

Financial Services Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

After Clause 35

EARL HOWE

14

Insert the following new Clause—

“Regulated activities and application of Consumer Credit Act 1974

- (1) This section applies on or at any time after the making of an order under section 22 of the Financial Services and Markets Act 2000, after this section comes into force, which has the effect that a relevant credit activity becomes a regulated activity for the purposes of that Act.
- (2) Section 107(6) of the Financial Services Act 2012 (power to make provision about the application of the Consumer Credit Act 1974) has effect as if—
 - (a) the reference to an order of the kind mentioned in subsection (1) of that section included an order of the kind mentioned in subsection (1) of this section, and
 - (b) the references to a transferred activity included a relevant credit activity which is the subject of an order of the kind mentioned in subsection (1) of this section.
- (3) “Relevant credit activity” means the activity of—
 - (a) entering into an agreement described in article 60F(2) or (3) of the Regulated Activities Order (certain borrower-lender-supplier agreements for fixed-sum credit or running-account credit) as lender, or
 - (b) exercising, or having the right to exercise, the lender’s rights and duties under such an agreement,

so far as the activity is not a transferred activity (as defined in section 107(1) of the Financial Services Act 2012).

After Clause 35 - continued

- (4) “The Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) as it has effect on the passing of this Act.”

Member’s explanatory statement

Section 107(6) of the Financial Services Act 2012 provides that the Treasury may disapply provisions of the Consumer Credit Act 1974 in relation to an activity previously licensed under the 1974 Act, or exempted under specified provisions of that Act, where the activity has become a regulated activity for the purposes of the Financial Services and Markets Act 2000. This amendment extends that power to certain other activities of lenders.

After Clause 36

EARL HOWE

- 14A Insert the following new Clause –

“Retention of personal data under the Market Abuse Regulation

In Article 28 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (data protection), omit “Personal data is to be retained for a maximum period of five years.””

Member’s explanatory statement

This amendment removes the prohibition, under the Market Abuse Regulation, on retaining personal data for more than five years.

After Clause 40LORD SHARKEY
BARONESS KRAMER
BARONESS SHEEHAN

- 15 Insert the following new Clause –

“Access to Sharia-compliant financial services including student finance

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

After Clause 40 - continued

BARONESS MEACHER
LORD STEVENSON OF BALMACARA
BARONESS MORGAN OF COTES
THE LORD BISHOP OF ST ALBANS

16 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;
- (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).”

LORD STEVENSON OF BALMACARA
BARONESS MCINTOSH OF PICKERING

17 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. This amendment is to further probe the Government's plans to review that recommendation.

BARONESS BOWLES OF BERKHAMSTED
BARONESS KRAMER

18 Insert the following new Clause—

“Undertakings from regulators

The FCA and the PRA must each give and publish the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.”

Member's explanatory statement

This amendment would require the FCA and PRA to give undertakings about liaising with Parliament.

19 Insert the following new Clause—

“Undertakings from regulators (No. 2)

- (1) The FCA and the PRA must each give and publish an undertaking on the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.
- (2) Each undertaking must establish that all consultation documents, rules, draft rules and impact assessments are provided to Parliament no later than publication or the beginning of public consultation procedures.
- (3) Each undertaking must include having due regard to recommendations made by committees or resolutions of Parliament.”

20 Insert the following new Clause—

“Undertakings from regulators (No. 3)

- (1) The FCA and the PRA must each give and publish an undertaking on the modes and timing of the provision of information and responses to Parliament concerning their activities and rule-making.
- (2) Each undertaking must establish—
 - (a) a principle of openness and sincere cooperation in assisting a relevant select committee of either House in the conduct of any inquiry and providing detailed information when writing to, or questioned by, committees;
 - (b) a commitment to provide—
 - (i) policy documents,
 - (ii) consultation documents,
 - (iii) rules,
 - (iv) draft rules, and
 - (v) impact assessments

After Clause 40 - continued

- no later than publication or when launching any consultation procedure (as applicable), and to have due regard to recommendations made by committees or resolutions of Parliament made in response;
- (c) a commitment to provide regular updates on—
 - (i) principles, and
 - (ii) kinds of indicators or information
 that they use in developing rules and policies;
 - (d) a commitment to provide, on request, or on their own initiative, documents necessary for the scrutiny of their activities, where necessary with appropriate secrecy provisions;
 - (e) a commitment to arrange for their respective executive committee members, chairs, chief executive officers and panel members, to meet relevant committees, including confidential briefings where necessary.”

LORD SHARKEY
LORD STEVENSON OF BALMACARA
BARONESS KRAMER

21 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)—
 - “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;
 - “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.

After Clause 40 - continued

- (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 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.
- (5) 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-Valuation (LTV) ratios taking into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
- (6) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made 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 mortgage prisoners and, under specified circumstances, ensure their access to fixed rate interest deals.

BARONESS HAYMAN

LORD OATES

BARONESS JONES OF WHITCHURCH

BARONESS BENNETT OF MANOR CASTLE

22

Insert the following new Clause –

“Reporting on climate related financial risks and contribution of financial services to climate change targets

- (1) The FCA and PRA must within 12 months of the day on which this Act is passed, and every 12 months thereafter, lay before Parliament a report setting out –
 - (a) how they have evaluated the UK financial system’s and regulated businesses’ exposure to climate related financial risks, and
 - (b) the impacts of such risks on the stability of the UK financial system.
- (2) In preparing the report in subsection (1) the PRA and FCA must –
 - (a) request advice from the Climate Change Committee, and
 - (b) publish the request, together with any associated terms of reference, guidance and advice received.
- (3) The Treasury must –
 - (a) within 12 months of the day on which this Act is passed set out a timetable to consult on a review of the objectives of the FCA and PRA and how such objectives will have regard to the United Kingdom’s net zero target as contained in section 1 of the Climate Change Act 2008; and

After Clause 40 - continued

- (b) within 12 months of the day on which this Act is passed, and every 12 months thereafter, set out details of all government guidance relating to climate considerations which has been provided to the FCA and PRA through remit letters or other correspondence.
- (4) The Treasury, FCA and PRA must, in relation to any future consultations relating to financial services operating within the United Kingdom, publish details setting out—
 - (a) the extent to which commitments to net zero and biodiversity have been taken into consideration; and
 - (b) how the proposed changes set out in such consultations would contribute to the achievement of the United Kingdom’s net zero target as contained in section 1 of the Climate Change Act 2008.”

Member’s explanatory statement

This amendment is to provide for the establishment of a regular reporting framework for systemic climate related financial risks. It also aims to ensure that appropriate consideration is given to climate considerations in future consultations and policy development.

BARONESS HAYMAN
BARONESS ALTMANN
LORD OATES

BARONESS BENNETT OF MANOR CASTLE

23 Insert the following new Clause—

“Appointment of an FCA senior manager with responsibility for climate change

In Schedule 1ZA to the Financial Services and Markets Act 2000 (The Financial Conduct Authority), after paragraph (8) insert—

“(9) The FCA must appoint a senior manager with responsibility for climate change.””

Member’s explanatory statement

This amendment adds a new provision which provides for the appointment of a senior manager within the FCA with responsibility for climate change.

BARONESS NEVILLE-ROLFE

24 Insert the following new Clause—

“Requirement to report to Parliament on impact on businesses

The Treasury 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 SHARKEY
BARONESS KRAMER

As an amendment to Amendment 24

25 After “business,” insert “consumer protection,”

After Clause 40 - continued

LORD LEIGH OF HURLEY
BARONESS ALTMANN

26 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
BARONESS BENNETT OF MANOR CASTLE
LORD SIKKA

27 Insert the following new Clause—

“Requirement for the provision of gambling blockers

In regulation 71 of the Payment Services Regulations 2017 (S.I. 2017/752), after paragraph (2) insert—

- “(2A) A framework contract must provide for the payment services user to have the right to stop the use of a payment instrument for specific purposes relating to transactions sent to gambling firms, as identified by card schemes merchant category codes.””

Member’s explanatory statement

This amendment requires payment service providers to offer an opt-in option for consumers to block, or access pre-agreed spending limits for, gambling transactions.

BARONESS NEVILLE-ROLFE
BARONESS MCINTOSH OF PICKERING
LORD HOLMES OF RICHMOND

28 Insert the following new Clause—

“Digital identification in the UK financial system

- (1) The Treasury may by regulations establish a scheme for the use of a distributed digital identification for individuals and corporate entities operating in the UK financial system.
- (2) Regulations under this section are subject to the affirmative procedure.
- (3) In this section, “the UK financial system” has the same meaning as in the Financial Services and Markets Act 2000 (see section 11 of that Act).”

After Clause 40 - *continued*

BARONESS NEVILLE-ROLFE
LORD HOLMES OF RICHMOND

29 Insert the following new Clause –

“Digital identification in the UK financial system: review

- (1) The Treasury must make a statement to Parliament, before 1 September 2021, about establishing a scheme for the use of a distributed digital identification for individuals and corporate entities operating in the UK financial system.
- (2) In this section, “the UK financial system” has the same meaning as in the Financial Services and Markets Act 2000 (see section 1I of that Act).”

LORD HOLMES OF RICHMOND

30 Insert the following new Clause –

“Digital identification

- (1) Within six months of the passing of this Act, the Treasury 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 Treasury must also undertake a public engagement campaign around Digital IDs to raise awareness and participation in the process.
- (4) In this section –

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

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

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

“scalable” means capable of national deployment.”

31 Insert the following new Clause –

“Mandatory regime for open finance

- (1) The Treasury 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.”

After Clause 40 - continued

32 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 Treasury must by regulations make 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) In making regulations under subsection (1), the Treasury must—
 - (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.
- (3) Regulations under this section are subject to the affirmative procedure.”

LORD SIKKA

BARONESS BENNETT OF MANOR CASTLE

THE LORD BISHOP OF ST ALBANS

33 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.””

34 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.
- (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.

After Clause 40 - continued

- (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

The new Clause will create a Supervisory Body for each of the FCA and the PRA. Its function would be to internally monitor the Executive Boards of the FCA and the PRA and provide a diversity of views on the conduct and practices of the FCA and the PRA.

LORD HOLMES OF RICHMOND

35 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) after paragraph (1)(b) insert—
 - “(c) monitoring exclusion from financial services in the United Kingdom.”
- (3) Within six months of the passing of this Act, the Treasury must report on any progress made by the Bank of England on offering basic bank accounts directly to financially-excluded individuals.”

BARONESS BENNETT OF MANOR CASTLE
LORD SIKKA

36 Insert the following new Clause—

“UK Finance Watch

- (1) A body corporate called UK Finance Watch is established.
- (2) The purpose of UK Finance Watch 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 PRA and FCA must fund the activities of UK Finance Watch.
- (4) UK Finance Watch 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) any other issue relating to financial markets and the financial services sector which, in the opinion of UK Finance Watch, threatens the stability and prosperity of the economy of the United Kingdom.
- (5) The Treasury, PRA and FCA must have regard to any publication produced by UK Finance Watch.
- (6) The Chancellor of the Exchequer must appoint members to UK Finance Watch.
- (7) When appointing members to UK Finance Watch, the Chancellor of the Exchequer must have regard to the desirability of appointing members who, between them, have expertise in—
 - (a) academia;
 - (b) accounting;
 - (c) law;
 - (d) climate, biodiversity and the environment;
 - (e) trade unions.
- (8) UK Finance Watch may appoint officers and staff to assist their functions.”

After Clause 40 - continued

37 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 PRA and FCA 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 poverty, regional inequality and economic development;
 - (c) the impact of capital allocation decisions on real economic activity.
- (3) In this section, “real economy” means the production, distribution and consumption of goods and services.”

LORD BLACKWELL

37A Insert the following new Clause –

“Parliamentary engagement on rules

- (1) Rules made by the PRA and FCA must be submitted with the supporting rationale either before taking effect or within 5 days after taking effect to any committee of either House of Parliament, or a joint committee of both, charged with considering such rules (a “relevant committee”).
- (2) The PRA and FCA must respond within 6 months to a relevant committee whose report has raised concerns about the impact of any rule made by that regulator, setting out what actions they have taken or propose to take in response to those concerns.
- (3) The Treasury must have regard to any report published by a relevant committee which recommends changes to regulations or legislation governing the powers of the PRA or FCA to make rules.”

Member’s explanatory statement

This amendment introduces a procedure for rules made by the regulators to be scrutinised by Parliament, for the regulator to respond to a scrutiny report, and the Treasury to have regard to it, but does not require advance approval of new rules which would undermine the independence of regulators in exercising their delegated powers.

LORD SHARKEY
LORD STEVENSON OF BALMACARA

37B Insert the following new Clause –

“Access to fixed rate mortgages for mortgage prisoners

- (1) The Treasury must by regulations provide for all mortgage prisoners who meet the conditions set out in subsection (2) to be offered a fixed rate mortgage by no later than 1st December 2021 on terms no less favourable than mortgages offered to consumers who are not mortgage prisoners and have broadly similar creditworthiness characteristics.
- (2) The conditions are –
 - (a) being up to date with payments or having aggregate arrears of no more than one monthly payment in the last 12 months,
 - (b) having a remaining mortgage term of two years or more,
 - (c) having an outstanding loan amount of at least £10,000, and
 - (d) not having had consent to let the mortgaged property.
- (3) In subsection (1) –

“mortgage prisoner” means a consumer who cannot switch to a different lender 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; or
 - (b) unregulated entities, or firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administrators.
- (4) The Treasury may by regulations define “broadly similar creditworthiness characteristics” for the purposes of subsection (1).
- (5) Regulations under subsection (1) are subject to the negative procedure.”

LORD YOUNG OF COOKHAM
LORD BLUNKETT

37C★ Insert the following new Clause –

“Payment to recipient acting for person without capacity

- (1) This section applies to –
 - (a) payments to a customer by an institution authorised by the Bank of England under Part I of the Banking Act 1987;
 - (b) payments to a member or depositor by a building society within the meaning of the Building Societies Act 1986; and
 - (c) payments of such other descriptions as may be specified for the purposes of this section by an order made by the Secretary of State.
- (2) A body by which payments to which this section applies fail to be made may, in accordance with the requirements of this section, enter into an agreement under which the payments (or any description of those payments) are to be made to the person with whom the agreement is made (“the recipient”) instead of to the person who would otherwise be entitled to receive them.

After Clause 40 - continued

- (3) A body making a payment pursuant to an agreement in respect of which those requirements are complied with may not by making it incur any liability to the person who would otherwise be entitled to receive it, unless that body has reasonable cause to believe that the recipient is likely to apply the money he or she receives otherwise than in that person's best interests or that person has informed the body that the payment is not to be made.
- (4) A body shall not enter into an agreement under this section in respect of any payments if the person who would, apart from this section, be entitled to receive them has informed that body that he or she does not wish such an agreement to be made.
- (5) A body shall not enter into an agreement under this section unless either –
 - (a) a document signed by a registered medical practitioner stating that the person concerned is without capacity to manage his or her financial affairs is provided; or
 - (b) a statement in writing has been provided by the proposed recipient to the effect –
 - (i) that he or she understands his duty to apply the money he or she receives in the best interests of the person who would otherwise be entitled to it;
 - (ii) that he or she is aware that he or she may incur civil or criminal liability if he or she misapplies the money; and
 - (iii) that, so far as he or she is aware, no other person has authority to receive the money by virtue of a power of attorney or an order or appointment made by the court.
- (6) An agreement under this section may specify that the payments to which it applies must be from a Child Trust Fund or Junior ISA and must specify –
 - (a) the period for which it is to remain in force; and
 - (b) the amount or maximum amount of the payments that are to be made under it, either as a single amount or as separate amounts for different periods or payments of different descriptions.
- (7) The aggregate of the payments to be made under an agreement shall not exceed £5000 in any year and must comply with regulations covering Child Trust Funds and Junior ISAs.
- (8) This section shall cease to have effect two years after commencement.”

Member's explanatory statement

The purpose of this New Clause is to provide safeguards for payments to be made from Child Trust Funds and Junior ISAs on behalf of children with learning disabilities, without going to the Court of Protection.

LORD HOLMES OF RICHMOND

37D★

Insert the following new Clause –

“Payment services and the provision of cash

In Part 2 of Schedule 1 to the Payment Services Regulations (S.I. 2017/752) (activities which do not constitute payment services), after paragraph 2 insert –

After Clause 40 - continued

- “3 (1) The provision of cash otherwise than through an automatic teller machine does not constitute a payment service where –
- (a) there is a transfer of a corresponding amount from a payment account held by the recipient of the cash to a relevant person, and
 - (b) the payment account is not provided by a relevant person.
- (2) In sub-paragraph (1), “relevant person” means –
- (a) where the cash is provided by a person (“P1”) through one or more persons acting on P1’s behalf, P1 and each person acting (directly or indirectly) on P1’s behalf;
 - (b) where the cash is provided by a person (“P2”) otherwise than on behalf of another person or through one or more persons acting on P2’s behalf, P2.
- (3) The execution of the transfer referred to in sub-paragraph (1)(a), and other services enabling that transfer, are not excluded from the meaning of payment services by this paragraph.””

Member’s explanatory statement

This amendment provides that, in certain circumstances, the provision of cash does not constitute a “payment service” for the purposes of the Payment Services Regulations 2017. Persons would no longer have to be authorised by, or registered with, the FCA in order to provide that service.

37E★ Insert the following new Clause –

“Access to digital payments review

- (1) Within one month of the passing of this Act, the Government must conduct a review into access to digital payments.
- (2) The review must include, but is not limited to, consideration of the accessibility and usability of digital payments for –
 - (a) people with protected characteristics, as defined in the Equality Act 2010,
 - (b) people from different socioeconomic groups, and
 - (c) people from each nation and region of the United Kingdom.
- (3) The review must also investigate the link between digital exclusion and financial exclusion.”

Clause 44

EARL HOWE

38 Page 47, line 33, leave out “subsection (2)” and insert “subsections (2) and (2A)”

Member’s explanatory statement

See the explanatory statement for the Minister’s second amendment at page 47, line 34.

39 Page 47, line 34, leave out subsection (2) and insert –

“(2) In section 34 –

Clause 44 - continued

- (a) subsections (1), (3) and (5) extend to England and Wales only, and
- (b) subsection (4) extends to England and Wales and Northern Ireland only.”

Member’s explanatory statement

This amendment provides that certain amendments of sections 6 and 7 of the Financial Guidance and Claims Act 2018 in Clause 34 extend only to England and Wales.

40 Page 47, line 34, at end insert –

“(2A) In Schedule 12, paragraph 14(3A) extends to Northern Ireland only.”

Member’s explanatory statement

This amendment and the Minister’s amendment at page 47, line 33 provide that subsection (5B) of section 303Z1 of the Proceeds of Crime Act 2002, inserted by Schedule 12 to the Bill (see the Minister’s amendment at page 182, line 26), extends to Northern Ireland only.

Clause 45

EARL HOWE

41 Page 48, line 21, leave out from “appoint” to end of line 22

Member’s explanatory statement

This amendment is consequential on the Minister’s amendment at page 182, line 26.

42 Page 48, line 34, leave out subsection (9)

Member’s explanatory statement

This amendment is consequential on the Minister’s amendment at page 48, line 21.

Schedule 2

EARL HOWE

43 Page 65, line 27, at end insert –

“(ba) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and”

Member’s explanatory statement

This amendment requires the FCA to have regard to the carbon target for 2050 when making Part 9C rules (defined in section 143F of the Financial Services and Markets Act 2000, inserted by Schedule 2 to the Bill).

BARONESS BENNETT OF MANOR CASTLE

As an amendment to Amendment 43

44 After “2050),” insert “and the United Kingdom’s commitments under the United Nations Convention on Biological Diversity,”

Schedule 2 - continued

LORD EATWELL
 BARONESS BOWLES OF BERKHAMSTED
 BARONESS NOAKES
 BARONESS BENNETT OF MANOR CASTLE

45 Page 66, line 17, at end insert –

“143HA Parliamentary engagement on rules

- (1) Before publishing a draft of proposed Part 9C rules under section 138I(1)(b), the FCA must make arrangements with the Treasury for the draft to be laid, as soon as practicable, before each House of Parliament.
- (2) The FCA may not make the rules contained in the draft unless –
 - (a) a relevant committee has, within the relevant period, published a report on the proposed rules, and –
 - (i) the relevant committee consents to proposed rules being made, or
 - (ii) the FCA has, having had due regard to any objections contained within the report, responded to those objections in writing, or
 - (b) the relevant period has elapsed without any report being published.
- (3) Subsections (1) and (2) do not apply in the event of rules being made using the exemption under section 138L.
- (4) In the event of rules being made using the exemption under section 138L, the FCA must, as soon as practicable –
 - (a) notify a person nominated by the relevant committee, and
 - (b) provide a written statement of the reasons for the rules being made under that procedure.
- (5) In this section –

“relevant committee” means a committee of each House of Parliament, or a joint committee of both, charged with scrutinising proposed Part 9C rules;

“the relevant period” means the period –

 - (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before both Houses as mentioned in subsection (1), and
 - (b) ending with –
 - (i) the end of the period for public consultation specified under section 138I(2)(e), or
 - (ii) in the event of this being less than 8 weeks, or either House of Parliament being adjourned or prorogued for a total of 30 days or more during this period, the end of any period agreed in writing by the FCA and a person nominated by the relevant committee.
- (6) For the purposes of subsection (5) –

Schedule 2 - continued

- (a) where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses, and
- (b) if either House of Parliament is recalled, either under standing orders or pursuant to statute, any day on which it sits pursuant to the notice of that recall is to count as a day of adjournment.”

Member’s explanatory statement

This amendment introduces a formal mechanism for Parliament to scrutinise those draft Part 9C rules which are published by the FCA for public consultation. These requirements are disapplied in the event of the FCA using their urgent rule-making powers.

EARL HOWE

46 Page 80, line 22, at end insert –

“Carbon target

21A In relation to the making of Part 9C rules that are made on or before 1 January 2022 –

- (a) paragraph (ba) of section 143G(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
- (b) section 143H(1)(b) of that Act does not require an explanation in respect of matters specified in that paragraph.”

Member’s explanatory statement

This amendment disapplies the FCA’s duty to have regard to the carbon target for 2050 (see the Minister’s amendment at page 65, line 27) in relation to Part 9C rules made on or before 1 January 2022.

Schedule 3

EARL HOWE

47 Page 82, line 14, at end insert –

“(ca) the target in section 1 of the Climate Change Act 2008 (carbon target for 2050), and”

Member’s explanatory statement

This amendment requires the PRA to have regard to the carbon target for 2050 when making CRR rules (defined in section 144A of the Financial Services and Markets Act 2000, inserted by Part 1 of Schedule 3 to the Bill) and also when making section 192XA rules (see sections 192XA and 192XB, inserted by Part 2 of Schedule 3 to the Bill).

LORD EATWELL
BARONESS BOWLES OF BERKHAMSTED
BARONESS NOAKES
BARONESS MCINTOSH OF PICKERING

48 Page 83, line 2, at end insert –

“144DA Parliamentary engagement on rules

Schedule 3 - continued

- (1) Before publishing a draft of proposed CRR rules under section 138J(1)(b), the PRA must make arrangements with the Treasury for the draft to be laid, as soon as practicable, before each House of Parliament.
- (2) The PRA may not make the rules contained in the draft unless—
 - (a) a relevant committee has, within the relevant period, published a report on the proposed rules, and—
 - (i) the relevant committee consents to proposed rules being made, or
 - (ii) the PRA has, having had due regard to any objections contained within the report, responded to those objections in writing, or
 - (b) the relevant period has elapsed without any report being published.
- (3) Subsections (1) and (2) do not apply in the event of rules being made using the exemption under section 138L.
- (4) In the event of rules being made using the exemption under section 138L, the PRA must, as soon as practicable—
 - (a) notify a person nominated by the relevant committee, and
 - (b) provide a written statement of the reasons for the rules being made under that procedure.
- (5) In this section—

“relevant committee” means a committee of each House of Parliament, or a joint committee of both, charged with scrutinising proposed CRR rules;

“the relevant period” means the period—

 - (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before both Houses as mentioned in subsection (1), and
 - (b) ending with—
 - (i) the end of the period for public consultation specified under section 138J(2)(e), or
 - (ii) in the event of this being less than 8 weeks, or either House of Parliament being adjourned or prorogued for a total of 30 days or more during this period, the end of any period agreed in writing by the PRA and a person nominated by the relevant committee.
- (6) For the purposes of subsection (5)—
 - (a) where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses, and
 - (b) if either House of Parliament is recalled, either under standing orders or pursuant to statute, any day on which it sits pursuant to the notice of that recall is to count as a day of adjournment.”

Member's explanatory statement

This amendment introduces a formal mechanism for Parliament to scrutinise those draft CRR rules which are published by the PRA for public consultation. These requirements are disapplied in the event of the PRA using their urgent rule-making powers.

EARL HOWE

49 Page 90, line 20, at end insert –

“Carbon target

24A In relation to the making of CRR rules or section 192XA rules that are made on or before 1 January 2022 –

- (a) paragraph (ca) of section 144C(1) of the Financial Services and Markets Act 2000 (duty to have regard to carbon target for 2050) does not apply, and
- (b) section 144D(1) of that Act does not require an explanation in respect of matters specified in that paragraph.”

Member's explanatory statement

This amendment disapplies the PRA's duty to have regard to the carbon target for 2050 (see the Minister's amendment at page 82, line 14) in relation to CRR rules and section 192XA rules made on or before 1 January 2022.

Schedule 12

EARL HOWE

50 Page 182, line 26, leave out sub-paragraph (3) and insert –

“(3) After subsection (5) insert –

“(5A) In this Chapter as it extends to England and Wales and Scotland, “relevant financial institution” means –

- (a) a bank,
- (b) a building society,
- (c) an electronic money institution, or
- (d) a payment institution.”

(3A) After subsection (5A) insert –

“(5B) In this Chapter as it extends to Northern Ireland, “relevant financial institution” means –

- (a) a bank, or
- (b) a building society.””

Member's explanatory statement

This amendment provides that it is only Chapter 3B of Part 5 of the Proceeds of Crime Act 2002 as it extends to England and Wales and Scotland that is amended to provide for forfeiture of money in accounts maintained with electronic money institutions and payment institutions.

51 Page 183, line 24, leave out “303Z1(1A)” and insert “303Z1”

Member's explanatory statement

This amendment is consequential on the Minister's amendment at page 182, line 26.

Financial Services Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

7 April 2021
