trustees and managers are required to produce a value for members assessment under regulation 25 of those Regulations;
 - (b) adjusting the terms of reference for DB Local Government Pension Schemes (LGPS) funds to consider regional development as an investment factor;
 - (c) establishing frameworks to enable DB pension funds to invest in firms and infrastructure alongside the British Business Bank.
- (4) The Treasury must prepare a report on the outcome of the review, and lay it before Parliament within one year of the passing of this Act.”

Member’s explanatory statement

This amendment would compel the Treasury to publish a review within a year of Royal Assent on how to incentivise pension fund schemes to invest in high-growth firms and green infrastructure. The review would have to consider requiring DC schemes to assess the merits of: consolidation, establishing frameworks for British Business Bank investments (so that DB pension schemes will be able to invest alongside them), and adjusting the terms of reference for Local Government Pension Schemes (so they consider regional development as an investment factor).

EARL ATTLEE

241FB Insert the following new Clause—

“Money laundering regulations: exports of aerospace and defence goods or services outside the EU or EFTA

- (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 from supplying such services to a relevant person.
- (2) For the purposes of this section, a relevant person is a small or medium-sized enterprise which is engaged in the international aerospace or defence industry and who—
 - (a) receives remittances from countries outside of the European Union or the European Free Trade Association,
 - (b) is a member of a designated trade association, and
 - (c) has satisfied the Secretary of State that they are beyond reproach.
- (3) For the purposes of this section, a designated trade association is a trade association which has been designated by the Secretary of State for the purposes of this section.
- (4) Regulations under this section are subject to the affirmative procedure.”

Clause 76

LORD SHARKEY

241G Page 89, line 32, at end insert—

“(3A) For each statutory instrument laid before Parliament in draft under this Act, if each House of Parliament passes a resolution that the regulations have effect with a specified amendment, the regulations have effect as amended.”

Member’s explanatory statement

This would allow affirmative SIs generated by this Act to be amended by agreement of both Houses.

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.

LORD SHARKEY

243A Page 89, line 38, at end insert –

“(5A) Any provision that may be made by regulations under this Act subject to the affirmative procedure may by resolution of either House be made according to the “super affirmative” procedure.”

Member’s explanatory statement

This amendment would enable Parliament to insist on the use of the super affirmative procedure to provide increased scrutiny of statutory instruments.

After Clause 76

LORD SHARKEY

243B Insert the following new Clause –

“Super-affirmative procedure

- (1) For the purposes of this Act, the “super-affirmative procedure” is as follows.
- (2) The Treasury must lay before Parliament –
 - (a) a draft of the regulations, and
 - (b) a document which explains the draft regulations.
- (3) Where a draft of the regulations is laid before Parliament under subsection (2), no statutory instrument containing the regulations is to be laid before Parliament until after the expiry of the 30-day period.
- (4) The Treasury must request a committee of either House whose remit includes Treasury matters, economic affairs, industry and regulatory matters to report on the draft regulations within the 30-day period.
- (5) In preparing a draft statutory instrument containing the regulations, the Treasury must take account of –
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee under subsection (4), made within the 30-day period with regard to the draft regulations.
- (6) If, after the 30-day period, the Treasury wishes to make regulations in the terms of the draft or a revised draft, the Treasury must lay before Parliament a statement –
 - (a) stating whether any representations, resolutions or recommendations were made under subsection (5),
 - (b) giving details of any representations, resolutions or recommendations so made, and
 - (c) explaining any changes made in any revised draft of the regulations.
- (7) The Treasury may make a statutory instrument containing the regulations (whether or not revised) if, after the laying of the statement required under subsection (6), a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (8) In this section, references to “the 30-day period” in relation to any draft regulations is to the period of 30 days beginning with the day on which the original draft regulations were laid before Parliament.

After Clause 76 - continued

- (9) For the purposes of subsection (8) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.”

Member’s explanatory statement

This amendment would enable Parliament to insist on the use of the super affirmative procedure to provide increased scrutiny of statutory instruments.

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.

VISCOUNT TRENCHARD

- 246** Page 90, line 32, at end insert –

“(4A) The Treasury must make regulations under subsection (3) so as to bring section 1 and Schedule 1 into force for the purposes of revoking, within the period of two months beginning with the day on which this Act is passed, the provisions mentioned in that Schedule connected with Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.”

Financial Services and Markets Bill

SIXTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

27 February 2023
