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Committee Stage: Monday 31 October 2022

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## Financial Services and Markets Bill (Amendment Paper)

This document lists all amendments tabled to the Financial Services and Markets Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

☆ Amendments which will comply with the required notice period at their next appearance.

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Peter Grant 40  
Martin Docherty-Hughes  
Owen Thompson

Clause 47, page 68, line 9, after “of” insert “free of charge”

**Member’s explanatory statement**

This amendment makes reference to the provision of free of charge cash access services in Schedule 8.

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Peter Grant 41  
Martin Docherty-Hughes  
Owen Thompson

Schedule 8, page 150, line 27, after “service”)” insert “free of charge or on the payment of a fee”

**Member’s explanatory statement**

This amendment changes the definition of cash deposit services to include both those which are free of charge and which require the payment of a fee.

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Peter Grant 42  
Martin Docherty-Hughes  
Owen Thompson

Schedule 8, page 150, line 29, after “service”)” insert “free of charge or on the payment of a fee”

**Member's explanatory statement**

This amendment changes the definition of cash withdrawal services to include both those which are free of charge and which require the payment of a fee.

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Siobhain McDonagh 16

Schedule 8, page 151, line 36, after "concerning" insert "both free of charge and paid access"

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Siobhain McDonagh 17

Schedule 8, page 154, line 12, after "appropriate" insert "and must include the provision of free of charge cash access services"

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Siobhain McDonagh 19

Schedule 8, page 154, line 12, at end insert—

"(2A) Before making a determination under subsection (2), the FCA must publish how it intends to define and assess the reasonable nature and extent of provision when making the determination."

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Siobhain McDonagh 18

Schedule 8, page 154, line 18, leave out from "is" to the end of line 22 and insert "—

- (a) an absence of free of charge cash access services in a locality in a part of the United Kingdom, or
- (b) a circumstance which limits the ability of persons in any locality in a part of the United Kingdom to—
  - (i) withdraw cash from a relevant current account, or
  - (ii) place cash on a relevant current account."

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Siobhain McDonagh 21

Schedule 8, page 154, line 32, at end insert—

"(7) In carrying out its functions for the purposes of section (1) the FCA may put in place arrangements for the purposes of ensuring that members of the public, elected officials, community groups, local authorities, councils, and other local persons the FCA considers may have an interest, can request a review of their local community's access to cash needs."

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Siobhain McDonagh 20

Schedule 8, page 154, line 32, at end insert—

- "(8) Upon making a determination of local deficiency in the course of carrying out its functions under subsections (1) to (7), the FCA must—
- (a) make provision for the publication of this assessment, and

- (b) outline steps to be taken by relevant parties to address such deficiency.”
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Andrew Griffith

9

Schedule 11, page 205, line 21, leave out “9A” and insert “9B”

**Member’s explanatory statement**

This amendment corrects a cross-reference so that the provision refers to paragraph 9B of Schedule 17A to the Financial Services and Markets Act 2000, which is inserted by clause 10 of the Bill.

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Andrew Griffith

24

Schedule 11, page 228, line 22, leave out sub-paragraph (1) and insert—

“(1) This paragraph applies where the Bank uses one or more of the stabilisation options mentioned in paragraph 1(3) in respect of a CCP unless the CCP has ceased to be subject to the exercise of any stabilisation power mentioned in paragraph 1(4).”

**Member’s explanatory statement**

This amendment widens the scope of paragraph 39 of Schedule 11, on shadow directors etc, by ensuring that it applies following the exercise of any of the Bank’s stabilisation options under Schedule 11, not just the powers in paragraph 38.

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Andrew Griffith

25

Schedule 11, page 228, line 28, leave out “, or as a temporary manager under paragraph 6,”

**Member’s explanatory statement**

This amendment is consequential on Amendment 27 and omits the reference to temporary managers as they will be included in the list of relevant persons in paragraph 39(3) under Amendment 27.

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Andrew Griffith

26

Schedule 11, page 228, line 38, at end insert—

- “(e) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
- “(f) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));”

**Member's explanatory statement**

This amendment ensures that the list of relevant enactments in paragraph 39(3) of Schedule 11 includes the relevant Northern Ireland legislation so that the position regarding shadow directors is consistent across the UK.

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Andrew Griffith

27

Schedule 11, page 228, line 41, at end insert “, and

- (c) a temporary manager appointed under paragraph 6 of this Schedule.”

**Member's explanatory statement**

This amendment ensures that the list of relevant persons in paragraph 39(3) of Schedule 11 includes temporary managers, for consistency with the bank resolution regime.

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Andrew Griffith

28

Schedule 11, page 255, line 43, after “EMIR” insert “where they have a contractual relationship as principal with the CCP”

**Member's explanatory statement**

This amendment operates on paragraph (d) of the definition of “relevant person”, to limit that group of persons entitled to compensation to those who are direct creditors of the CCP.

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Andrew Griffith

10

Schedule 11, page 256, line 16, leave out “or 29(3)” and insert “, 29(3), 66(2) or 73(2)”

**Member's explanatory statement**

This amendment provides that the definition of “residual CCP” applies to properties transferred under paragraphs 66(2) and 73(2) of Schedule 11 (transfers subsequent to resolution instrument and transfers subsequent to share transfer to bridge CCP).

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Andrew Griffith

29

Schedule 11, page 257, line 43, at end insert—

- “(5) An obligation imposed on the residual CCP or a group company under subparagraph (2)(d) or (e) continues to apply despite the residual CCP or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.”

**Member's explanatory statement**

This amendment provides an equivalent provision to section 64(6) of the Banking Act 2009 (continuity obligations relating to property transfers), to ensure that certain obligations continue to apply despite the residual CCP or group company entering insolvency.

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Andrew Griffith 11

Schedule 11, page 259, line 25, leave out "CCP whose business has been transferred" and insert "transferred CCP"

**Member's explanatory statement**

This amendment provides the correct terminology in relation to share transfers, to which this provision relates.

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Andrew Griffith 12

Schedule 11, page 259, line 26, leave out "property" and insert "share"

**Member's explanatory statement**

This amendment provides the correct terminology in relation to share transfers, to which this provision relates.

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Andrew Griffith 30

Schedule 11, page 260, line 19, at end insert—

"(5) An obligation imposed on the transferred CCP or a former group company under sub-paragraph (2)(b) or (c) continues to apply despite the transferred CCP or former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989."

**Member's explanatory statement**

This amendment provides an equivalent provision to section 67(6) of the Banking Act 2009 (continuity obligations relating to share transfers), to ensure that certain obligations continue to apply despite the residual CCP or former group company entering insolvency.

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Andrew Griffith 13

Schedule 11, page 267, line 2, leave out "or onward" and insert ", onward, bridge or subsequent"

**Member's explanatory statement**

This amendment is consequential on Amendment 14.

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Andrew Griffith 14

Schedule 11, page 267, line 3, after "50," insert "52, 66,"

**Member's explanatory statement**

This amendment adds to the list of instruments in paragraph 105(6) to include instruments made under paragraphs 52 (bridge CCP: share transfers) and 66 (property transfer subsequent to resolution instrument).

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Andrew Griffith

15

Schedule 11, page 267, line 5, leave out “or onward” and insert “, onward, bridge or subsequent”

**Member’s explanatory statement**

This amendment is consequential on Amendment 14.

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Andrew Griffith

31

Schedule 11, page 299, line 30, at end insert—

- “(g) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
- (h) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).”

**Member’s explanatory statement**

This amendment ensures that the list of relevant enactments in paragraph 165(2) of Schedule 11 includes the relevant Northern Ireland legislation so that the relevant law can be applied consistently across the UK in the event of a resolution of a CCP.

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Andrew Griffith

32

Schedule 12, page 310, line 43, at end insert—

“(2A) Nothing in this Part of this Schedule affects the operation of—

- (a) Part 7 of the Companies Act 1989 (financial markets and insolvency);
- (b) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);
- (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);
- (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).

(2B) The Treasury may by regulations amend sub-paragraph (2A).”

**Member’s explanatory statement**

This amendment ensures that certain exclusions apply in relation to the moratorium on proceedings during a write down and provides a power to amend that list of exclusions.

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Andrew Griffith 33

Schedule 12, page 315, line 8, after "paragraph" insert "3(2B) or"

**Member's explanatory statement**

This amendment is consequential on Amendment 32 and ensures that regulations made under new sub-paragraph (2B) are subject to the affirmative procedure.

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Andrew Griffith 5

Clause 67, page 81, line 2, leave out "relevant"

**Member's explanatory statement**

This amendment, read with Amendments 6 and 7, broadens the effect of clause 67 so that it applies to all consultation duties arising under the Bill rather than only those duties specifically mentioned in subsection (3) of that clause.

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Andrew Griffith 6

Clause 67, page 81, line 7, leave out "relevant"

**Member's explanatory statement**

See the explanatory statement for Amendment 5.

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Andrew Griffith 7

Clause 67, page 81, line 9, leave out subsection (3)

**Member's explanatory statement**

See the explanatory statement for Amendment 5.

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Andrew Griffith 8

Clause 70, page 82, line 17, at end insert ", except so far as making provision by virtue of section 4(1)"

**Member's explanatory statement**

This amendment ensures that clause 4(1) of the Bill (power to restate and modify saved

legislation) is within the scope of clause 70 for the purpose of being able to rely on the powers in clause 70, when making regulations by virtue of clause 4(1).

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Andrew Griffith

23

Clause 72, page 82, line 35, at end insert—

“(aa) section (*Chair of the Payment Systems Regulator as member of the FCA Board*);”

**Member’s explanatory statement**

This amendment provides for NC13 to come into force two months after Royal Assent.

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Andrew Griffith

NC13

To move the following Clause—

**“Chair of the Payment Systems Regulator as member of FCA Board**

- (1) FSMA 2000 is amended as follows.
- (2) In section 417(1) (definitions), at the appropriate place insert—
 

““the Payment Systems Regulator” means the body established under section 40(1) of the Financial Services (Banking Reform) Act 2013;”.
- (3) Schedule 1ZA (FCA: constitution etc) is amended as follows.
- (4) In paragraph 2—
  - (a) in sub-paragraph (2), after paragraph (c) insert—
 

“(ca) the Chair of the Payment Systems Regulator,”;
  - (b) in sub-paragraph (3), after “(c)” insert “, (ca)”.
- (5) In paragraph 3—
  - (a) in sub-paragraph (6) after “PRA” insert “or of the Payment Systems Regulator”;
  - (b) in sub-paragraph (7) for “the Bank’s Deputy Governor for prudential regulation” substitute “a person holding an office mentioned in paragraph 2(2)(c) or (ca)”.
- (6) In paragraph 5(a) for “or (c)” substitute “, (c) or (ca)”.
- (7) After paragraph 6 insert—

“6A (1) The Chair of the Payment Systems Regulator must not take part in any discussion by or decision of the FCA which relates to—

- (a) the exercise of the FCA’s functions in relation to a particular person, or
- (b) a decision not to exercise those functions.



- (2) Sub-paragraph (1) does not apply at any time when the person who is the Chair of the Payment Systems Regulator also holds the office mentioned in paragraph 2(2)(a)."

**Member's explanatory statement**

This amendment provides for the Chair of the Payment Systems Regulator to be a member of the FCA's Board.

Andrew Griffith

NC14

To move the following Clause—

**"Cryptoassets**

- (1) FSMA 2000 is amended as follows.
- (2) In section 21 (restrictions on financial promotion), in subsection (14) at end insert "(including where an asset, right or interest is, or comprises or represents, a cryptoasset)".
- (3) In section 22 (regulated activities), in subsection (4) at end insert "(including where an asset, right or interest is, or comprises or represents, a cryptoasset)".
- (4) In section 417 (definitions)—
  - (a) in subsection (1), insert at the appropriate place—
 

"“cryptoasset” means any cryptographically secured digital representation of value or contractual rights that—

    - (a) can be transferred, stored or traded electronically, and
    - (b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology).”";
    - (b) at end insert—

“(5) The Treasury may by regulations amend the definition of “cryptoasset” in subsection (1).”
- (5) In section 429 (Parliamentary control of statutory instruments), in subsection (2) leave out “or 333T” and insert “, 333T or 417(5)”.“

**Member's explanatory statement**

This new clause amends the Financial Services and Markets Act 2000 to clarify that the powers relating to financial promotion and regulated activities can be relied on to regulate cryptoassets and activities relating to cryptoassets. Cryptoasset is also defined, with a power to amend the definition.

Stella Creasy

NC1

To move the following Clause—

**"Regulation of buy-now-pay-later firms**

- (1) Within 28 days of the passing of this Act, the Secretary of State must by regulations make provision for—
  - (a) buy-now-pay-later credit services, and

- (b) other lending services that have non-interest-bearing elements to be regulated by the FCA.
- (2) These regulations must include measures which—
  - (a) ensure all individuals accessing services mentioned in sub-section (1) have access to the Financial Services Ombudsman,
  - (b) ensure that individuals applying for services mentioned in sub-section (1) are subject to credit checks prior to the service being approved, and
  - (c) ensure that individuals accessing services mentioned in paragraph (1) are protected by Section 75 of the Consumer Credit Act.”

**Member’s explanatory statement**

This new clause would bring the non-interest-bearing elements of bring buy-now-pay-later lending and similar services under the regulatory ambit of the FCA, as proposed by the Government consultation carried out in 2022.

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Emma Hardy  
Siobhain McDonagh

**NC2**

To move the following Clause—

**“FCA: Regard to financial inclusion in consumer protection objective**

- (1) FSMA 2000 is amended as follows.
- (2) In section 1C (The consumer protection objective), after subsection (2)(c) insert—
  - “(ca) financial inclusion;””

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Emma Hardy  
Siobhain McDonagh

**NC3**

To move the following Clause—

**“FCA duty to report on financial inclusion**

- (1) The FCA must lay before 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 financial inclusion in the UK.
- (2) A report under this section must include—
  - (a) an assessment of the state of financial inclusion in the UK;
  - (b) details of any measures the FCA has taken, or is planning to take, to improve financial inclusion in the UK;
  - (c) developments which the FCA considers could significantly impact on financial inclusion in the UK; and

- (d) any recommendations to the Treasury which the FCA considers may promote financial inclusion in the UK.”

Tulip Siddiq

NC4

To move the following Clause—

**“Local community access to essential in-person banking services**

- (1) The Treasury and the FCA must jointly undertake a review of the state of access to essential in-person banking services for local communities in the United Kingdom, and jointly prepare a report on the outcome of the review.
- (2) “Essential in-person banking services” include services which are delivered face-to-face and which local communities require regular access to. These may include services provided in banks, banking hubs, or other service models.
- (3) The report mentioned in subsection (1) must be laid before the House of Commons as soon as practicable after the review has been undertaken.
- (4) The report mentioned in subsection (1) must propose a minimum level of access to essential in-person banking services which must be provided by banks and building societies in applicable local authority areas in the United Kingdom, for the purpose of ensuring local communities have adequate access to essential in-person banking services.
- (5) The applicable local authority areas mentioned in subsection (4) are local authority areas in which, in the opinion of the FCA, local communities have a particular need for the provision of essential in-person banking services.
- (6) In any applicable local authority area which, according to the results of the review undertaken under subsection (1) falls below the minimum level of access mentioned in subsection (4), the FCA may give directions for the purpose of ensuring essential in-person banking services meet the minimum level of access required by subsection (4).
- (7) A direction under subsection (6) may require a minimum level of provision of essential in-person banking services through mandating, for example—
  - (a) a specified number of essential in-person banking services within a geographical area, or
  - (b) essential in-person banking services to operate specific opening hours.”

**Member’s explanatory statement**

This new clause would require the Treasury and FCA to conduct and publish a review of community need for, and access to, essential in-person banking services, and enable the FCA to ensure areas in need of essential in-person banking service have a minimum level of access to such services.

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Tulip Siddiq

NC5

To move the following Clause—

**“Essential banking services access policy statement**

- (1) The Treasury must lay before the House of Commons an essential banking services access policy statement within six months of the passing of this Act.
- (2) An “essential banking services access policy statement” is a statement of the policies of His Majesty’s Government in relation to the provision of adequate levels of access to essential in-person banking services in the United Kingdom.
- (3) “Essential in-person banking services” include services which are delivered face-to-face, and may include those provided in banks, banking hubs, or other service models.
- (4) The policies mentioned in sub-section (2) may include those which relate to—
  - (a) ensuring adequate availability of essential in-person banking services;
  - (b) ensuring adequate provision of support for online banking training and internet access, for the purposes of ensuring access to online banking; and
  - (c) expectations of maximum geographical distances service users should be expected to travel to access essential in-person banking services in rural areas.
- (5) The FCA must have regard to the essential banking services access policy statement when fulfilling its functions.”

**Member’s explanatory statement**

This new clause would require the Treasury to publish a policy statement setting out its policies in relation to the provision of essential in-person banking services, including policies relating to availability of essential in-person banking services, support for online banking, and maximum distances people can expect to travel to access services.

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Tulip Siddiq

NC6

To move the following Clause—

**“National strategy on financial fraud**

- (1) The Treasury must lay before the House of Commons a national strategy for the purpose of detecting, preventing and investigating fraud and associated financial crime within six months of the passing of this Act.
- (2) In preparing the strategy, the Treasury must consult—
  - (a) the Secretary of State for the Home Office,
  - (b) the National Economic Crime Centre,
  - (c) law enforcement bodies which the Treasury considers relevant to the strategy,

- (d) relevant regulators,
  - (e) financial services stakeholders,
  - (f) digital platforms, telecommunications companies, financial technology companies, and social media companies.
- (3) The strategy must include arrangements for a data-sharing agreement involving—
- (a) relevant law enforcement agencies,
  - (b) relevant regulators,
  - (c) financial services stakeholders,
  - (d) telecommunications stakeholders, and
  - (e) technology-based communication platforms,
- for the purposes of detecting, preventing and investigating fraud and associated financial crime and, in particular, tracking stolen money which may pass through mule bank accounts or platforms operated by other financial services stakeholders.
- (4) In this section “fraud and associated financial crime” includes, but is not limited to authorised push payment fraud, unauthorised facility takeover fraud, and online and offline identity fraud.
- (5) In this section, “financial services stakeholders” includes banks, building societies, credit unions, investment firms, Electric Money Institutions, virtual asset providers and exchanges, and payment system operators.”

**Member’s explanatory statement**

This new clause would require the Treasury to publish a national strategy for the detection, prevention and investigation of fraud and associated financial crime, after having consulted relevant stakeholders. The strategy must include arrangements for a data sharing agreement between law enforcement agencies, regulators and others to track stolen money.

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Tulip Siddiq

NC7

To move the following Clause—

**“FCA duty to report on mutual and co-operative business models**

- (1) The FCA must lay before 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 it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) must include the needs of mutual and co-operative financial services providers to have a level-playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—

- (a) credit unions,
- (b) building societies,
- (c) mutual banks,
- (d) co-operative banks, and
- (e) regional banks.”

**Member’s explanatory statement**

This new clause would require the FCA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

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Tulip Siddiq

NC8

To move the following Clause—

**“PRA duty to report on mutual and co-operative business models**

- (1) The PRA must lay before 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 it considers the specific needs of mutual and co-operative financial services providers and other relevant business models when discharging its regulatory functions.
- (2) The “specific needs” referred to in subsection (1) must include the needs of mutual and co-operative financial services providers to have a level-playing field with financial services providers which are not mutuals or co-operatives.
- (3) The “mutual and co-operative financial services providers and other relevant business models” referred to in subsection (1) may include—
  - (a) building societies,
  - (b) mutual banks,
  - (c) co-operative banks, and
  - (d) regional banks.”

**Member’s explanatory statement**

This new clause would require the PRA to report annually on how they have considered the specific needs of mutual and co-operative financial services.

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Tulip Siddiq

NC9

To move the following Clause—

**“Updated Green Finance Strategy**

- (1) The Treasury must lay before the House of Commons an updated Green Finance Strategy within three months of the passing of this Act.
- (2) The strategy must include—

- (a) a Green Taxonomy, and
  - (b) Sustainability Disclosure Requirements.
- (3) In preparing the strategy, the Treasury must consult—
- (a) financial services stakeholders,
  - (b) businesses in the wider economy,
  - (c) the Secretary of State for Business, Energy and Industrial Strategy, and
  - (d) the Secretary of State for Work and Pensions.
- (4) In this section a “Green Taxonomy” means investment screening criteria which classify which activities can be defined as environmentally sustainable including, but not limited to—
- (a) climate change mitigation and adaptation,
  - (b) sustainable use and protection of water and marine resources,
  - (c) transitions to a circular economy,
  - (d) pollution prevention and control, and
  - (e) protection and restoration of biodiversity and ecosystems.
- (5) In this section “Sustainability Disclosure Requirements” are the requirements placed on companies, including listed issuers, asset managers and asset owners, to report on their sustainability risks, opportunities and impacts.”

**Member’s explanatory statement**

This new clause would require the Treasury to publish an updated Green Finance Strategy. This must include a Green Taxonomy and Sustainability Disclosure Requirements.

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Siobhain McDonagh

NC10

To move the following Clause—

**“Access to cash: Guaranteed minimum provision**

- (1) The Treasury must, by regulations, make provision to guarantee a minimum level of access to free of charge cash access services for consumers across the United Kingdom.
- (2) The minimum level of access referred to in subsection (1) must be included in the regulations.
- (3) Regulations under this section shall be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

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Siobhain McDonagh  
Peter Grant  
Martin Docherty-Hughes

NC11

To move the following Clause—

**“Duty to collect data on cash acceptance**

- (1) The FCA must monitor, collect and publish data in relation to levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (2) The FCA must publish 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 levels of cash acceptance amongst retailers and service providers within the United Kingdom.
- (3) The FCA can, by written notice, require a retailer or service provider to provide to the FCA information that it may reasonably require for the purposes of exercising its duties under subsections (1) and (2).”

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Siobhain McDonagh

NC12

To move the following Clause—

**“Access to cash: Guaranteed minimum provision for small businesses**

- (1) The Treasury must, by regulations, make provision to guarantee a minimum level of access to free of charge cash access services for small businesses across the United Kingdom.
- (2) The minimum level of access referred to in subsection (1) must be included in the regulations.
- (3) Regulations under this section shall be made by statutory instrument, and may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

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Sally-Ann Hart

NC15

To move the following Clause—

**“Refusal to provide services for reasons connected with freedom of expression**

- (1) No payment service provider providing a relevant service (the “provider”) may refuse to supply that service to any other person (the “customer”) in the United Kingdom if the reason for the refusal is significantly related to the customer exercising his or her right to freedom of expression.
- (2) Where a customer has prominently and publicly exercised his or her right to freedom of expression, it is to be presumed that any refusal by a provider to supply a relevant service was significantly related to the



customer exercising his or her right to freedom of expression unless the provider can provide a substantial basis for believing there was an alternative good and proper reason for the refusal.

- (3) Where a customer has prominently and publicly exercised his or her right to freedom of expression and has been refused a relevant service by a provider on application by the customer, the FCA must within 5 working days issue an order to the provider immediately to recommence supply unless the FCA considers it clearly inappropriate to do so.
- (4) An order issued pursuant to subsection (3) must last until the FCA is satisfied that there was or there has subsequently arisen an alternative good and proper reason for the refusal.
- (5) Upon considering an application by the customer under subsection (3), where the FCA decides not to issue an order to the supplier, the FCA must give reasons in writing to the customer explaining its decision not to issue an order.
- (6) Where the FCA is satisfied that there has been a breach by a provider of the obligation in subsection (1) or the failure to comply with an order issued pursuant to subsection (3), the FCA may impose a penalty on the provider of such an amount as it considers appropriate. The FCA may, instead of imposing a penalty on a provider, publish a statement censuring the provider.
- (7) The FCA must within three months of the coming into force of this section prepare and arrange for publication of a statement of its policy with respect to—
  - (a) the circumstances the FCA will consider under subsection (3) in deciding whether it is clearly inappropriate to issue an order; and
  - (b) the imposition of penalties and statements of censure under subsection (6).
- (8) A breach by a provider of the obligation in subsection (1) and the failure to comply with an order issued pursuant to subsection (3) are actionable at the suit of the customer, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (9) In this section—
  - (a) a “relevant service” means a service which is (in whole or in part) directed at users in the United Kingdom and constitutes—
    - (i) any service provided pursuant to any regulated activity; or
    - (ii) any service in relation to a payment system for the purposes of enabling the transfer of funds using the payment system as referred to in section 42(5) of the 2013 Act;save for any service expressly excluded by regulations;
  - (b) a “payment service provider” has the same meaning as under section 42(5) of the 2013 Act;
  - (c) the right to freedom of expression has the same meaning as under Article 10 of the European Convention on Human Rights—
    - (i) save that it includes the right to campaign for or seek to protect the right to freedom of expression of others; and

- (ii) save as excluded by regulations;
  - (d) “the 2013 Act” means the Financial Services (Banking Reform) Act 2013.
- (10) Regulations under this section may be made pursuant to the provisions of section 428 of FSMA 2000 save that—
- (a) before preparing regulations under this section, the Secretary of State must consult the FCA and such other persons as the Secretary of State considers appropriate; and
  - (b) they must be adopted using the affirmative procedure before Parliament.”

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Peter Grant  
Martin Docherty-Hughes  
Owen Thompson

NC16

To move the following Clause—

**“Regulators’ immunity from civil damages action**

Relevant regulators may be the subject of civil damages actions in cases where conditions A, B and C are met—

- (a) condition A is that a consumer has suffered material financial loss,
- (b) condition B is that the material financial loss referred to in paragraph (a) has occurred as the result of the conduct of an activity, or activities, which are prohibited,
- (c) condition C is that the prohibited activities referred to in paragraph (b) are within the statutory remit of the relevant regulator, and the relevant regulator has negligently failed to take sufficient action to prevent the prohibited activity or activities occurring where it was aware, or could reasonably be expected to have been aware, that the prohibited activity or activities were taking place.”

**Member’s explanatory statement**

This new clause would allow regulators to be the subject of civil damages actions if a consumer has suffered financial loss as a result of prohibited activity and the regulator has not taken sufficient action to prevent such prohibited activity within its remit.

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Craig Tracey

NC18

☆ To move the following Clause—

**“Regulators’ reporting requirement: competitiveness and growth objective**

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

- (2) In paragraph 11 of Schedule 1ZA (FCA annual report), after sub-paragraph (1) insert—
- “(1A) A report under sub-paragraph (1) must include an assessment of the FCA’s performance in fulfilling the competitiveness and growth objective, against the following criteria—
- (a) outcomes of regulatory consolidation exercises;
  - (b) response times in assigning a case officer and authorisation times;
  - (c) data on the number of new market entrants to the UK and firms which have left the UK;
  - (d) reviews undertaken by the FCA of regulatory data requirements of authorised firms;
  - (e) outcomes of rule monitoring and evaluation and how it has contributed to UK competitiveness;
  - (f) comparative analysis of the regulatory approach of other jurisdictions;
  - (g) any other matters as the Treasury may from time to time direct.”
- (3) In paragraph 19 of Schedule 1ZB (annual report of the PRA), after sub-paragraph (1A) insert—
- “(1AA) In the report the PRA must also report on its performance in fulfilling the competitiveness and growth objective, against the following criteria—
- (a) outcomes of regulatory consolidation exercises;
  - (b) response times in assigning a case officer and authorisation times;
  - (c) data on the number of new market entrants to the UK and firms which have left the UK;
  - (d) reviews undertaken by the FCA of regulatory data requirements of authorised firms;
  - (e) outcomes of rule monitoring and evaluation and how it has contributed to UK competitiveness;
  - (f) comparative analysis of the regulatory approach of other jurisdictions;
  - (g) any other matters as the Treasury may from time to time direct.””

**Member’s explanatory statement**

This new clause would require the FCA and the PRA to include in their annual reports an assessment of their performance in fulfilling the competitiveness and growth objective, against specified criteria.

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Craig Tracey

NC19

☆ To move the following Clause—

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

- (1) The Financial Services and Markets Act 2000 is amended as follow.
- (2) In Section 3B(1)(b) leave out “considered in general terms”.
- (3) In Section 3B(1)(b) after “restriction” insert “, and take into account the nature of and risk to the consumer, and the service or product being delivered”.

**Member’s explanatory statement**

This new clause would amend the existing regulatory principle for both regulators to remove reference to proportionality in “general terms”, and include 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.

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## Order of the House

**[7 September 2022, as amended 22 September 2022]**

That the following provisions shall apply to the Financial Services and Markets Bill:

**Committal**

1. The Bill shall be committed to a Public Bill Committee.

**Proceedings in Public Bill Committee**

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 3 November 2022.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

**Proceedings on Consideration and Third Reading**

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and up to and including Third Reading.

**Other proceedings**

7. Any other proceedings on the Bill may be programmed.

## Order of the Committee

### [19 October 2022]

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Wednesday 19 October) meet—
  - (a) at 2.00 pm on Wednesday 19 October;
  - (b) at 9.25 am and 2.00 pm on Tuesday 25 October;
  - (c) at 11.30 am and 2.00 pm on Thursday 27 October;
  - (d) at 9.25 am and 2.00 pm on Tuesday 1 November;
  - (e) at 11.30 am and 2.00 pm on Thursday 3 November;
2. the Committee shall hear oral evidence in accordance with the following Table:

<b>Date</b>	<b>Time</b>	<b>Witness</b>
Wednesday 19 October	Until no later than 10.10 am	Prudential Regulation Authority Financial Conduct Authority
Wednesday 19 October	Until no later than 10.40 am	TheCityUK UK Finance
Wednesday 19 October	Until no later than 10.55 am	Payment Systems Regulator
Wednesday 19 October	Until no later than 11.25 am	Association of British Insurers Investment Association
Wednesday 19 October	Until no later than 2.25 pm	The Bank of England
Wednesday 19 October	Until no later than 2.45 pm	Which?
Wednesday 19 October	Until no later than 3.10 pm	Access to Cash Group Fair by Design
Wednesday 19 October	Until no later than 3.10 pm	New Financial
Wednesday 19 October	Until no later than 3.55 pm	Association of British Credit Unions Ltd. Building Societies Association
Wednesday 19 October	Until no later than 4.10 pm	CIFAS
Wednesday 19 October	Until no later than 4.25 pm	Innovate Finance
Wednesday 19 October	Until no later than 4.40pm	Mr Martin Taylor

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clauses 3 to 7; Clause 2; Schedule 2; Clause 8; Schedule 3; Clauses 9 to 13; Schedule 4; Clauses 14 to 20; Schedule 5; Clause 21; Schedule 6; Clauses 22 to 46; Schedule 7; Clause 47; Schedule 8; Clause 48; Schedule 9; Clause 49; Schedule 10; Clause 50; Schedule 11; Clause 51; Schedules 12 and 13; Clauses 52 to 63; Schedule 14; Clauses 64 to 73; new Clauses; new Schedules; remaining proceedings on the Bill;
  4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 3 November.
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## Withdrawn Amendments

The following amendments were withdrawn on 25 October 2022:

50 and NC17

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