

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Schedule 2

BARONESS PENN

Page 128, line 38, at end insert –

- “(5) Paragraph (6) applies where –
- (a) a central counterparty (A) was taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 19A(3), and
 - (b) A ceased to be taken to be so recognised by virtue of the relevant period in the case of A having expired before the commencement day.
- (6) The Bank of England –
- (a) may determine that the relevant period in the case of A is (in spite of its expiry) to be treated, as from the making of the determination, as not having expired, and
 - (b) may accordingly exercise its power under this regulation to vary the relevant period on or after the commencement day.
- (7) In paragraphs (5) and (6) “the commencement day” means the day on which Part 5 of Schedule 2 to the Financial Services and Markets Act 2023 comes into force.
- (8) Paragraphs (5) to (7) expire at the end of 31 December 2025 (but without affecting any variation of a relevant period made under this regulation by virtue of paragraph (6)(b) before that time).”

Member’s explanatory statement

This amendment would enable the Bank of England to restore a third country CCP to the run-off regime in cases where the regime has ended in the case of that CCP before the coming into force of the amendment made by paragraph 51 of Schedule 2 to the Bill.

Clause 6

BARONESS PENN

Page 6, line 29, after “section 1B(1)” insert “, (4A)”

Member's explanatory statement

This amendment would ensure that Clause 6(10)(a) of the Bill includes a reference to the duty relating to the competitiveness and growth objective, as inserted into section 1B of the Financial Services and Markets Act 2000 by Clause 24.

After Clause 20

BARONESS PENN

Insert the following new Clause—

“Sustainability disclosure requirements

Sustainability disclosure requirements

- (1) FSMA 2000 is amended as follows.
- (2) After section 416 insert—

“Sustainability disclosure requirements

416A SDR policy statement

- (1) The Treasury may prepare an SDR policy statement.
- (2) An “SDR policy statement” is a statement of the policies of His Majesty’s Government concerning disclosure requirements in connection with matters relating to sustainability.
- (3) In preparing an SDR policy statement, the Treasury must consult the regulators.
- (4) The Treasury must publish any SDR policy statement in such manner as they consider appropriate.
- (5) The Treasury—
 - (a) must keep any SDR policy statement under review;
 - (b) may prepare a revised statement (and subsections (3) and (4) apply in relation to any revised statement);
 - (c) may withdraw any SDR policy statement.
- (6) The Treasury may request a regulator to provide them with a report on any matter that the Treasury require in connection with the preparation of an SDR policy statement.
- (7) A request for a report under subsection (6)—
 - (a) must be made in writing, and
 - (b) may require a regulator to send the report to the Treasury within such reasonable period as may be specified in the request (or such other period as may be agreed).
- (8) A regulator must comply with a request under subsection (6).
- (9) Nothing in section 348, or in regulations made under section 349, is to be taken as preventing or restricting the ability of a regulator to disclose information to the Treasury for the purposes of this section.
- (10) Subsection (9) does not apply in relation to information provided to a regulator by a regulatory authority outside the United Kingdom.

416B FCA and PRA rules etc

- (1) When making rules or issuing guidance in connection with disclosure concerning matters relating to sustainability, a regulator must have regard to any SDR policy statement (within the meaning of section 416A) that the Treasury have published and not withdrawn.

After Clause 20 - continued

- (2) For the purposes of this section, matters relating to sustainability include matters relating to—
- (a) the environment, including climate change,
 - (b) social, community and human rights issues,
 - (c) tackling corruption and bribery, and
 - (d) governance, so far as relevant to matters within paragraphs (a) to (c)."
- (3) In Schedule 1ZA (the Financial Conduct Authority), in paragraph 11 (annual report), in sub-paragraph (1)—
- (a) after paragraph (ha) insert—

“(hc) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;”;
 - (b) after paragraph (ia) insert—

“(ib) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury published and not withdrawn under section 416A (sustainability disclosure requirements: policy statement);”.
- (4) In Schedule 1ZB (the Prudential Regulation Authority), in paragraph 19 (annual report), in sub-paragraph (1)—
- (a) after paragraph (e) insert—

“(ea) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;”;
 - (b) after paragraph (fa) insert—

“(fb) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury under section 416A (sustainability disclosure requirements: policy statement), and”.

Member’s explanatory statement

This amendment would support the regulation of disclosure requirements relating to sustainability by requiring the FCA and the PRA to a.) comply with a request by the Treasury to provide a report in order to inform a policy statement by the Treasury on such requirements and b.) have regard to such a policy statement when making rules or issuing guidance about such requirements.

Schedule 5

BARONESS PENN

Page 137, line 32, leave out sub-paragraphs (3) to (5) and insert—

- “(3) For subsection (4) substitute—
- “(4) If either regulator—
 - (a) proposes to vary a Part 4A permission or to impose or vary a requirement,

Schedule 5 - continued

- (b) varies a Part 4A permission, or imposes or varies a requirement, with immediate effect,
 - (c) proposes to vary a permission under section 55NA, or
 - (d) varies permission under section 55NA with immediate effect,
- it must give A written notice.””

Member’s explanatory statement

This amendment would align the wording of new section 55Y(4A), being inserted by paragraph 10 of Schedule 5 to the Bill, with section 55Y(4) of the Financial Services and Markets Act 2000, by replacing both those provisions with a new section 55Y(4) which clarifies in a single subsection the circumstances in which a written notice must be given to a person.

Page 138, line 8, leave out paragraph 13

Member’s explanatory statement

This amendment is consequential on the amendment at page 137, line 32.

After Clause 24

BARONESS PENN

Insert the following new Clause –

“Competitiveness and growth objective: reporting requirements

- (1) Each regulator must make two reports to the Treasury on how it has complied with its duty to advance the competitiveness and growth objective.
- (2) The reports prepared by each regulator under subsection (1) must in particular explain –
 - (a) the action taken by the regulator to ensure that the competitiveness and growth objective is embedded in its operations, processes and decision-making, and
 - (b) how any rules and guidance that the regulator has made advance that objective.
- (3) The first report under this section must be made before the end of 12 months beginning with the first day on which section 24 of this Act comes into force, and must relate to that period.
- (4) The second report under this section must be made before the end of 24 months beginning with the first day on which section 24 of this Act comes into force, and must relate to the period beginning with the day on which the first report is published.
- (5) The Treasury must lay a copy of each report prepared under this section before Parliament.
- (6) Each regulator must publish its reports prepared under this section in such manner as it thinks fit.
- (7) In this section –
 - (a) “regulator” means the FCA and the PRA;

After Clause 24 - continued

- (b) references to the competitiveness and growth objective, and the duty to advance that objective, are—
- (i) in relation to the FCA, references to its objective in section 1EB of FSMA 2000 and to its duty to advance that objective under section 1B(4A) of that Act, and
 - (ii) in relation to the PRA, references to its objective in section 2H(1B) of FSMA 2000 and to its duty to advance that objective under section 2H(1)(b) of that Act.”

Member’s explanatory statement

This amendment would insert a new Clause to ensure that the FCA and the PRA, in addition to their annual reports, each provide for two consecutive years a report on the new competitiveness and growth objective, as inserted into the Financial Services and Markets Act 2000 by Clause 24 of the Bill.

LORD HOLMES OF RICHMOND

Insert the following new Clause—

“Regulators’ duty to report on competitiveness and growth objective

- (1) The FCA and PRA must each lay before each House of Parliament a report as soon as practicable after the end of—
 - (a) the period of 12 months beginning with the day on which this Act is passed, and
 - (b) every subsequent 12-month period,
 on how they consider that they have facilitated the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term.
- (2) The reports must include analysis and data on the following—
 - (a) steps taken to simplify their respective regulatory rulebooks and frameworks;
 - (b) the number of new market entrants to the United Kingdom;
 - (c) new regulations introduced in the previous twelve months;
 - (d) an assessment of the impact of the new regulations on United Kingdom competitiveness;
 - (e) comparative analysis of the number of new authorisations in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (f) comparative analysis of product and service innovations introduced in the United Kingdom and other international jurisdictions in the previous 12 months;
 - (g) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment would require both the FCA and PRA to each publish a report annually setting out how they have facilitated international competitiveness and growth against a range of data and analysis requirements.

Clause 26

BARONESS PENN

Page 39, line 15, at end insert –

- “(1A) In section 1JA (Treasury recommendations in connection with general duties), after subsection (1)(c) insert –
- “(ca) how to discharge the duty in section 1B(4A)(duty to advance competitiveness and growth objective).”
- (1B) In section 1K (guidance about objectives), after subsection (1) insert –
- “(1A) The reference in subsection (1) to the FCA’s operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).”
- (1C) In section 2I (guidance about objectives), after subsection (1) insert –
- “(1A) The reference in subsection (1) to the PRA’s objectives includes, in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).”
- (1D) In section 3B (regulatory principles to be applied by both regulators), for subsection (3) substitute –
- “(3) “Objectives” –
- (a) in relation to the FCA means –
- (i) operational objectives, and
- (ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and
- (b) in relation to the PRA means –
- (i) the PRA’s objectives, and
- (ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).”
- (1E) In section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions), for subsection (4) substitute –
- “(4) In this section, “objectives” –
- (a) in relation to the FCA means –
- (i) operational objectives, and
- (ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and
- (b) in relation to the PRA means –
- (i) the PRA’s objectives, and
- (ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).
- (5) Where a regulator is proposing to exercise a function that is not one of its general functions, the reference to “objectives” in subsection (1)(a) does not include the secondary objectives mentioned in subsection (4)(a)(ii) and (b)(ii).
- (6) In this section, “general functions” –

Clause 26 - continued

- (a) in relation to the FCA, has the same meaning as in section 1B(6), and
 - (b) in relation to the PRA, has the same meaning as in section 2J(1).”.
- (1F) In section 138I (consultation by the FCA), in subsection (2)(d) after “1B(1)” insert “, (4A).”.

Member’s explanatory statement

This amendment would ensure that provisions of the Financial Services and Markets Act 2000 that refer to the objectives of the FCA and the PRA also include a reference to the new competitiveness and growth objective, as inserted by Clause 24 of the Bill.

Page 39, line 20, at end insert –

- “(2A) In section 232A (scheme operator’s duty to provide information to FCA) –
- (a) the existing words become subsection (1), and
 - (b) after that subsection insert –
 - “(2) The reference in subsection (1) to the FCA’s operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).”

Member’s explanatory statement

This amendment would ensure that section 232A of the Financial Services and Markets Act 2000 includes a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

After Clause 26

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Regulatory principles to be applied by both regulators: proportionality principle

In section 3B(1) of FSMA 2000 (regulatory principles to be applied by both regulators), in paragraph (b), for the words from “considered” to the end of that paragraph substitute “taking into consideration the nature of the service or product being delivered, the nature of risk to the consumer, whether the cost of implementation is proportionate to that level of risk and whether the burden or restriction enhances UK international competitiveness;”.

Member’s explanatory statement

This would amend the existing regulatory principle for both regulators and require that the nature of and risk to the consumer, and the service or product being delivered, must be taken into account when imposing a new burden or restriction.

Clause 27

BARONESS PENN

Page 40, line 6, at end insert –

- “(1A) The statement must provide information about –
- (a) how representations (including by a statutory panel) can be made to each regulator with respect to its review of rules under section 3RA, and
 - (b) the arrangements to ensure that those representations are considered.
- (1B) In this section “statutory panel” has the meaning given by section 1RB(5).”

Member’s explanatory statement

This amendment would impose a duty on the FCA and PRA to ensure that those regulators include in their statements of policy about the review of rules (required by section 3RB of the Financial Services and Markets Act 2000, as inserted by Clause 27) information about how representations (including by statutory panels) can be made and considered.

Page 41, line 13, at end insert “and

- (iii) advance the competitiveness and growth objective;”

Member’s explanatory statement

This amendment would ensure that new section 3RD of the Financial Services and Markets Act 2000, as inserted by Clause 27 of the Bill, includes, for the purposes of the FCA’s report, a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

Page 41, line 15, at end insert “and

- (ii) advance the PRA’s competition objective and the PRA’s competitiveness and growth objective;”

Member’s explanatory statement

This amendment would ensure that new section 3RD of the Financial Services and Markets Act 2000, as inserted by Clause 27 of the Bill, includes, for the purposes of the PRA’s report, a reference to the competition objective and the competitiveness and growth objective, as inserted by Clause 24 of the Bill. (The words after “review” in section 3RD(2)(b) would become sub-paragraph (i)).

Clause 35

BARONESS PENN

Page 49, line 40, at end insert –

- “(ic) how it has complied with the statement of policy on panel appointments prepared under section 1RA in relation to the process for making appointments and the matters considered in determining who is appointed, and”

Member's explanatory statement

This amendment would ensure that the FCA includes in its annual report under paragraph 11 of Schedule 1ZA to the Financial Services and Markets Act 2000 a summary of how it has complied with the statement of policy on panel appointments in section 1RA as inserted into FSMA 2000 by Clause 43.

Page 50, line 6, at end insert –

“(za) after paragraph (ba) insert –

“(bb) how it has complied with the statement of policy on panel appointments prepared under section 2NA in relation to the process for making appointments and the matters considered in determining who is appointed,”

Member's explanatory statement

This amendment would ensure that the PRA includes in its annual report under paragraph 19 of Schedule 1ZB to the Financial Services and Markets Act 2000 a summary of how it has complied with the statement of policy on panel appointments in section 2NA as inserted into FSMA 2000 by Clause 43.

Clause 36

BARONESS PENN

Page 50, line 30, leave out “the Treasury Committee of the House of Commons” and insert “each relevant Parliamentary Committee”

Member's explanatory statement

This amendment, together with the amendment at page 50, line 43, would extend the duties of the FCA to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

Page 50, line 40, at end insert –

“(4A) The reference in sub-paragraph (4)(a) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).”

Member's explanatory statement

This amendment would ensure that the references to the FCA's operational objectives in new paragraph 28 of Schedule 1ZA to the Financial Services and Markets Act 2000, as inserted by Clause 36 of the Bill, includes a reference to the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

Page 50, line 43, leave out “Treasury Committee of the House of Commons” and insert “relevant Parliamentary Committees”

Member's explanatory statement

See the explanatory statement for the amendment at page 50, line 30.

Page 50, line 43, at end insert –

- “(5A) References in this paragraph to the relevant Parliamentary Committees are references to –
- (a) the Treasury Committee of the House of Commons,
 - (b) the Committee of the House of Lords which –
 - (i) is charged with responsibility by that House for the purposes of this paragraph, and
 - (ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes, and
 - (c) the Joint Committee of both Houses which –
 - (i) is charged with responsibility by those Houses for the purposes of this paragraph, and
 - (ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes.”

Member’s explanatory statement

See the explanatory statement for the amendment at page 50, line 30.

Page 51, line 42, leave out “the Treasury Committee of the House of Commons” and insert “each relevant Parliamentary Committee”

Member’s explanatory statement

This amendment, together with the amendment at page 52, line 11, would extend the duties of the PRA to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

Page 52, line 8, at end insert –

- “(4A) The reference in sub-paragraph (4)(a) to the PRA’s objectives includes, in their application as secondary objectives, the competition objective and the competitiveness and growth objective (see section 2H).”

Member’s explanatory statement

This amendment would ensure that the references to the PRA’s objectives in new paragraph 36 of Schedule 1ZB to the Financial Services and Markets Act 2000, as inserted by Clause 36 of the Bill, includes a reference to the competition objective and the competitiveness and growth objective, as inserted by Clause 24 of the Bill.

Page 52, line 11, leave out “Treasury Committee of the House of Commons” and insert “relevant Parliamentary Committees”

Member’s explanatory statement

See the explanatory statement for the amendment at page 51, line 42.

Page 52, line 11, at end insert –

- “(5A) References in this paragraph to the relevant Parliamentary Committees are references to –
- (a) the Treasury Committee of the House of Commons,
 - (b) the Committee of the House of Lords which –
 - (i) is charged with responsibility by that House for the purposes of this paragraph, and

Clause 36 - continued

- (ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes, and
- (c) the Joint Committee of both Houses which—
 - (i) is charged with responsibility by those Houses for the purposes of this paragraph, and
 - (ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes.”

Member’s explanatory statement

See the explanatory statement for the amendment at page 51, line 42.

After Clause 37

LORD HOLMES OF RICHMOND

Insert the following new Clause—

“Requirement to publish regulatory performance information on authorised firms

- (1) The FCA must lay before each House of Parliament a report on its regulatory performance as soon as practicable after the end of—
 - (a) the period of 6 months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The report must include the average length of time taken from application to final decision for each of the following regulatory responsibilities—
 - (a) approved persons;
 - (b) change in control;
 - (c) variation of permission;
 - (d) waivers and modifications that alter compliance obligations.”

Member’s explanatory statement

This amendment requires the FCA to publish regular reports to Parliament on their regulatory performance for existing authorised entities and persons.

Insert the following new Clause—

“Requirement to publish regulatory performance information on new authorisations

- (1) The FCA and PRA must each lay before each House of Parliament a report on their regulatory performance as soon as practicable after the end of—
 - (a) the period of six months beginning with the day on which this Act is passed, and
 - (b) subsequently, each quarter.
- (2) The reports must include analysis and data on the following—
 - (a) the total number of new applications for authorisation made to each regulator each year, and a breakdown by authorisation type;
 - (b) the rates of approval for applications for authorisation by each regulator and a breakdown by authorisation type;

After Clause 37 - continued

- (c) the average length of time taken from application to final authorisation decision by each regulator;
- (d) an estimate of the time and costs required by an applicant to comply with information requirements for authorisation;
- (e) such other matters as the Treasury may from time to time direct.”

Member’s explanatory statement

This amendment requires both regulators to publish regular reports to Parliament on their regulatory performance for new applicants for regulation.

Clause 41

LORD HOLMES OF RICHMOND

Page 57, line 22, at end insert –

- “(c) be provided with any information or data that the Panel requires in order to fulfil its duties,
- (d) publish the agendas and minutes of meetings of the Panel, and
- (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the FCA’s activities and the range of representations made by Panel members to those recommendations.”

Member’s explanatory statement

This amendment would require the FCA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel’s recommendations were made publicly available.

BARONESS PENN

Page 57, line 29, at end insert –

- “(7A) The FCA must appoint to the FCA Cost Benefit Analysis Panel at least two individuals who are employed by persons authorised for the purposes of this Act by the FCA, with each one being employed by a different person.”

Member’s explanatory statement

This amendment would impose a duty on the FCA to ensure that the FCA Cost Benefit Analysis Panel includes at least two members who are employed by persons authorised by the FCA under the Financial Services and Markets Act 2000.

LORD HOLMES OF RICHMOND

Page 57, line 29, at end insert –

- “(7A) The Panel must include at least two representatives of FCA authorised firms.”

Page 58, line 15, at end insert –

- “(c) be provided with any information or data that the Panel requires in order to fulfil its duties,

Clause 41 - continued

- (d) publish the agendas and minutes of meetings of the Panel, and
- (e) make publicly available its recommendations in full, including, but not limited to, the evidence base and analysis it used to make its recommendations, the assessed costs and benefits of the PRA's activities and any dissenting representations made by Panel members to those recommendations."

Member's explanatory statement

This amendment would require the PRA to provide its CBA Panel with the necessary data and information to undertake its duties and ensure that the Panel's recommendations were made publicly available.

BARONESS PENN

Page 58, line 22, at end insert –

- “(7A) The PRA must appoint to the PRA Cost Benefit Analysis Panel at least two individuals who are employed by PRA-authorised persons, with each one being employed by a different person.”

Member's explanatory statement

This amendment would impose a duty on the PRA to ensure that the PRA Cost Benefit Analysis Panel includes at least two members who are employed by PRA-authorised persons.

LORD HOLMES OF RICHMOND

Page 58, line 22, at end insert –

- “(7A) The Panel must include at least two representatives of PRA authorised firms.”

Page 58, leave out lines 28 and 29 and insert –

- “(11) The PRA is required to publish a response to these representations within 30 days, including a statement of actions it will take as a result of the recommendations.”

Member's explanatory statement

This amendment would require the PRA to publish their responses and actions to the CBA Panel's recommendations within 30 days.

BARONESS PENN

Page 58, line 31, leave out “paragraph 10(1)” insert “paragraphs 10(1) and 10A”

Member's explanatory statement

This amendment ensures that the PRA Cost Benefit Analysis Panel (established under Clause 41) will be required to provide advice in relation to cost benefit analyses prepared for the purposes of consultation under the new paragraph 10A of Schedule 17A to FSMA 2000 (inserted by Clause 19).

After Clause 44

BARONESS PENN

Insert the following new Clause –

“Panel reports

- (1) The Treasury may by regulations require specified statutory panels of the regulator to produce an annual report on their work and provide that report to the Treasury.
- (2) Regulations under subsection (1) may make provision about the content of the annual report.
- (3) The Treasury must lay a copy of each report prepared by virtue of this section before Parliament.
- (4) Each specified statutory panel of the regulator must publish its reports prepared by virtue of this section in such manner as it thinks fit.
- (5) In this section –
 - (a) “statutory panels of the regulator” means –
 - (i) in relation to the FCA, the panels mentioned in section 1RA(8) of FSMA 2000,
 - (ii) in relation to the PRA, the panels mentioned in section 2NA(8) of FSMA 2000, and
 - (iii) in relation to the Payment Systems Regulator, a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013;
 - (b) “specified” means specified in regulations under this section.
- (6) Regulations under this section are subject to the negative procedure.”

Member’s explanatory statement

This new Clause would provide the Treasury with a power to make regulations to require annual reports to be produced by the statutory panels established under the Financial Services and Markets Act 2000 and the Financial Services (Banking Reform) Act 2013.

Clause 46

BARONESS PENN

Page 67, line 14, at end insert –

- “(1A) The statement must provide information about –
- (a) how representations (including by a statutory panel) can be made to the Bank with respect to its review of rules under section 300I, and
 - (b) the arrangements to ensure that those representations are considered.
- (1B) In this section “statutory panel” has the meaning given by section 1RB(5).”

Member's explanatory statement

This amendment would impose a duty on the Bank of England to ensure that the Bank includes in its statement of policy about the review of rules (required by section 300J of the Financial Services and Markets Act 2000, as inserted by Clause 46) information about how representations (including by statutory panels) can be made and considered.

Page 68, line 23, at end insert “and

- (ii) the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);”

Member's explanatory statement

This amendment would ensure that new section 300L of the Financial Services and Markets Act 2000, as inserted by Clause 46 of the Bill, includes, for the purposes of the Bank's report, a reference to the Bank's secondary innovation objective, as inserted by Clause 45 of the Bill. (The words after “advance” in section 300L(2)(a) would become sub-paragraph (i)).

Clause 47

BARONESS PENN

Page 72, line 32, at end insert “and the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998)”

Member's explanatory statement

This amendment would ensure that new paragraph 33B of Schedule 17A to the Financial Services and Markets Act 2000, as inserted by Clause 47(14) of the Bill, includes a reference to the Bank's secondary innovation objective, as inserted into the Bank of England Act 1998 by Clause 45 of the Bill.

Page 72, line 37, at end insert –

- “(g) in sub-paragraph (5A)(b)(ii) and (c)(ii), the references to the PRA being notified were references to the Bank being notified.”

Member's explanatory statement

This amendment would extend the duties of the Bank of England to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

Schedule 7

BARONESS PENN

Page 152, line 44, at end insert –

- “(1A) The statement must provide information about –
 - (a) how representations (including by a relevant panel) can be made to the Regulator with respect to its review of requirements under section 104B, and
 - (b) the arrangements to ensure that those representations are considered.
- (1B) In this section “relevant panel” means –
 - (a) a panel of the Payment Systems Regulator established under section 103(3),

Schedule 7 - continued

- (b) a panel of the FCA mentioned in section 1RA(8) of FSMA 2000, and
- (c) a panel of the PRA mentioned in section 2NA(8) of FSMA 2000.”

Member’s explanatory statement

This amendment would impose a duty on the Payment Systems Regulator to ensure that the Regulator includes in its statement of policy about the review of requirements (required by section 104B of the Financial Services (Banking Reform) Act 2013, as inserted by paragraph 7 of Schedule 7 to the Bill) information about how representations (including by statutory panels) can be made and considered.

Page 157, line 30, at end insert –

- “(bb) set out how the Regulator has complied with the statement of policy on panel appointments prepared under section 104I in relation to the process for making appointments and the matters considered in determining who is appointed,”

Member’s explanatory statement

This amendment would ensure that the Payment Systems Regulator includes in its annual report under paragraph 7 of Schedule 4 to the Financial Services (Banking Reform) Act 2013 a summary of how it has complied with the statement of policy on panel appointments in section 104I as inserted into the 2013 Act by paragraph 7 of Schedule 7.

Page 158, line 36, leave out “the Treasury Committee of the House of Commons” and insert “each relevant Parliamentary Committee”

Member’s explanatory statement

This amendment, together with the amendment at page 159, line 5, would extend the duties of the Payment Systems Regulator to notify the Treasury Committee of the House of Commons so as to include a relevant Committee of the House of Lords and a Joint Committee.

Page 159, line 5, leave out “Treasury Committee of the House of Commons” and insert “relevant Parliamentary Committees”

Member’s explanatory statement

See the explanatory statement for the amendment at page 158, line 36.

Page 159, line 6, at end insert –

- “(5A) References in this paragraph to the relevant Parliamentary Committees are references to –
 - (a) the Treasury Committee of the House of Commons,
 - (b) the Committee of the House of Lords which –
 - (i) is charged with responsibility by that House for the purposes of this paragraph, and
 - (ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes, and
 - (c) the Joint Committee of both Houses which –
 - (i) is charged with responsibility by those Houses for the purposes of this paragraph, and

Schedule 7 - continued

- (ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes.”

Member’s explanatory statement

See the explanatory statement for the amendment at page 158, line 36.

Clause 50

BARONESS PENN

Page 74, line 9, at end insert –

- “(4D) Where representations are made to the FCA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the FCA’s account mentioned in subsection (4) must also describe how the FCA has considered the representations made by that Committee in making the proposed rules.””

Member’s explanatory statement

This amendment would impose a duty on the FCA to include in the account that the FCA must publish under section 138I(4) of the Financial Services and Markets Act 2000 details about representations made by Parliamentary Committees.

Page 74, line 23, at end insert –

- “(4D) Where representations are made to the PRA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the PRA’s account mentioned in subsection (4) must also describe how the PRA has considered the representations made by that Committee in making the proposed rules.””

Member’s explanatory statement

This amendment would impose a duty on the PRA to include in the account that the PRA must publish under section 138J(4) of the Financial Services and Markets Act 2000 details about representations made by Parliamentary Committees.

Page 74, line 36, at end insert –

- “(5D) Where representations are made to the Payment Systems Regulator by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (3)(d), the Payment Systems Regulator’s account mentioned in subsection (5) must also describe how the Payment Systems Regulator has considered the representations made by that Committee in making the proposed requirement.”

Member’s explanatory statement

This amendment would impose a duty on the Payment Systems Regulator to include in the account that the Payment Systems Regulator must publish under section 104(5) of the Financial Services (Banking Reform) Act 2013 details about representations made by Parliamentary Committees.

Schedule 8

BARONESS PENN

Page 160, line 17, after “service” insert “, “free cash access service””

Member’s explanatory statement

This amendment is consequential on the amendment at page 160, line 29.

Page 160, line 29, at end insert –

- “(3A) A “free cash access service” is a cash access service that is –
- (a) a free of charge service which enables cash to be placed on a relevant personal current account, or
 - (b) a free of charge service which enables cash to be withdrawn from a relevant personal current account.”

Member’s explanatory statement

This amendment would provide a definition of “free cash access service” in new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill.

Page 161, line 4, at end insert “, “relevant personal current account””

Member’s explanatory statement

This amendment is consequential on the amendment at page 161, line 15.

Page 161, line 15, at end insert –

- “(3A) A “relevant personal current account” means a relevant current account held by one or more individuals for purposes outside any business, trade, craft or profession of that individual or those individuals.”

Member’s explanatory statement

This amendment would provide a definition of “relevant personal current account” in new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill.

Page 161, line 37, at end insert –

- “(2A) The reference to cash access services in subsection (2) includes free cash access services.”

Member’s explanatory statement

This amendment would clarify that the cash access policy statement that the Treasury must prepare under new Part 8B of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill, includes policies concerning free cash access services.

Page 164, line 7, at end insert –

- “(1A) In this section references to cash access services include references to free cash access services.”

Member's explanatory statement

This amendment would ensure that the FCA's duty, in new section 131U of the Financial Services and Markets Act 2000, as inserted by paragraph 1 of Schedule 8 to the Bill, of seeking to ensure reasonable provision of cash access services includes seeking to ensure reasonable provision of free cash access services.

After Clause 52

LORD HOLMES OF RICHMOND

Insert the following new Clause—

Mandatory acceptance of cash

- (1) Any entity providing a public service directly to the public and involving payments or a charge must accept cash.
- (2) Any Third Party or private entity operating a public service on behalf of local or national Government which involves a charge or payments must accept cash.
- (3) Any private business offering for sale any goods or services directly to the public with a turnover exceeding £100,000 per year must accept cash.

Insert the following new Clause—

“UK cash network: critical national infrastructure

- (1) Within six months of the passing of this Act, the Treasury must designate the UK cash network as critical national infrastructure.
- (2) “UK cash network” means the infrastructure to make available cash access and distribution services throughout the United Kingdom by financial service providers.”

Member's explanatory statement

This amendment would require the Government to designate the UK cash infrastructure as Critical National Infrastructure.

Insert the following new Clause—

“Access to banking services

- (1) Within one year of this Act being passed, the Treasury must prepare a policy statement to achieve the objective that every high street with more than a number of shops determined by the Treasury has a bank branch or shared banking facility of a description as set out in subsection (2).
- (2) Each bank branch or banking facility must provide services including but not limited to—
 - (a) access to cash including deposits as well as withdrawals,
 - (b) basic banking services for individuals, and
 - (c) basic banking services for small and medium-sized businesses.
- (3) The Treasury must lay the policy statement before Parliament, and must take all reasonable steps to implement it.
- (4) No bank may close a branch on a high street unless there is a shared banking facility on that high street of a description set out in subsection (2).”

Member's explanatory statement

This amendment seeks to ensure continuity of service for areas where only one bank branch remains.

Insert the following new Clause—

“Accessibility of financial services and financial products

- (1) As soon as reasonably practicable and within three months of the passing of this Act, the Treasury must commission a review of the accessibility of financial services and products throughout the United Kingdom.
- (2) The review must consider but is not limited to—
 - (a) automatic teller machines,
 - (b) point of sale terminals,
 - (c) card payment machines, and
 - (d) internet-based and mobile platforms and products.”

Member's explanatory statement

This amendment would require the Government to commission a review into the accessibility of financial services and products throughout the UK.

Schedule 11

BARONESS PENN

Page 257, line 7, at end insert—

- “(2A) Regulations under this paragraph may apply to partial property transfers generally or only to partial property transfers—
- (a) of a specified kind, or
 - (b) made or applying in specified circumstances.”

Member's explanatory statement

This amendment would provide consistency with other parts of Schedule 11 on Central counterparties by clarifying that regulations made under paragraph 75 (restriction of partial transfers) may apply to transfers generally or only to transfers of a particular kind or in particular circumstances, as specified in the regulations.

Schedule 12

BARONESS PENN

Page 311, line 11, at end insert—

- “(5A) A liability, to the extent of its reduction by a write-down order under this section, is to be treated as extinguished unless and until revived by section 377H or 377I.”

Member's explanatory statement

This amendment would clarify the effect of a write-down order under section 377A (to be inserted into FSMA 2000 by paragraph 1 of Schedule 12 to the Bill) on the treatment of liabilities reduced by the order.

Page 314, line 40, leave out “termination” and insert “revocation”

Member's explanatory statement

This amendment would correct a reference in the table of termination events in the context of describing when a write-down order regarding the value of an insurer's liabilities ceases to have effect.

Page 324, line 30, leave out “reduced value” and insert “reduction in value”

Member's explanatory statement

This amendment would provide a drafting clarification to ensure that the effect of a write-down order is more clearly reflected in this provision concerning compensation to policyholders where insurers are in financial difficulties.

After Clause 59

BARONESS PENN

Insert the following new Clause –

“The Ombudsman scheme

- (1) FSMA 2000 is amended as follows.
- (2) In section 429 (Parliamentary control of statutory instruments), in subsection (2B) after paragraph (c) insert –
 - “(d) provision made under paragraph 15(3) of Schedule 17.”
- (3) Paragraph 15 of Schedule 17 (the Ombudsman scheme: power of scheme operator to charge fees) is amended as set out in subsections (4) and (5).
- (4) In sub-paragraph (1) after “respondent” insert “or other persons of a specified description”.
- (5) After sub-paragraph (2) insert –
 - “(3) The reference in sub-paragraph (1) to persons of a specified description is a reference to such descriptions of persons as may be specified in regulations made by the Treasury.
 - (4) The power conferred by sub-paragraph (3) to specify descriptions of persons may not be exercised so as to provide for eligible complainants to fall within a specified description of persons.
 - (5) The reference in sub-paragraph (4) to “eligible complainants” is a reference to complainants who are eligible in relation to the compulsory or voluntary jurisdiction of the ombudsman scheme (see section 226(6) and 227(7)).
 - (6) Before making regulations under sub-paragraph (3) the Treasury must consult the scheme operator.””

After Clause 65

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Determination of applications

- (1) FSMA 2000 is amended as follows.
- (2) In section 61 (determination of applications), after subsection (2) insert –
 - “(2ZA) In determining the application, the regulator must –

After Clause 65 - continued

- (a) assign a new application to a case handler within 5 working days of the application being made,
 - (b) complete an initial application review within 10 working days of allocation to a case handler, and
 - (c) allow a period of no more than 15 working days from receiving the application, to make requests for additional information.
- (2ZB) The regulators must publish monitoring data on an annual basis regarding the following –
- (a) the proportion of cases which required escalation to sponsoring firms, including summary trend data on the reasons for escalation,
 - (b) the average time it takes to assign a case handler, and
 - (c) the average number of days it takes to complete an application in full.”

Member’s explanatory statement

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

Clause 68

LORD VAUX OF HARROWDEN
BARONESS BOWLES OF BERKHAMSTED

Page 85, line 9, at end insert –

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

Member’s explanatory statement

This amendment aims to ensure that the impact of the APP reimbursement requirement is assessed and reported on regularly and to ensure that consumers can see whether the rules are being applied consistently and which institutions are better and worse at reimbursing victims fairly and promptly.

After Clause 71

BARONESS PENN

Insert the following new Clause –

“Arrangements for the investigation of complaints

- (1) The Financial Services Act 2012 is amended in accordance with subsections (2) and (3).
- (2) In section 84 (arrangements for the investigation of complaints) –
 - (a) omit the “and” at the end of subsection (1)(a);
 - (b) omit subsection (1)(b);
 - (c) after subsection (1) insert –
 - “(1A) The Treasury must appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.”;
 - (d) omit subsection (4);
 - (e) in subsection (5), in the opening words, for “regulators” substitute “Treasury”.
- (3) In section 87 (investigation of complaints) –
 - (a) in subsection (9A), after paragraph (b) insert –
 - “(ba) for the regulator’s response under paragraph (b) to include a summary of –
 - (i) the cases in which the regulator decided not to follow any relevant recommendations, and
 - (ii) the reasons for not following those recommendations;”;
 - (b) in subsection (9B), after paragraph (e) insert –
 - “(f) such other matters as the Treasury may from time to time direct.”;
 - (c) after subsection (9B) insert –
 - “(9C) In subsection (9A)(ba) the reference to “relevant recommendations”, in relation to the regulator’s response in respect of an annual report, is a reference to –
 - (a) any recommendations to the regulator contained in that annual report, and
 - (b) any recommendations to the regulator contained in final reports relating to individual complaints given during the period to which that annual report relates.”

Member’s explanatory statement

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

Insert the following new Clause—

“Politically exposed persons: money laundering and terrorist financing

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

After Clause 71 - continued

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

Member’s explanatory statement

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

Insert the following new Clause—

“Politically exposed persons: review of guidance

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

After Clause 71 - continued

“known close associate”.”

Member’s explanatory statement

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

LORD HOLMES OF RICHMOND

Insert the following new Clause –

“Designated artificial intelligence officer

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

Member’s explanatory statement

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

Insert the following new Clause –

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

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

Member’s explanatory statement

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

Insert the following new Clause –

“Access to digital financial services: review

- (1) Within three months of the passing of this Act, the Treasury must commission a review of access to digital financial services.
- (2) The review must consider, but is not limited to –

After Clause 71 - continued

- (a) the levels of access that individuals and small and medium-sized enterprises have in relation to—
 - (i) digital payments, and
 - (ii) mobile and internet applications and platforms;
 - (b) the level of digital skills needed to enable digital financial services transactions to be undertaken;
 - (c) the levels of broadband and mobile connectivity needed to support digital financial services transactions.
- (3) The review must consider the barriers to individuals and small and medium-sized enterprises in accessing digital financial services and publish recommendations on how these will be addressed.”

Member’s explanatory statement

This amendment would require the Government to commission a review into access to digital financial services. It would follow on from and adopt similar but not identical aims to the Access to Cash Review, published in 2019.

Insert the following new Clause—

“Minimum Banking Service

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

BARONESS BENNETT OF MANOR CASTLE

Insert the following new Clause—

“Size of the UK financial services and markets sector

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

Clause 78

BARONESS PENN

Page 90, line 16, at end insert—

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

Clause 78 - continued

Page 90, line 20, at end insert—

“(e) section (*Politically exposed persons: money laundering and terrorist financing*);

“(f) section (*Politically exposed persons: review of guidance*).”

Member’s explanatory statement

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

Financial Services and Markets Bill

AMENDMENTS
TO BE MOVED
ON REPORT

25 May 2023
