

Financial Services and Markets Bill

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 24th May 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 65

BARONESS BOYCOTT
LORD RANDALL OF UXBRIDGE
BARONESS CHAPMAN OF DARLINGTON
BARONESS SHEEHAN

91 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

After Clause 65 - continued

- (1) A person must not carry on a regulated activity in the United Kingdom that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity unless relevant local laws were complied with in relation to that commodity.
 - (2) A person that intends to carry on a regulated activity that may directly or indirectly support a commercial activity in relation to a forest risk commodity or a product derived from a forest risk commodity must establish and implement a due diligence system in relation to that regulated activity to ensure compliance with relevant local laws.
 - (3) The due diligence system referred to in subsection (2) must be in place within 24 months of the day on which the Financial Services and Markets Act 2023 is passed.
 - (4) Within the period of one year beginning with the day on which the Financial Services and Markets Act 2023 is passed, the Secretary of State must by regulations made by statutory instrument make provision about the details of the due diligence system referred to in subsection (2).
 - (5) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
 - (6) 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.
 - (7) 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 subsection (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.
 - (8) 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”.

After Clause 65 - *continued*

LORD HOLMES OF RICHMOND

92 Insert the following new Clause—

“Determination of applications

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

Member’s explanatory statement

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

BARONESS HAYMAN
 BARONESS ALTMANN
 BARONESS DRAKE
 BARONESS SHEEHAN

93 Insert the following new Clause—

“Investment duties of personal pension providers and investment managers

In FSMA 2000 after section 137FD insert—

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

- (1) The FCA may publish guidance on the consideration by relevant FCA-regulated persons of—
 - (a) the likely consequences of any decision in the long term;
 - (b) the impacts of climate, nature and society (including impacts that FCA-regulated persons cannot manage through choosing investments) on their investments and investment strategy, and the impact of their investments and investment strategy on society, climate and nature;
 - (c) public reporting on how they have met the other requirements in this subsection.
- (2) In this section “relevant FCA-regulated persons” means—

After Clause 65 - continued

- (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, and
- (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 works alongside the proposed new Clause after Clause 71 tabled by Baroness Hayman to permit 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, the impacts of risks, and the impacts of investments on society and the environment.

Clause 68

LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED

94

Page 85, line 9, at end insert –

- “(8A) At least annually after the Payment Systems Regulator has imposed the requirement set out in subsection (5), it must publish a report on the impact of the requirement, including its assessment of the impact on the protection of consumers and the behaviour of payment service providers in relation to consumer protection.
- (8B) Reports published under subsection (8A) must provide at least the following information for each payment service provider subject to the requirement –
- (a) the number and value of authorised push payment (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 initially rejected and subsequently appealed and the results of such appeals;
 - (d) the percentage by number and value of APP scams that have been finally rejected;
 - (e) the shortest, longest and average time from notification to decision about reimbursement.”

Member’s explanatory statement

This amendment aims to ensure that the impact of the APP reimbursement requirement is assessed and reported on regularly and 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.

After Clause 71

BARONESS PENN

95 Insert the following new Clause—

“Arrangements for the investigation of complaints

- (1) The Financial Services Act 2012 is amended in accordance with subsections (2) and (3).
- (2) In section 84 (arrangements for the investigation of complaints)—
 - (a) omit the “and” at the end of subsection (1)(a);
 - (b) omit subsection (1)(b);
 - (c) after subsection (1) insert—

“(1A) The Treasury must appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.”;
 - (d) omit subsection (4);
 - (e) in subsection (5), in the opening words, for “regulators” substitute “Treasury”.
- (3) In section 87 (investigation of complaints)—
 - (a) in subsection (9A), after paragraph (b) insert—

“(ba) for the regulator’s response under paragraph (b) to include a summary of—

 - (i) the cases in which the regulator decided not to follow any relevant recommendations, and
 - (ii) the reasons for not following those recommendations;”;
 - (b) in subsection (9B), after paragraph (e) insert—

“(f) such other matters as the Treasury may from time to time direct.”;
 - (c) after subsection (9B) insert—

“(9C) In subsection (9A)(ba) the reference to “relevant recommendations”, in relation to the regulator’s response in respect of an annual report, is a reference to—

 - (a) any recommendations to the regulator contained in that annual report, and
 - (b) any recommendations to the regulator contained in final reports relating to individual complaints given during the period to which that annual report relates.”

Member’s explanatory statement

This new Clause would amend the Financial Services Act 2012 to make the Treasury, rather than the regulators, responsible for the appointment of the Complaints Commissioner and would impose additional reporting requirements.

96 Insert the following new Clause –

“Politically exposed persons: money laundering and terrorist financing

- (1) The Treasury must exercise the power conferred by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (power of appropriate Minister to make regulations about money laundering etc) for the purpose mentioned in subsection (2).
- (2) The purpose is to make provision amending Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“the 2017 Regulations”) (customer due diligence) so as to secure the result required by subsection (3).
- (3) The result required by this subsection is that, where a customer is a domestic PEP, or a family member or a known close associate of a domestic PEP –
 - (a) the starting point for the relevant person’s assessment under regulation 35(3) of the 2017 Regulations is that the customer presents a lower level of risk than a non-domestic PEP, and
 - (b) if no enhanced risk factors are present, the extent of enhanced customer due diligence measures to be applied in relation to that customer is less than the extent to be applied in the case of a non-domestic PEP.
- (4) In this section –
 - (a) “customer” includes a potential customer;
 - (b) “domestic PEP” means a politically exposed person entrusted with prominent public functions by the United Kingdom;
 - (c) “enhanced risk factors”, in relation to a customer who is a domestic PEP or a family member or a known close associate of that domestic PEP, mean risk factors other than the customer’s position as a domestic PEP or as a family member or known close associate of that domestic PEP;
 - (d) “non-domestic PEP” means a politically exposed person who is not a domestic PEP;
 - (e) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations –
 - “politically exposed person” or “PEP”;
 - “family member”;
 - “known close associate”.
- (5) Section 55 of the Sanctions and Anti-Money Laundering Act 2018 (Parliamentary procedure for regulations) does not apply to regulations made in compliance with the duty imposed by subsection (1).
- (6) Regulations made in compliance with the duty imposed by subsection (1) –
 - (a) are subject to the negative procedure, and
 - (b) must be laid before Parliament in accordance with paragraph (a) before the end of 12 months starting with the day on which this section comes into force.
- (7) The Treasury must, before the end of 6 months starting with the day on which this section comes into force, lay before Parliament a statement setting out what progress has been made towards making the regulations in compliance with the duty imposed by subsection (1).

After Clause 71 - continued

- (8) The duty in subsection (7) does not apply where the regulations have been laid before Parliament in accordance with subsection (6)(a) before the end of 6 months starting with the day on which this section comes into force.”

Member’s explanatory statement

This new Clause would impose a duty on the Treasury to amend the money laundering regulations with the effect of ensuring that a politically exposed person who is entrusted with a prominent public function by the UK (or their family members or known close associates) should be treated as representing a lower risk than a person so entrusted by a country other than the UK, and have lesser enhanced due diligence measures applied to them.

97

Insert the following new Clause –

“Politically exposed persons: review of guidance

- (1) The FCA must review its guidance on politically exposed persons (“PEPs”) given under section 139A of FSMA 2000 and in compliance with the requirements under regulation 48 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692)(“the 2017 Regulations”).
- (2) The review required under subsection (1) must include –
 - (a) an assessment of the extent to which the guidance is followed by those persons to whom it is given under regulation 48 of the 2017 Regulations, and
 - (b) in the light of that assessment, consideration as to whether the guidance remains appropriate or whether it should be revised.
- (3) The FCA must –
 - (a) before the end of 3 months beginning with the day on which this section comes into force, publish an update on the FCA’s plan for the review required under subsection (1), and
 - (b) before the end of 12 months beginning with the day on which this section comes into force –
 - (i) publish the conclusions of the review, and
 - (ii) where the FCA concludes that the guidance should be revised, publish draft revised guidance for consultation.
- (4) Publication as required by subsection (3) must be in the way appearing to the FCA to be best calculated to bring the publication to the attention of persons likely to be affected by it.
- (5) The FCA is not required under this section to publish any information whose publication would be against the public interest.
- (6) In this section –
 - (a) “domestic PEP” means a politically exposed person entrusted with prominent public functions by the United Kingdom;
 - (b) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations –
 - “politically exposed person” or “PEP”;
 - “family member”;

After Clause 71 - continued

“known close associate”.”

Member’s explanatory statement

This new Clause would impose a duty on the FCA to review the guidance that the FCA produced in 2017 on the banks’ treatment of politically exposed persons, and publish draft guidance alongside the review, if the FCA concludes that the guidance should be revised.

EARL ATTLEE
VISCOUNT TRENCHARD

98

Insert the following new Clause –

“Withdrawal of banking services

- (1) When a provider of banking services in the United Kingdom decides to cease to provide banking services to an existing customer, or decides not to offer banking services to a specific prospective customer, because of one or more of the reasons specified in subsection (2), the bank is required to inform the FCA about that decision within the period of 4 weeks after the decision is taken.
- (2) The specified reasons are –
 - (a) there is a reasonable suspicion that the customer is, or has, engaged in money laundering;
 - (b) there is a record or specific instance of the customer not complying with requirements under money laundering regulations in a significant and easily-avoidable manner;
 - (c) the provider cannot accept the regulatory risk of providing banking services to the customer despite the reasons set out in paragraphs (a) and (b) not applying;
 - (d) ethical reasons;
 - (e) the customer is in the defence industry.
- (3) The FCA must maintain a record of decisions notified to it under subsection (1).”

EARL ATTLEE

99

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,

After Clause 71 - continued

- (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.”

100 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.”

LORD FORSYTH OF DRUMLEAN

101 Insert the following new Clause –

“Review of guidance relating to politically exposed persons

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

“Guidance relating to politically exposed persons

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

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

After Clause 71 - continued

EARL ATTLEE

102 Insert the following new Clause—

“Performance bonds for small or medium-sized enterprises

- (1) Within six months of the passing of this Act, the Secretary of State must lay before each House of Parliament a report on the availability of performance bonds to small and medium-sized enterprises from the financial markets to cover stage payments in capital projects.
- (2) The report must, among other things, cover collateral requirements.”

LORD FORSYTH OF DRUMLEAN
LORD BRIDGES OF HEADLEY
BARONESS ALTMANN

103 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.”

BARONESS CHAPMAN OF DARLINGTON
BARONESS BOWLES OF BERKHAMSTED
BARONESS ALTMANN

104 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) The review must consider how best to do this while protecting the safeness and soundness of pension funds.
- (3) 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) the Pension Protection Fund,
 - (g) pension trustees, and
 - (h) relevant financial services stakeholders.
- (4) The review must consider the merits of—

After Clause 71 - continued

- (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.
- (5) 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).

LORD MOYLAN
BARONESS HAYTER OF KENTISH TOWN
LORD FORSYTH OF DRUMLEAN
LORD SHARKEY

105 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) After paragraph (14) insert –
 - “(14A) For the purposes of subsections (14B) and (14C), the relevant person must determine whether a person identified as a PEP under paragraph 1 of this Regulation is a domestic PEP.
 - (14B) Where these Regulations apply to a relevant person in relation to whom the FCA is the supervisory authority under Regulation 7, paragraphs (5) to (9) do not apply to a domestic PEP or a family member or a known close associate of a domestic PEP, unless the PEP, the family member or known close associate is engaged or becomes engaged in a higher risk business relationship with the relevant person.
 - (14C) A domestic PEP means a PEP who is or has been entrusted with a prominent public function, including those listed in paragraph (14), under the laws of the United Kingdom.
 - (14D) The FCA may issue guidance to a relevant person as to the definition and assessment of a “higher risk business relationship”. ”

Member's explanatory statement

This amendment brings the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 into alignment with the Recommendations of the Financial Action Task Force as regards the distinction to be made between domestic and foreign Politically Exposed Persons.

BARONESS KRAMER
THE LORD ARCHBISHOP OF CANTERBURY

106 Insert the following new Clause—

“Protection of banking reform: ring-fencing and SMCR

- (1) Parts 1 (ring-fencing) and 4 (conduct of persons working in financial services sector) of the Financial Services (Banking Reform) Act 2013 and amendments made by them 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, including by the PRA and FCA, to—
 - (a) the requirements for ring-fenced bodies, and
 - (b) the senior managers and certification regime, or other rules for the conduct of persons working in the financial services sector,
 that departs from the principles set out in the final report of the Parliamentary Commission on Banking Standards.
- (3) For the avoidance of doubt, subsection (2) includes secondary legislation that would allow ring-fenced bodies permanently to carry out excluded activities.
- (4) This section may not be amended except by an Act of Parliament.”

Member's explanatory statement

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

LORD SHARKEY
VISCOUNT TRENCHARD

107 Insert the following new Clause—

“Interest rates for mortgage prisoners

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FD 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)—

After Clause 71 - continued

“mortgage prisoner” means a consumer who cannot switch to a new mortgage deal (with a new lender or with their existing lender) and includes—

- (a) all 195,000 mortgages identified in CP576 Mortgage Prisoners Review, and
- (b) those who have a regulated mortgage contract with one of the following types of firms—
 - (i) inactive lenders: firms authorised for mortgage lending that are no longer lending;
 - (ii) unregulated entities: firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration; or
 - (iii) closed mortgage books within larger financial groups: a closed mortgage book that is within a larger financial group but in a different entity to an active lender;

“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 with their existing lender;

“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) should make new fixed interest rate deals available to mortgage prisoners who meet criteria determined by the FCA.
- (5) When specifying the criteria which mortgage prisoners need to meet to access the new fixed interest rate deals required by subsection (1) the FCA should take into account the criteria used by active lenders to enable their existing customers to access product transfers and ensure that similar criteria apply in the rules required by subsection (1).
- (6) When specifying the interest rates for new fixed interest rate deals required by subsection (1) the FCA should specify rates for a range of Loan-To-Value (LTV) ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
- (7) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made not 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 ensure their access to fixed rate interest deals.

LORD HOLMES OF RICHMOND

108 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 that use AI to have a designated AI officer.

109 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.

110 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.

After Clause 71 - continued

- (3) The review must consider the barriers to individuals 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.

111 Insert the following new Clause—

“Minimum Banking Service

Where a location with a population of more than 10,000 people has one remaining banking branch which does not offer a full banking service, including for business customers, and which serves less than 20 per cent of that population, a shared banking hub can be opened.”

BARONESS BENNETT OF MANOR CASTLE
LORD SIKKA

112 Insert the following new Clause—

“Size of the UK financial services and markets sector

- (1) Within 12 months of this Act coming into force, the Secretary of State must publish a report assessing the optimum size of the financial services and markets sector in the United Kingdom.
- (2) The assessment in subsection (1) must include the following—
- (a) the skills and availability of the labour force,
 - (b) the impacts of the sector on the availability of capital for other sectors of the economy,
 - (c) the role of the sector in supporting the broader economy,
 - (d) costs to the public and private sector of instability in the financial sector and the risk of collapse, and
 - (e) global trends which are likely to impact UK financial services and markets.”

BARONESS HAYMAN
BARONESS SHEEHAN
BARONESS ALTMANN
BARONESS WHEATCROFT

113 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) In subsection (1) for “subsections (3) and (4)” substitute “subsections (1B), (1C), (3) and (4)”
- (3) After sub-section (1A), add—

After Clause 71 - continued

- “(1B) The assets of the scheme must be invested –
- (a) in the best interests of members and beneficiaries, and
 - (b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries.
- (1C) 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 on the matters listed in subsection (1D).
- (1D) The Secretary of State may prepare guidance on the consideration by trustees and managers of –
- (a) the likely consequences of any decision in the long term;
 - (b) the impacts of climate, nature and society (including impacts that the trustees cannot manage through choosing investments) on their investments and investment strategy, and the impact of their investments and investment strategy on society, climate and nature.”

Member’s explanatory statement

This amendment works alongside the proposed new Clause after Clause 65 tabled by Baroness Hayman to permit the Secretary of State for DWP in relation to occupational pension schemes, to issue guidance to which trustees and firms must have regard about consideration of the long term consequences of investment decisions, the impacts of risks, and the impacts of investments on society and the environment.

BARONESS WHEATCROFT
 BARONESS ALTMANN
 BARONESS NORTHOVER
 BARONESS HAYMAN

114 Insert the following new Clause –

“Sustainability disclosure requirements

- (1) The FCA may make general rules requiring relevant FCA-regulated persons to make sustainability disclosures in respect of their firms.
- (2) The PRA may make general rules requiring relevant PRA-regulated persons to make sustainability disclosures in respect of their firms.
- (3) A Minister of the Crown may make regulations requiring other relevant persons to make sustainability disclosures in respect of their schemes.
- (4) Sustainability disclosures by relevant persons may 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;

After Clause 71 - continued

- (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 to that Act (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 permits the FCA, the PRA and Ministers to make rules and regulations 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.

BARONESS BOWLES OF BERKHAMSTED

115

Insert the following new Clause—

“Competitiveness and investment

In Commission Delegated Regulation (EU) 2017/565 (Information on costs and associated charges), at end of Article 50(2) insert—

- “(c) For these purposes, investment firms are not required to aggregate any costs and charges relating to shares of any investment company admitted to trading on a UK Regulated Market.””

Member's explanatory statement

This would establish a more level playing field between listed companies and listed investment companies which perform essentially the same investment function and resolves issues caused by amalgamating investee company costs with fund management costs.

Clause 76

LORD SHARKEY

116 Page 89, line 39, 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

117 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, or 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.

After Clause 76 - continued

- (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 PENN

118 Page 90, line 16, at end insert –

“(aa) Part 5 of Schedule 2, and section 2 so far as relating to that Part;”

Member’s explanatory statement

This amendment would bring the amendments made in Part 5 of Schedule 2 to the Bill (which relate to the third country CCP run-off regime) into force on the day the Act is passed.

119 Page 90, line 20, at end insert –

- “(e) section (*Politically exposed persons: money laundering and terrorist financing*);
 (f) section (*Politically exposed persons: review of guidance*).”

Member’s explanatory statement

This amendment would ensure that the new Clauses on politically exposed persons to be inserted after Clause 71 would come into force on the day the Act is passed.

VISCOUNT TRENCHARD

BARONESS LAWLOR

120 Page 90, line 34, 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

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

9 June 2023
