

Financial Services and Markets Bill

NINTH
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 71

BARONESS KRAMER

216

Insert the following new Clause –

“Limitation on the powers of the PRA

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

Member’s explanatory statement

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

217 Insert the following new Clause –

“Distribution of the proceeds of fines

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

Member’s explanatory statement

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

LORD HOLMES OF RICHMOND

218 Insert the following new Clause –

“Digital identification

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

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

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

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

“scalable” means capable of national deployment.”

219 Insert the following new Clause –

“SME rights of action for breaches of FCA handbook

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

Member's explanatory statement

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

220 Insert the following new Clause –

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

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

Member's explanatory statement

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

221 Insert the following new Clause –

“Designated artificial intelligence officer

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

Member's explanatory statement

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

222 Insert the following new Clause –

“Regional mutual banks

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

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
LORD FORSYTH OF DRUMLEAN
BARONESS KRAMER
LORD ALTRINCHAM

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.”

BARONESS WORTHINGTON

241FC Insert the following new Clause—

“Climate and nature offsets

In Schedule 2 to FSMA 2000 (regulated activities) after paragraph 9 insert—

“Climate and nature offsets

(9ZA) Selling, or offering or agreeing to sell, climate and nature offsets.””

LORD FORSYTH OF DRUMLEAN

241FD Insert the following new Clause—

“Bank of England digital currency: legislation

The Bank of England may not issue digital currency unless authority to do so is granted by an Act of Parliament which is passed after this Act.”

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
BARONESS NOAKES

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
BARONESS NOAKES

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

After Clause 76 - continued

- (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.
- (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
BARONESS LAWLOR

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.”

Member’s explanatory statement

This amendment ensures that the retained EU Law which replaced the Alternative Investment Fund Managers Directive and associated legislation will cease to have effect no later than two months after the passage of the Bill.

Financial Services and Markets Bill

NINTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

17 March 2023
