

Financial Services Bill

FIFTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 11th February 2021, as follows –

Clause 1	Schedules 6 to 8
Schedule 1	Clauses 23 and 24
Clause 2	Schedule 9
Schedule 2	Clauses 25 to 27
Clauses 3 to 5	Schedule 10
Schedule 3	Clause 28
Clauses 6 and 7	Schedule 11
Schedule 4	Clauses 29 to 32
Clauses 8 to 21	Schedule 12
Schedule 5	Clauses 33 to 46
Clause 22	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 40

BARONESS BOWLES OF BERKHAMSTED
BARONESS KRAMER
LORD SIKKA

74 Insert the following new Clause –

“Alignment of accounting to prudential standards

Where the prudential capital and profit or losses for a banking company are lower than the accounting numbers for that banking company where International Accounting Standards have been used, then the accounting numbers must have an adjustment to the balance sheet and profit and loss account in order to –

- (a) align the accounting numbers with the regulatory capital of the banking company which constrains the growth of a banking company and its ability to lend,

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- (b) align the regulatory capital for going concern purposes with the accounting capital for going concern purposes,
- (c) align the regulatory capital and profits for remuneration purposes with the accounting capital and profits in accordance with the regulations for shareholder approval of director remuneration, and
- (d) align the regulatory capital and profits for distribution purposes with the accounting capital and profits for distribution purposes.”

Member’s explanatory statement

This amendment ensures that when there are prudential filters discounting capital these should be carried through to accounting capital figures.

BARONESS HAYMAN
LORD OATES
BARONESS ALTMANN
BARONESS BENNETT OF MANOR CASTLE

75 Insert the following new Clause –

“Appointment of a member of FCA governing body with responsibility for climate change

In Schedule 1ZA to the Financial Services and Markets Act 2000 (Financial Conduct Authority), after paragraph 2(2)(d) insert –

“(da) a member appointed jointly by the Secretary of State and the Treasury with responsibility for climate change, and”.”

Member’s explanatory statement

This amendment adds a new provision which provides for the appointment of a board member of the FCA with responsibility for climate change.

BARONESS HAYMAN
LORD OATES

76 Insert the following new Clause –

“Duty of PRA to report on climate risk

(1) Schedule 1ZB to the Financial Services and Markets Act 2000 (Prudential Regulation Authority) is amended as follows.

(2) In paragraph 19 –

(a) after sub-paragraph (1)(f) insert –

“(fa) how it has evaluated exposure to climate related financial risks and the impacts of such risks on the stability of the UK financial system, and”;

(b) after sub-paragraph (1) insert –

“(1ZA) In carrying out an evaluation under paragraph 19(1)(fa) the PRA must –

- (a) request advice from the Climate Change Committee, and
- (b) publish the request, together with any associated terms of reference or guidance and any advice received.””

Member's explanatory statement

This amendment would ensure that there is a regular mandatory reporting mechanism for a sector-wide climate risk assessment.

BARONESS BOWLES OF BERKHAMSTED
BARONESS KRAMER
LORD SIKKA

77 Insert the following new Clause—

“Bank of England determination of accounting standards

- (1) Before the Secretary of State approves an accounting standard under the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019, the Bank of England shall determine whether an International Accounting Standard is suitable for use in United Kingdom banking and financial services, having regard to—
 - (a) whether the use of the standard is likely to have an adverse effect on the economy of the United Kingdom, including on economic growth, and
 - (b) whether the standard is suitable for use in prudential regulation.
- (2) The Bank of England shall inform the Secretary of State of their determination under subsection (1).
- (3) Where the Bank of England has determined that a standard is not suitable in accordance with subsection (1), that International Accounting Standard must not be used for the purpose of prudential regulation of banking companies in the United Kingdom.”

Member's explanatory statement

This amendment requires the Bank of England to give a view on accounting standards as part of the UK endorsement process for their use in United Kingdom banking and financial services provision.

BARONESS MCINTOSH OF PICKERING
LORD HOLMES OF RICHMOND

78 Insert the following new Clause—

“Short selling review

- (1) Within the period of six months beginning with the day on which this Act is passed, the Secretary of State must commission a review of legislation relating to short selling.
- (2) Following the conclusion of the review, the Secretary of State must lay a report before Parliament.”

LORD TUNNICLIFFE
LORD EATWELL

79 Insert the following new Clause—

“FCA duty to regulate buy now, pay later firms

- (1) Within 3 months of the day on which this Act is passed, the Secretary of State must lay before Parliament regulations which confer a duty on the FCA to regulate—
 - (a) buy now, pay later credit services, and

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- (b) other lending services that have non-interest-bearing elements.
- (2) The duty conferred in regulations under subsection (1) must take effect no later than 6 April 2022.
- (3) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This new Clause would require the Chancellor to confer responsibility for regulation of the non-interest-bearing elements of buy-now-pay-later lending to the FCA, with such a duty to come into force no later than the beginning of the 2022/23 tax year.

LORD SHARKEY

80 Insert the following new Clause –

“Sharia-compliant financial services

Within one year of the passing of this Act, the Secretary of State must publish an assessment of the availability of Sharia-compliant financial services in the United Kingdom, including financial services to support students.”

LORD GARNIER

LORD ROOKER

LORD FAULKS

BARONESS BENNETT OF MANOR CASTLE

81 Insert the following new Clause –

“Failure to prevent an economic criminal offence

- (1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.

- (2) In this section –

“economic criminal offence” means an offence of the following kind, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system –

- (a) a common law offence of conspiracy to defraud;
- (b) an offence under section 1, 6 or 7 of the Fraud Act 2006;
- (c) an offence under section 1, 17 or 20 of the Theft Act 1968 (theft, false accounting and destruction of documents);
- (d) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
- (e) an offence under section 346 or 398 of the Financial Services and Markets Act 2000 (providing false statements to auditors, and misleading the FCA);
- (f) an offence under section 89, 90 or 91 of the Financial Services Act 2012 (misleading statements);
- (g) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (concealing criminal property, facilitating acquisition, acquisition and use of criminal property);

“relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.

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- (3) In subsection (2), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (4) It is a defence for B to prove that, when the economic criminal offence was committed –
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (5) In subsection (4) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (6) A relevant body guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine,
 - (b) on summary conviction in England and Wales, to a fine,
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether –
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a relevant criminal financial offence,
 takes place in the United Kingdom or elsewhere.
- (8) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member’s explanatory statement

This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to certain offences listed in subsection (2).

LORD GARNIER
LORD ROOKER
LORD FAULKS
BARONESS ALTMANN

82

Insert the following new Clause –

“Failure to prevent an economic criminal offence

- (1) A relevant body (B) is guilty of an offence if a person commits an economic criminal offence when acting in the capacity of a person associated with B.
- (2) In this section –

“economic criminal offence” means any of the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system;

After Clause 40 - continued

“relevant body” and “acting in the capacity of a person associated with B” have the same meaning as in section 44 of the Criminal Finances Act 2017.

- (3) In subsection (2), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (4) It is a defence for B to prove that, when the economic criminal offence was committed—
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (5) In subsection (4), “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing an economic criminal offence.
- (6) A relevant body guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine,
 - (b) on summary conviction in England and Wales, to a fine,
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether—
 - (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a relevant criminal financial offence,
 takes place in the United Kingdom or elsewhere.
- (8) The Chancellor of the Exchequer and the Secretary of State must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing an economic criminal offence.”

Member’s explanatory statement

This new Clause would create a corporate offence of failing to prevent economic crime, defined by reference to the offences listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013.

83

Insert the following new Clause—

“Failure to prevent criminal financial offences

- (1) A relevant body (B) is guilty of an offence if a person commits a criminal financial offence when acting in the capacity of a person associated with B.
- (2) It is a defence for B to prove that, when the criminal financial offence was committed—
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

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- (3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing criminal financial offences.
- (4) In this section –
- “criminal financial offence” means an offence of the following kind, committed in the course of using or providing financial services, that might affect the integrity of the UK financial system –
- (a) an offence listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013, or
 - (b) one of the offences listed below –
 - (i) an offence under section 1, 6 or 7 of the Fraud Act 2006;
 - (ii) an offence under section 1, 17 or 20 of the Theft Act 1968;
 - (iii) an offence under section 993 of the Companies Act 2006;
 - (iv) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002;
 - (v) the common law offence of conspiracy to defraud;
- “relevant body” has the same meaning as in section 44 of the Criminal Finances Act 2017.
- (5) In subsection (4), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (6) A relevant body guilty of an offence under this section is liable –
- (a) on conviction on indictment, to a fine,
 - (b) on summary conviction in England, to a fine,
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (7) It is immaterial for the purposes of this section whether –
- (a) any relevant conduct of a relevant body, or
 - (b) any conduct which constitutes part of a relevant criminal financial offence,
- takes place in the United Kingdom or elsewhere.”

Member’s explanatory statement

This new Clause would create an offence of failing to prevent any financial offence listed in Part 2 of Schedule 17 to the Crime and Courts Act 2013.

BARONESS BOWLES OF BERKHAMSTED
 LORD HODGSON OF ASTLEY ABBOTTS
 LORD ROOKER
 LORD THOMAS OF GRESFORD

84

Insert the following new Clause –

“Commission or facilitation of financial crime

- (1) A relevant body commits an offence if it –
- (a) facilitates a financial crime,

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- (b) uses the financial system for a purpose connected with financial crime, or
 - (c) fails to take the necessary steps to prevent a financial crime from being committed by a person acting in the capacity of the relevant body.
- (2) In subsection (1), a “relevant body” is any person, including a body corporate or an unincorporated association, using or providing financial services.
- (3) In subsection (1), a “financial crime” means an offence of the following kind that might affect the integrity of the UK financial system—
 - (a) fraud, as defined in the Fraud Act 2006;
 - (b) false accounting, as defined in the Theft Act 1968;
 - (c) an offence under the following sections of the Proceeds of Crime Act 2002—
 - (i) section 327 (concealing etc criminal property);
 - (ii) section 328 (arrangements etc concerning the acquisition, retention, use or control of criminal property);
 - (iii) section 329 (acquisition, use and possession of criminal property).
- (4) In subsection (3), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.
- (5) In subsection (1), “facilitates a financial crime” means—
 - (a) is knowingly involved in or takes steps with a view to the commission of any of the offences in subsection (3), or
 - (b) aids, abets, counsels or procures the commission of an offence in subsection (3).
- (6) In proceedings for an offence under subsection (1), it is a defence for the relevant body to show that—
 - (a) it had in place such prevention procedures as it was reasonable in all circumstances for it to have in place, or
 - (b) it was not reasonable in the circumstances to expect it to have any prevention procedures in place.
- (7) A relevant body guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (8) If the offence was committed with the consent or connivance of—
 - (a) a director, manager, secretary or other similar officer of the relevant body, or
 - (b) a person who was purporting to act in any such capacity,that person (as well as the relevant body) is guilty of the offence and liable to be proceeded against and punished accordingly.”

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LORD BLACKWELL

85 Insert the following new Clause—

“Parliamentary oversight of regulators’ delegated powers

- (1) Rules enacted by the PRA and FCA to apply regulations under their delegated powers must be submitted for scrutiny to a committee of each House of Parliament, or a joint committee of both, charged with responsibility for considering—
 - (a) new rules submitted for scrutiny either before taking effect or within 5 days after taking effect, together with the supporting rationale and evidence;
 - (b) how the PRA and FCA are implementing established rules and regulations in accordance with their general duties.
- (2) The Secretary of State must have regard to any report published by such a committee, or committees, which recommends changes to regulations and legislation governing the relevant delegated powers.”

86 Insert the following new Clause—

“PRA and FCA joint coordination committee

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 3F (with-profits insurance policies) insert—
“3FA PRA and FCA joint coordination committee
 - (1) In exercising their general duties and their duty to exercise coordinated exercise of functions, the PRA and FCA must establish and maintain a joint regulatory coordination committee to ensure their activities are consistent and proportionate in meeting their respective general duties and objectives.
 - (2) The committee membership shall be—
 - (a) the Governor of the Bank of England as Chair,
 - (b) the Chief Executives of the PRA and FCA, and
 - (c) two independent non-executive directors of each of the PRA and FCA.
 - (3) The committee must review—
 - (a) how their combined exercise of functions accords with each organisation’s individual duties and objectives, and with the memorandum of understanding between the FCA and the Bank of England;
 - (b) their combined supervisory agenda for each of the five largest banks and five largest insurance companies they regulate; and
 - (c) their combined supervisory agenda for any other dual-regulated entities they identify as systemically important; in order to ensure consistent priorities and proportionate impact.

After Clause 40 - continued

- (4) Where the committee concludes that the combined exercise of functions by the PRA and FCA is not consistent and proportionate it must report that to the PRA and FCA boards, which must consider what changes might be made to address the concern.
- (5) The committee shall meet at least once every year.””

LORD HODGSON OF ASTLEY ABBOTTS

87 Insert the following new Clause—

“International competitiveness

- (1) When making rules using their powers under the Financial Services and Markets Act 2000, the PRA and FCA must—
 - (a) take into account the impact of regulation for the sustainability and international competitiveness of the United Kingdom as a global financial centre;
 - (b) promote the United Kingdom as a centre for innovative financial services products and industries within a system of good governance; and
 - (c) protect and enhance the United Kingdom’s reputation and position as a leading international financial centre.
- (2) In fulfilling this duty the PRA and FCA must each provide an annual statement to the responsible Treasury Minister and relevant parliamentary committees which includes, but is not limited to, the following information—
 - (a) an analysis of the effect of relevant legislation and rules on the overall regulatory burden within the United Kingdom;
 - (b) cumulative cost-benefit analysis of the impact of regulation on the competitive position of United Kingdom financial services internationally;
 - (c) comparative review of the relative position of the United Kingdom’s regulatory framework and the overall regulatory burdens it creates compared to other international financial centres; and
 - (d) any other matter requested by the responsible Treasury Minister.”

Member’s explanatory statement

This is an additional high level policy that could be embedded in the remit for the Regulators to ensure that financial regulation in the UK is benchmarked against other international financial hubs and that the UK’s regulatory framework remains internationally competitive.

LORD SHARKEY
BARONESS KRAMER

88 Insert the following new Clause—

“Access to Sharia-compliant student finance

In the Financial Services and Markets Act 2000, in section 1B (the FCA’s general duties), subsection (3) (the FCA’s operational objectives), at the end insert—

After Clause 40 - continued

- “(d) the Sharia-compliant student finance objective, which is to ensure that students who are eligible for the Government’s student finance provision but do not wish to use it have access to Sharia-compliant finance products for paying tuition fees and for student maintenance on equitable terms with students accessing the Government’s student finance provision.””

Member’s explanatory statement

This is a probing amendment to enable the Grand Committee to debate the issue of access to Sharia-compliant student finance.

BARONESS JONES OF WHITCHURCH
LORD TUNNICLIFFE
LORD OATES
BARONESS HAYMAN

89 Insert the following new Clause –

“Contribution of financial services to climate change targets

- (1) In conducting their functions under this Act, and under the Financial Services and Markets Act 2000 (as amended by this Act), the Treasury, FCA and PRA must have due regard to –
 - (a) the target for 2050 contained in section 1 of the Climate Change Act 2008, and
 - (b) international climate change treaties to which the United Kingdom is a signatory, including the Paris Agreement on Climate Change.
- (2) Within 12 months of the day on which this Act is passed, the Treasury must lay before Parliament a strategy outlining the policies Her Majesty’s Government will pursue to ensure financial services operating within the United Kingdom make a positive contribution to climate change targets.
- (3) In preparing the strategy under subsection (2), the Treasury must consult –
 - (a) the FCA,
 - (b) the PRA, and
 - (c) the Committee on Climate Change.
- (4) The Treasury may choose to consult other persons who appear to the Treasury to have an interest in financial services or climate change.
- (5) In this section, “Committee on Climate Change” means the body established under section 32 of the Climate Change Act 2008.”

Member’s explanatory statement

This amendment would require the Government to consult with key stakeholders in order to formulate a strategy for putting financial services at the heart of green economic growth.

BARONESS BOWLES OF BERKHAMSTED

90 Insert the following new Clause—

“Equivalence

The Treasury may not make an equivalence decision unless it has determined that a third country has equivalent legal and supervisory standards, and it may not make a determination based only on agreement to make reciprocal determinations.”

Member’s explanatory statement

This is a probing amendment in order to discuss equivalence determinations and processes and the role of reciprocity.

BARONESS KRAMER

91 Insert the following new Clause—

“Access to the Term Funding Scheme

No clearing bank will be eligible to access the Term Funding Scheme at the Bank of England unless that bank can demonstrate it is making such funds available to non-clearing banks and non-bank lenders on similar terms.”

Member’s explanatory statement

This is designed to create a level playing field for lenders funding bounce back loans.

92 Insert the following new Clause—

“Enhancement of Basic Accounts or provision through an alternate provider

In regulation 19 of The Payment Accounts Regulations 2015 (payment account with basic features), after sub-paragraph (1)(d) insert—

“(e) access budget management tools and debt advice directly or indirectly through an alternate provider.””

Member’s explanatory statement

This is designed to give enhanced services to those reliant on basic bank accounts.

93 Insert the following new Clause—

“Access to cash

- (1) Within two months of the passing of this Act the Government must publish a report detailing the progress it has made on its commitments to protect access to cash.
- (2) The report must include—
 - (a) an assessment of the impact of COVID-19 on the extent to which access to cash is protected by the providers of relevant services, and
 - (b) an assessment of access to cash, access to digital payment services and training to use digital payment services for—
 - (i) vulnerable people, and
 - (ii) rural communities.”

Member's explanatory statement

This is intended to ensure that cash is available to those who currently rely on it and to increase their capability to use digital payment services.

94 Insert the following new Clause –

“Registered societies with withdrawable share capital: removal of restriction on banking

- (1) The Co-operative and Community Benefit Societies Act 2014 is amended as follows.
- (2) In section 4 (registration etc: special cases), omit subsections (1) and (2).
- (3) Omit section 67 (registered society with withdrawable share capital not to carry on banking etc) and section 68 (power to amend figures in section 67(2)).
- (4) In section 69 (society carrying on banking must display statement) omit subsection (2).”

Member's explanatory statement

This removes provisions which prevent certain Co-operative and Community Benefit Societies from undertaking banking activities.

95 Insert the following new Clause –

“Legal protections for small businesses against the mis-selling of financial services

- (1) Regulation 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (private person) is amended as follows.
- (2) In paragraph (1)(a), leave out “individual” and insert “relevant person”.
- (3) In paragraph (1)(b), leave out “an individual” and insert “a relevant person”.
- (4) After paragraph (1), insert –
 - “(1A) For the purposes of this regulation, a “relevant person” means –
 - (a) any individual;
 - (b) any body corporate which meets the qualifying conditions for a small company under sections 382 and 383 of the Companies Act 2006 in the financial year in which the cause of action arises; or
 - (c) any partnership which would, if it were a body corporate, meet the qualifying conditions for a small company under section 382 of the Companies Act 2006 in the financial year in which the cause of action arises.””

Member's explanatory statement

This new Clause seeks to give small businesses greater legal protections against the mis-selling of financial services products.

96 Insert the following new Clause –

“Establishment of an Office of the Financial Services Whistleblower

- (1) Within one year of the passing of this Act the Secretary of State must by regulations made by statutory instrument establish an Office of the Financial Services Whistleblower (“the Office”).
- (2) The duties of the Office are –

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- (a) the administration of arrangements to facilitate whistleblowing in financial services; and
 - (b) the prevention of detriment to whistleblowers.
- (3) A whistleblower is any person or persons in financial services protected under the Public Disclosures Act 1998.
- (4) The Office has powers to—
- (a) give direction to and monitor activities of the Financial Conduct Authority and the Prudential Regulation Authority relevant to section 1 of this Act, including but not limited to—
 - (i) confidentiality,
 - (ii) protection of whistleblowers, and
 - (iii) the use of disclosed information;
 - (b) give direction to the Financial Conduct Authority and the Prudential Regulation Authority to inform an employment tribunal of the significance of the information provided by the whistleblower when a whistleblower is seeking redress;
 - (c) act as a point of contact for whistleblowers who wish to make a disclosure they believe to be protected under the Public Interest Disclosure Act 1998 or the Public Interest Disclosure (Northern Ireland) Order 1998 (S.I. 1998/1763 (N.I. 17));
 - (d) form and maintain a panel of accredited legal firms and advisory bodies to advise and support whistleblowers;
 - (e) maintain a fund to support whistleblowers in any tribunal process consequent on their whistleblowing actions; and
 - (f) recommend civil and criminal penalties for entities causing detriment to whistleblowers including recompense to whistleblowers for that detriment.”

Member’s explanatory statement

This expands protection for whistleblowers in financial services from detriment.

BARONESS BOWLES OF BERKHAMSTED

97 Insert the following new Clause—

“Whistleblowers

- (1) Where a whistleblower is seeking redress in an employment tribunal, the PRA or FCA, whichever is relevant, must give evidence as to the significance of the information provided by the whistleblower.
- (2) The FCA or PRA must regard any attempt by an individual in authority to identify, dismiss or penalise a legitimate whistleblower as behaviour that is not fit and proper for the purpose of being an authorised person or board member.
- (3) Suspensions under subsection (2) must be reviewed and take into account whether the individual was instructed by a more senior individual.”

After Clause 40 - continued

BARONESS HAYMAN
 BARONESS JONES OF WHITCHURCH
 BARONESS BENNETT OF MANOR CASTLE
 LORD OATES

98 Insert the following new Clause—

“Climate change as an FCA objective

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1B (the FCA’s general duties), after subsection (3)(c) insert—
 “(d) the climate-related financial risk objective (see section 1EA).”
- (3) After section 1E insert—

“1EA The climate-related financial risk objective

- (1) The climate-related financial risk objective is: taking account of climate-related financial risks through capital or assets held by institutions regulated by the FCA.
- (2) The matters which the FCA must take account of in considering climate-related financial risks mentioned in subsection (1) include—
 - (a) physical climate risks relating to specific weather events and longer term shifts in the climate,
 - (b) transitional climate risks arising from the process of adjustment towards a low-carbon economy, and
 - (c) liability risks arising from parties who have suffered loss or damage from physical or transition risk factors seeking to recover losses from those they hold responsible.”

Member’s explanatory statement

This amendment amends the Financial Services and Markets Act 2000 to insert a new FCA climate-related financial risk objective.

LORD STEVENSON OF BALMACARA
 LORD SHARKEY
 LORD HOLMES OF RICHMOND

99 Insert the following new Clause—

“Standard Variable Rates: cap on charges for mortgage prisoners

In section 137A of the Financial Services and Markets Act 2000 (the FCA’s general rules), at end insert—

- “(7) The FCA must make rules by virtue of subsection (1) in relation to introducing a cap on the interest rates charged to mortgage prisoners in relation to regulated mortgage contracts, with a view to securing an appropriate degree of protection for consumers.
- (8) In subsection (7) “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 type of firms—
 - (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending; and

After Clause 40 - continued

- (b) unregulated entities, or firms not authorised for mortgage lending.
- (9) The rules made by the FCA under subsection (7) 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.
- (10) In subsection (9) “Standard Variable Rate” means the variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.
- (11) The FCA must ensure any rules that it is required to make as a result of the amendment made by subsection (7) are made not later than 31 July 2021.””

Member’s explanatory statement

This new Clause would require the FCA to introduce a cap on the Standard Variable Rates charged to consumers who cannot switch to a different lender because of their characteristics and who have a regulated mortgage contract with either an inactive lender or an unregulated entity.

LORD TUNNICLIFFE
LORD EATWELL

100

Insert the following new Clause—

“UK-EU regulatory equivalence

- (1) Within one month of the day on which this Act is passed, the Treasury must lay a statement before both Houses of Parliament containing—
 - (a) an update on the status of negotiations regarding recognition of regulatory equivalence for UK financial services firms operating within the European Union;
 - (b) a summary of the areas in which equivalence recognition—
 - (i) has been granted to UK-based businesses on the same basis as which the UK has granted equivalence recognition to EU based businesses, and
 - (ii) has not been granted.
- (2) Within six months of the day on which this Act is passed, the Treasury must publish a strategy outlining the steps it proposes to take to provide security to retail investors based in the United Kingdom in the event of any equivalence recognition being withdrawn.
- (3) The strategy under subsection (2) must include an assessment of the risks and potential mitigations for investments of different sizes and terms of maturity.”

Member’s explanatory statement

This amendment would require the Government to update Parliament on its financial services equivalence negotiations with the EU. Recognising that equivalence can be withdrawn with little or no notice, the amendment also requires the Treasury to publish a strategy outlining steps to mitigate the impact of any changes on different types of retail investor.

LORD STEVENSON OF BALMACARA
LORD HOLMES OF RICHMOND

101 Insert the following new Clause –

“Bills of Sale Act 1878 and Bills of Sale Act (1878) Amendment Act 1882

- (1) The Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 are repealed.
- (2) In consequence of the repeals made by subsection (1), the following are also repealed –
 - (a) the Bills of Sale Act 1890;
 - (b) the Bills of Sale Act 1891;
 - (c) section 23 of the Administration of Justice Act 1925;
 - (d) in Schedule 11 to the Constitutional Reform Act 2005, in paragraph 4(3), the entry relating to the Bills of Sale Act 1878;
 - (e) in Schedule 13 to the Tribunals, Courts and Enforcement Act 2007, paragraphs 17 to 19;
 - (f) in Schedule 9 to the Crime and Courts Act 2013, paragraph 15.”

Member’s explanatory statement

Bills of Sale are mainly used for “log book loans”, one of the last sources of high cost credit. They are governed by two Victorian statutes which the Law Commission recommended in 2017 should be repealed.

LORD TUNNICLIFFE
LORD EATWELL

102 Insert the following new Clause –

“International collaboration on financial services matters

- (1) Within 6 months of the day on which this Act is passed, the Treasury must lay before Parliament a document outlining the priorities of Her Majesty’s Government as a participant in international discussions on the direction and detail of financial services regulation.
- (2) The document under subsection (1) must include the position of Her Majesty’s Government in relation to –
 - (a) the adoption and enhancement of requirements on public country-by-country reporting of revenue and tax payments by jurisdiction,
 - (b) the coordination of regulatory efforts to tackle financial crime and its facilitation, and
 - (c) any other matters the Treasury deems appropriate,
 insofar as international action on these matters would impact on the carrying out of regulated activities in the United Kingdom.”

Member’s explanatory statement

This probing amendment seeks to understand the position of Her Majesty’s Government on a range of financial services matters currently being discussed at the international level. It would require publication of a document setting out the Government’s position on issues such as country-by-country reporting, as such issues relate to the carrying out of regulated financial services activities in the UK.

BARONESS NEVILLE-ROLFE

103 Insert the following new Clause—

“Impact assessments

- (1) Regulations made under this Act, and under any regulation-making powers inserted by this Act into any other Act, may not come into force until the Secretary of State has laid an impact assessment of each regulation before each House of Parliament.
- (2) Rules made by the FCA or the PRA under rule-making powers given to the FCA or the PRA by this Act, and under any rule-making powers inserted by this Act into any other Act, must be published on the website of the FCA or PRA (as appropriate) at least 30 days before they are due to take effect, together with an impact assessment of the rules.
- (3) In this section, “impact assessment” means an analysis of the costs and benefits of the proposed change, compared to the existing position and other options considered, including the expected impact on UK businesses and the UK economy.”

104 Insert the following new Clause—

“Requirement to report to Parliament on impact on businesses

The Secretary of State must publish an annual report on the impact of measures taken by the FCA, PRA and the Government to regulate financial services, particularly on small business, innovation and competitiveness.”

LORD HODGSON OF ASTLEY ABBOTTS

105 Insert the following new Clause—

“Regulatory cooperation with the European Union

- (1) Within the period of two months beginning with the day on which this Act is passed, the Treasury must prepare and publish a report on progress towards agreeing a memorandum of understanding for regulatory cooperation in financial services with the European Union.
- (2) This report should include—
 - (a) an update on the status of negotiations,
 - (b) a statement on areas where agreement has been reached,
 - (c) areas where further negotiation is required, and
 - (d) a proposed timetable for implementation of areas of agreement.
- (3) The report must also include—
 - (a) an update on progress towards achieving regulatory equivalence for UK financial services firms operating within the European Union,
 - (b) the equivalence assessments that have been granted to UK based businesses, and
 - (c) a statement on where equivalence recognition has not been granted.”

Member's explanatory statement

This new Clause would require a report to be published on progress towards, or completion of, a Memorandum of Understanding with the European Union on regulatory cooperation measures envisaged by the Trade and Cooperation Agreement between the UK and EU and to provide an update on equivalence recognition for UK financial services firms.

106 Insert the following new Clause—

“Recognition of nature of financial products and clients within the regulatory framework

- (1) When making rules using their powers under the Financial Services and Markets Act 2000, the Prudential Regulation Authority and Financial Conduct Authority must structure these rules to recognise different types of financial service businesses, taking into account the nature and risk of the products or services they provide and the level of sophistication of the client receiving those products or services, while maintaining high market standards overall.
- (2) In structuring these rules they must have regard to—
 - (a) the nature of the product or service being provided and the level of risk involved,
 - (b) the level of risk involved to UK customers,
 - (c) whether the product or service is provided to a “retail client” or a “professional client”,
 - (d) whether the client engages professional advisers who are supervised and regulated by either the Prudential Regulation Authority or Financial Conduct Authority,
 - (e) the overall impact on UK financial stability of providing that product or service.
- (3) For the purposes of this section, a “professional client” means a person or entity that falls within COBS 3.5 *Professional clients*, FCA Handbook, and a “retail client” means a client who is not a professional client.”

Member's explanatory statement

This new Clause would require both regulators to consider the nature of the product or service being provided by a financial services provider, the level of risk within that product for UK customers and the nature and level of sophistication of the client receiving those products and services, when developing regulatory rules pertaining to those products or services.

LORD SIKKA

BARONESS BENNETT OF MANOR CASTLE

107 Insert the following new Clause—

“FCA duty to make a statement about ministerial directions on investigations

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 1T (right to obtain documents and information) insert—

“1U Duty to make a statement about ministerial directions on investigations

Where a Minister directs, comments on, or intervenes with an FCA investigation into wrongdoing or malpractice by a company, the FCA must make a public statement about the nature of any such intervention.””

After Clause 40 - continued

LORD HODGSON OF ASTLEY ABBOTTS
 LORD KNIGHT OF WEYMOUTH
 BARONESS BOWLES OF BERKHAMSTED

108 Insert the following new Clause—

“Duty to take account of impacts on sustainable good work

- (1) When undertaking duties and using powers under the Financial Services and Markets Act 2000, the FCA must take into account—
 - (a) the impacts or potential impacts on sustainable good work in the United Kingdom as a consequence of the provision of financial services with particular regard to the evaluation of—
 - (i) net gains in total employment;
 - (ii) quality of work available;
 - (iii) terms and conditions of work available;
 - (iv) opportunities for training and reskilling;
 - (b) the desirability of providing financial services and investment supporting the creation of sustainable good work across the United Kingdom; and
 - (c) the desirability of advancing the international reputation of the United Kingdom for promoting inclusive and sustainable economic growth and decent work for all pursuant to the United Nations Sustainable Development Goals.
- (2) The FCA must publish guidance to organisations providing financial services about fulfilment of the requirements specified in subsection (1)(a)(i) to (iv).
- (3) In this Act, “good work” means work which provides and promotes—
 - (a) fair pay;
 - (b) fair conditions;
 - (c) equality and freedom from discrimination;
 - (d) dignity;
 - (e) autonomy of workers;
 - (f) physical and mental wellbeing;
 - (g) access to institutions and people who can represent workers’ interests;
 - (h) participation of workers in determining and improving working conditions;
 - (i) access to facilities for career guidance and training.”

109 Insert the following new Clause—

“Related disclosure of risk to sustainable good work

An organisation providing financial services must within 12 months of the FCA guidance required under section (*Duty to take into account impacts on sustainable good work*)(2)—

- (a) publish a statement about its policies on—
 - (i) evaluating impacts or potential impacts on sustainable good work in the United Kingdom,

After Clause 40 - continued

- (ii) the integration of the evaluation undertaken under subparagraph (i) into investment decisions or advice provided, and
 - (iii) due diligence undertaken with respect to any impacts or potential impacts on sustainable good work in the United Kingdom which have been identified taking account of its size, the nature and scale of its activities and the types of financial services or products it makes available;
- (b) disclose a statement of adherence in relation to any guidance provided by the FCA under section (*Duty to take into account impacts on sustainable good work*)(2).”

110 Insert the following new Clause –

“Member of FCA governing body with responsibility for investment to promote sustainable good work

In Schedule 1ZA to the Financial Services and Markets Act 2000 (the Financial Conduct Authority), after paragraph 2(2)(d) insert –

“(da) a further member jointly appointed by the Secretary of State and the Treasury with responsibility to promote sustainable good work across the United Kingdom.”

Member’s explanatory statement

This amendment is to ensure that financial regulators understand and give due weight to the importance of creating sustainable good work across the United Kingdom.

LORD HOLMES OF RICHMOND
BARONESS MCINTOSH OF PICKERING
BARONESS ALTMANN

111 Insert the following new Clause –

“Regulation of lead generators for debt advice and debt solution services

In section 22 of the Financial Services and Markets Act 2000 (regulated activities), after subsection (1A) insert –

- “(1AA) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and relates to –
- (a) effecting an introduction of an individual to a person carrying on debt advice and debt solution services, or
 - (b) effecting an introduction of an individual to a person who carries on an activity of the kind specified in paragraph (a) by way of business.”

LORD HOLMES OF RICHMOND
BARONESS MCINTOSH OF PICKERING

112 Insert the following new Clause –

“Designated artificial intelligence officer

- (1) The Secretary of State must by regulations made by statutory instrument provide that companies operating in the financial services sector who use artificial intelligence (“AI”) must have a designated AI officer.

After Clause 40 - continued

- (2) The AI officer under subsection (1) has responsibility for ensuring the—
 - (a) safe,
 - (b) fair,
 - (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.”

113 Insert the following new Clause—

“Review of financial services regulations

- (1) Within six months of the passing of this Act, the Secretary of State must undertake a review of—
 - (a) all financial services regulations, and
 - (b) the rules of all financial services regulators, including the PRA and the FCA.
- (2) The review under subsection (1) must have the aim of ensuring such regulations and rules—
 - (a) are proportionate,
 - (b) encourage economic growth, and
 - (c) do not inhibit innovation or competition.”

114 Insert the following new Clause—

“Review of regulations relating to financial payments

- Within six months of the passing of this Act, the Secretary of State must undertake a review of regulations relating to payments, with the aim of ensuring payments are optimised in terms of—
- (a) strong customer authentication, and
 - (b) capital and liquidity requirements.”

115 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.

After Clause 40 - continued

(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;

“scalable” means capable of national deployment;

“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.”

LORD SHARKEY

116

Insert the following new Clause—

“New fixed rate deals for mortgage prisoners

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) After section 137FD insert—

“137FE FCA general rules: new fixed rate deals for mortgage prisoners

(1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration 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 type 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.

(3) The general rules made under subsection (1) should make new fixed interest rate deals available to mortgage prisoners which meet the following criteria—

- (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.

(4) When specifying the interest rates required by subsection (1) the FCA should set a range of rates including rates for mortgage prisoners with Loan-To-Valuation ratios of less than—

After Clause 40 - continued

- (a) 60%,
 - (b) 75%,
 - (c) 90%,
 - (d) 100%.
- (5) In subsection (4) Loan-To-Valuation ratio means the current amount of the outstanding mortgage loan as a percentage of the valuation of the property which is subject to the mortgage.
 - (6) When specifying the interest rates required by subsection (1) the FCA should take 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 31 July 2021.”

Member’s explanatory statement

This new Clause would require the FCA to make rules allowing mortgage prisoners with inactive lenders and unregulated entities to access new fixed interest rate deals. These would be made available at or below rates specified by the FCA which would take into account the rates offered to customers of active lenders.

117

Insert the following new Clause—

“Conditions for the transfer of a regulated mortgage contract

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FD (FCA general rules: charges for claims management services) insert—

“137FF FCA general rules: conditions for the transfer of a regulated mortgage contract

- (1) A regulated mortgage contract shall not be transferred without the written consent of the borrower.
- (2) When seeking consent from either an existing or a new borrower the lender must provide a statement to the borrower containing sufficient information in order for them to make an informed decision.
- (3) The statement provided pursuant to subsection (2) must be approved in advance by the Financial Conduct Authority and shall include—
 - (a) a clear explanation of the implications in terms of the interest rates which will be offered to the borrower including details of the policies and procedures which will apply for the setting of mortgage interest rates and for the making of repayments if the transfer takes place;
 - (b) how the transfer might affect the borrower;
 - (c) the name and address of the intended transferee, and of any holding company applicable;
 - (d) the relationship, if any, between the lender and the transferee;
 - (e) a description of the intended transferee and of its business, including how long it has been in operation, and details of its involvement in the management of mortgages; and

After Clause 40 - continued

- (f) confirmation that in the absence of a specific consent the existing arrangements will continue to apply.
- (4) Each borrower shall be approached individually and shall be given a reasonable time within which to give or decline to give their consent.
- (5) In this section, “regulated mortgage contract” has the meaning given by article 61(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (6) This section does not apply to transfers of regulated mortgage contracts where the transferee is an active lender and a condition of the transfer is that the borrowers transferred are offered the same interest rates as the active lender’s existing customers.
- (7) This section does not apply to transfers of regulated mortgage contracts made using powers given by Parts 1 to 3 of the Banking Act 2009.”

Member’s explanatory statement

This new Clause would, under certain circumstances, require the written consent of the borrower for the transfer of a regulated mortgage contract.

LORD HOLMES OF RICHMOND

118 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.”

119 Insert the following new Clause—

“Digital operational resilience

- (1) Within 6 months of the passing of this Act, the Secretary of State must conduct a review of the digital operational resilience of financial services providers, and assess any consequential risks for the UK financial system.
- (2) Following the review the Secretary of State may by regulations impose requirements on financial service providers to ensure a standard of digital operational resilience.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.”

LORD SIKKA

120 Insert the following new Clause—

“Supervisory Board

- (1) There is to be a Supervisory Board to perform the function of monitoring the FCA and PRA.
- (2) The Supervisory Board must consist entirely of stakeholders.

After Clause 40 - continued

- (3) Recruitment for the membership of the Supervisory Board is to be conducted through open competition and the appointments are to be confirmed by the House of Commons Treasury Committee, or another relevant House of Commons Select Committee.
- (4) The Chancellor of the Exchequer may nominate individuals to the Supervisory Board.
- (5) The following are ineligible for appointment to the Supervisory Board –
 - (a) current and past employees of the FCA and the PRA, and
 - (b) current employees of organisations supervised by the FCA and the PRA.
- (6) A member's membership of the Supervisory Board cannot exceed a period of five years beginning with the day the member's appointment is confirmed under subsection (3).
- (7) The Supervisory Board has no responsibility for –
 - (a) the day-to-day operations of the FCA or the PRA, and
 - (b) investigations and enforcement of the rules devised by the FCA and the PRA.
- (8) The Supervisory Board's functions are to –
 - (a) provide strategic oversight of the Executive Boards of the FCA and PRA responsible for day-to-day operations;
 - (b) inquire into the adequacy of resources used and available to the FCA and the PRA;
 - (c) seek explanations from the Executive Board for reasons for the delay in launching and completing investigations; and
 - (d) seek explanations from the Executive Board in relation to the efficiency and effectiveness of the FCA and the PRA in discharging their statutory duties.
- (9) The Supervisory Board shall have powers to –
 - (a) demand explanations from the Executive Board on any matter affecting the protection of consumers from harmful practices;
 - (b) secure information from the Executive Board about their transparency and accountability to the public; and
 - (c) liaise with whistle-blowers and examine FCA and PRA policies for protecting and rewarding whistle-blowers.
- (10) The Supervisory Board must hold open meetings with the Executive Boards of the FCA and the PRA at least once every three months.
- (11) The working and background papers of the Supervisory Board must be made publicly available.
- (12) The Supervisory Board must lay before each House of Parliament an annual report highlighting matters of concern relating to the operation of the FCA and PRA which it has discovered in exercising its powers and functions.
- (13) The Supervisory Board must be consulted on appointment and reappointment of the Chief Executives of the FCA and the PRA.”

Member's explanatory statement

This new Clause would create a Supervisory Board to monitor the Executive Boards of the FCA and PRA and provide a diversity of views on the conduct of the FCA and the PRA.

BARONESS BOWLES OF BERKHAMSTED

121 Insert the following new Clause—

“Country-by-country reporting requirements

- (1) The PRA must include country-by-country reporting requirements in reporting requirements for banks.
- (2) The FCA must include country-by-country reporting requirements in reporting requirements for investment firms.”

LORD HODGSON OF ASTLEY ABBOTTS
BARONESS BOWLES OF BERKHAMSTED

122 Insert the following new Clause—

“Regulatory principles – employees’ share schemes

- (1) Section 3B of the Financial Services and Markets Act 2000 (regulatory principles to be applied by both regulators) is amended as follows.
- (2) After subsection (3A) insert—
 - “(3B) “Sustainable growth” includes consideration of the impact on economic growth provided by employees' share schemes.
 - (3C) In subsection (3B) “employees’ share schemes” means schemes with the same meaning as in section 1166 of the Companies Act 2006 (“employees’ share scheme”).”

Member's explanatory statement

This amendment requires regulators to take into account the impact of employees' share schemes.

BARONESS BENNETT OF MANOR CASTLE

123 Insert the following new Clause—

“Regular impact assessments on the UK financial services sector

- (1) Within 12 months of the passing of this Act, and every subsequent five years, the responsible Treasury Minister, Chairs and Chief Executive Officers of the Prudential Regulation Authority and Financial Conduct Authority must each separately provide reports to relevant Committees of the House of Commons and House of Lords.
- (2) The reports under subsection (1) must include an assessment and critical analysis of the following—
 - (a) the costs and benefits of the financial services sector in the United Kingdom;
 - (b) the impact of the financial services sector on inequality and economic development;
 - (c) the impact of capital allocation decisions on real economic activity;
 - (d) net gains or losses to the real economy caused by mergers and acquisitions;
 - (e) risks to the real economy of write downs in the value of financial assets;

After Clause 40 - continued

- (f) risks inherent in “shadow banking”;
 - (g) the impacts of money and financial activities being moved to offshore jurisdictions.
- (3) In preparing the reports under subsection (1), the responsible person must consult with, and publish any submissions from, the Financial Scrutiny and Oversight Network.
- (4) In this section –
- “shadow banking” means financial services which are not subject to regulatory oversight, including but not limited to unregulated activities by regulated entities;
- “real economy” means the production, distribution and consumption of goods and services.”

124 Insert the following new Clause –

“Financial Scrutiny and Oversight Network

- (1) A body corporate called the Financial Scrutiny and Oversight Network (“FSON”) is established.
- (2) The purpose of the FSON is to provide oversight of –
 - (a) the United Kingdom’s financial services industry,
 - (b) its impacts on the real economy, and
 - (c) all associated regulations.
- (3) The Prudential Regulation Authority and Financial Conduct Authority must fund the activities of the FSON.
- (4) The FSON must produce reports on the following matters –
 - (a) proposed changes in financial legislation and regulations;
 - (b) deficiencies identified in retained EU law relating to financial regulation;
 - (c) the net costs and benefits of the UK financial services sector and how these can be improved;
 - (d) the impacts of the UK financial services sector on climate change, the environment, and biodiversity;
 - (e) any other issue relating to financial markets and the financial services sector which, in the opinion of the FSON, threatens the stability and prosperity of the economy of the United Kingdom.
- (5) The Treasury, Prudential Regulation Authority and Financial Conduct Authority must have regard to any publication produced by the FSON.
- (6) The Chancellor of the Exchequer must appoint members to the FSON.
- (7) When appointing members to the FSON, the Secretary of State must have regard to the desirability of appointing members who, between them, have expertise in –
 - (a) academia;
 - (b) accounting;
 - (c) law;

After Clause 40 - continued

- (d) tax justice;
 - (e) climate, biodiversity and the environment;
 - (f) trade unions.
- (8) The FSON shall have the power to appoint officers and staff to assist their functions.
- (9) In this section—
- “real economy” means the production, distribution and consumption of goods and services;
- “tax justice” means the use of tax and fiscal policy to reduce poverty and increase equality.”

LORD HOLMES OF RICHMOND

125 Insert the following new Clause—

“UK Centre for Applied Innovation in Financial Services

- (1) The Secretary of State must, within 3 months of this Act being passed, prepare, publish and lay before Parliament a detailed plan for the establishment, funding, governance and accountabilities of the UK Centre for Applied Innovation in Financial Services (“the Centre”).
- (2) In preparing the plan for the Centre the Secretary of State must have regard to—
 - (a) the recommendations and conclusions of the FinTech Strategic Review;
 - (b) similar existing facilities in jurisdictions outside the United Kingdom and the adoption and adaptation to the United Kingdom of best practice;
 - (c) the capacity of the UK financial services sector (including financial technology) to contribute to the delivery of wider government policy objectives; and
 - (d) developing a framework wherein government and other public sector agencies can collaborate with the financial services sector in a flexible and innovative way without the constraints of government procurement procedures.
- (3) The purpose and activities of the Centre must include, but not be limited to, practical pilot and other experimental innovative work on—
 - (a) the development of standards for security, confidentiality and privacy of data relating to financial transactions, including the identity and authorisation of transactors to enable those data, identities and authorities to be safely reused in other areas, including the delivery of government services, at the request of the owner of that data;
 - (b) collection, aggregation and reporting of financial data to third parties in support of the Second Payment Services Directive and open banking; and
 - (c) applications for new technology, including distributed ledgers, artificial intelligence, internet of things and smart contracts, to leverage the capability of the financial services sector and its contribution to wider policy delivery.

After Clause 40 - continued

- (4) In this section—
- “open banking” refers to—
- (a) the use of open APIs that enable third-party developers to build applications and services around the financial institution;
 - (b) greater financial transparency options for account holders ranging from open data to private data; and
 - (c) the use of open source technology to achieve the above.”

126 Insert the following new Clause—

“Regional mutual banks

- (1) The Secretary of State must report to Parliament, within 3 months of the date of the passing of this Act, on existing barriers to the establishment of regional mutual banks in the United Kingdom.
- (2) The report must consider—
 - (a) current capital adequacy requirements;
 - (b) other limiting features of the current regime;
 - (c) regional mutual bank structures in jurisdictions outside the United Kingdom and the adoption and adaptation to the United Kingdom of best practice; and
 - (d) the use of dormant assets as seed capital for the establishment of such regional mutual banks.”

127 Insert the following new Clause—

“Sale of mortgage loan books

- (1) The Secretary of State must, within 3 months after the date of the passing of this Act, lay before both Houses of Parliament draft regulations to prohibit the sale of mortgage loan books from authorised to non-authorised entities.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”

128 Insert the following new Clause—

“Transaction reporting requirements under MiFID and EMIR

The Secretary of State must, within 3 months of the date of the passing of this Act, report to Parliament on—

- (a) the operational burdens imposed on financial services institutions by transaction reporting requirements under the Markets in Financial Instruments Directive and the European Market Infrastructure Regulation, and
- (b) whether those burdens may be alleviated through the development and deployment of blockchain-based tools, such as transaction ledgers, accessible by regulators and trade repositories.”

After Clause 40 - continued

129 Insert the following new Clause—

“SME rights of action for breaches of FCA handbook

- (1) The Secretary of State must, within 3 months after the date of the passing of this Act, lay before both Houses of Parliament draft regulations 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.”

130 Insert the following new Clause—

“Mandatory regime for open finance

- (1) The Secretary of State must, within 3 months of the date of the passing of this Act, lay before both Houses of Parliament draft regulations requiring that providers of financial services data must make that data available to appropriately licensed third parties on a non-discriminatory basis.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”

131 Insert the following new Clause—

“Financial Policy Committee: financial exclusion

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 9C (objectives of the Financial Policy Committee)—
 - (a) after paragraph (1)(b) insert—

“(c) monitoring exclusion from financial services in the United Kingdom.”
 - (b) after subsection (6) insert—

“(6A) The Committee must lay a report before both Houses of Parliament every quarter on its findings under subsection (1)(c).

(6B) The report under subsection (6A) must include—

 - (a) the number of individuals in the United Kingdom without a current account,
 - (b) the number of small and medium-sized enterprises who rely on cash, rather than financial products, and
 - (c) how financial technology solutions are improving financial inclusion.”

132 [*Withdrawn*]

133 Insert the following new Clause—

“Distributed ledger technologies and market infrastructure

Within three months of the passing of this Act, the Secretary of State must report to Parliament on the options for a pilot regime for financial services market infrastructures based on distributed ledger technologies.”

After Clause 40 - continued

134 Insert the following new Clause –

“Review of financial inclusion

- (1) Within three months of the passing of this Act, the Secretary of State must launch a review of financial inclusion.
- (2) The review must consider matters such as –
 - (a) the appropriateness of the assessment of credit worthiness based on credit ratings for those with minimal credit records;
 - (b) the establishment of a process for onward referral of rejected retail credit applicants;
 - (c) the role of credit unions, in partnership with financial technology companies; and
 - (d) incentivising financial technology companies to work with certain demographics or geographies.”

LORD LEIGH OF HURLEY
BARONESS ALTMANN

135 Insert the following new Clause –

“Financial Ombudsman Service rules to include potential customers

- (1) Section 226 of the Financial Services and Markets Act 2000 (compulsory jurisdiction) is amended as follows.
- (2) After subsection (7) insert –
 - “(7ZA) The rules must provide that –
 - (a) potential customers of financial services, in addition to actual customers, are eligible to make a complaint, and
 - (b) any complaints by potential customers are dealt with under the scheme.””

THE LORD BISHOP OF ST ALBANS

136 Insert the following new Clause –

“Application of Senior Managers and Certification Regime to appointed representatives of directly regulated firms

In section 64A of the Financial Services and Markets Act 2000 (rules of conduct) after subsection (6)(b) insert –

“(c) is the appointed representative of P;”.

Member’s explanatory statement

The amendment is to extend the Senior Managers and Certification Regime to apply to Appointed Representatives of directly regulated firms in the same way as it does apply to regulated firms.

LORD HOLMES OF RICHMOND

136A Insert the following new Clause—

“Duty to report on environmental, social and governance status of funds

- (1) Within three months of the passing of this Act, the Secretary of State must by regulations made by statutory instrument provide that all fund managers regulated by the FCA must report to the FCA on how their funds, and each constituent part of their funds, satisfy such environmental, social and governance requirements as may be prescribed.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”

136B Insert the following new Clause—

“Report on financial technology strategic review

Within three months of the passing of this Act, the Secretary of State must report to Parliament on the implications of the financial technology strategic review for the regulation of financial services.”

136C Insert the following new Clause—

“Review on cashback without a purchase

- (1) Within three months of the passing of this Act, the Secretary of State must report to Parliament on options for enabling cashback without a purchase, and a review of the Revised Payment Services Directive.
- (2) The report under subsection (1) must include a review of the FCA's responsibilities under the Revised Payment Services Directive.”

136D Insert the following new Clause—

“Scale up review

- (1) The Secretary of State must, within 3 months of the passing of this Act, report to Parliament on what action the Government intends to take to reduce any scale up gaps in the UK financial services sector.
- (2) The report must include—
 - (a) consideration of regulatory barriers to the patient capital market in the United Kingdom;
 - (b) full identification of the current scale up gap in the financial services sector, and each constituent element of that gap;
 - (c) other comparative jurisdictions' approach to scale up gaps in the financial services sector;
 - (d) consideration of the factors impacting place-based growth in the financial services sector; and
 - (e) consideration of the relevant recommendations of the Financial Technology Strategic Review.
- (3) In this section—

“patient capital” means long-term equity or debt whose providers do not aim to capture benefits in the short term;

After Clause 40 - continued

“place-based growth” means a broad array of interventions under which a place or area is identified as the main entry point, instead of a sector or target group;

“scale up company” means a company in a specific phase of development, defined as growth or direction;

“scale up gap” means the barriers to scale up businesses accessing finance for growth.”

136E Insert the following new Clause—

“Modernisation of UK law to allow financial market infrastructure to process digital instruments

- (1) Within three months of the passing of this Act, the Secretary of State must report to Parliament on the legislative and regulatory changes required to enable the modernisation of UK law to allow the UK’s financial market infrastructure to process digital instruments.
- (2) The report should—
 - (a) consider the need to dematerialise securities at the same rate as the European Union;
 - (b) consider the need to review insolvency of companies regulated by the PRA or FCA, central securities depositories regulation and the settlement finality directive to allow digital technology;
 - (c) consider how the trading of tokenised securities (such as company shares using a blockchain based register) can be facilitated on investment exchanges and multilateral trading facilities; and
 - (d) consider whether and how digital technology in post-trade processes should be embraced.”

BARONESS MEACHER

136F Insert the following new Clause—

“Regulation of bailiffs and bailiff firms for the purpose of taking control of goods

In section 22 of the Financial Services and Markets Act 2000 (regulated activities), after subsection (1B) insert—

- “(1C) An activity is a regulated activity for the purposes of this Act if it is an activity described by Part 3 of the Tribunal, Courts and Enforcement Act 2007 (enforcement by taking control of goods) performed as a service by way of business specified in an order that may include provisions in respect of—
- (a) defining the people, organisations and activities under Part 3 of the Tribunal, Courts and Enforcement Act 2007 which may or may not be regulated under this section;
 - (b) delegating some or all of the functions of the FCA in respect of this regulated activity to another person or body, either existing or established by an order under this section;
 - (c) setting out which parts of this Act may or may not apply in respect of activities regulated by this section;

After Clause 40 - continued

- (d) making such supplemental provisions as necessary to carry out the functions of the regulator.
- (1D) If an order under subsection (1C) has not commenced within 2 years of the passing of the Financial Services Act 2021, an activity of the type described in subsection (1C) is to be a regulated activity notwithstanding the lack of an order under subsection (1C).”

Clause 42

LORD BRUCE OF BENNACHIE

137

Page 47, line 10, at end insert –

- “(5) Before making regulations under this Act which affect financial services firms and transactions in Scotland, Wales or Northern Ireland, the Secretary of State must consult the relevant devolved administration.”

Member’s explanatory statement

This amendment would require the Secretary of State to consult with the relevant devolved administration before making regulations which affect financial services firms and transactions in Scotland, Wales or Northern Ireland.

Financial Services Bill

FIFTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

3 March 2021
