

Financial Services Bill

[This provisional Marshalled List includes all amendments tabled for Day 3 onwards. A revised Marshalled List will be produced following the conclusion of proceedings on Day 3. Neither amendments nor members' names may be added between the two.]

PROVISIONAL FOURTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

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

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

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 5

LORD OATES
BARONESS KRAMER

BARONESS BENNETT OF MANOR CASTLE

28

Insert the following new Clause –

“Considerations in setting capital adequacy requirements

In setting the capital adequacy requirements of a credit institution, the Prudential Regulation Authority shall have regard to –

- (a) the level of exposure of an institution to climate-related financial risk;
- (b) the level of compliance of the institution with the recommendations of the Task Force on Climate-Related Financial Disclosure; and
- (c) the objectives of the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056).”

Member's explanatory statement

The purpose of this amendment is to place a requirement on the PRA in setting capital adequacy requirements of a credit institution to have regard to its exposure to climate-related financial risk.

BARONESS BOWLES OF BERKHAMSTED
BARONESS KRAMER

29 Insert the following new Clause—

“Further matters for regulators to take into account

When making rules using their powers under the Financial Services and Markets Act 2000, the Prudential Regulation Authority and Financial Conduct Authority must—

- (a) have regard to competition within the contexts of—
 - (i) the availability of consumer choice and fair pricing;
 - (ii) the development and encouragement of new products and new industry;
 - (iii) the desirability of supporting the international reputation of the United Kingdom for good governance;
- (b) structure the rules to establish clear categories for different types and sizes of financial service businesses including—
 - (i) in banking, for small co-operative, mutual and community banks;
 - (ii) in insurance, for captives and reinsurance.”

Member's explanatory statement

This is a non-exhaustive example of additional high level policy that could be embedded in the remit for the Regulators.

30 Insert the following new Clause—

“Skilled person review of supervisory bodies

- (1) At least once every five years, an independent skilled person review must be conducted of—
 - (a) the Financial Conduct Authority and
 - (b) the Prudential Regulation Authority.
- (2) The body set up to conduct the independent skilled person review must include a person nominated by resolutions of the House of Commons and House of Lords.
- (3) The independent skilled person review must include a review of—
 - (a) internal operations and controls;
 - (b) systems for responding to whistleblowers, Parliamentary correspondence and reports, and public concerns;
 - (c) regulatory perimeters;
 - (d) the effectiveness of relevant legislation and rules and the regulatory burden;
 - (e) whether all statutory and public policy objectives have been met;
 - (f) the operation and effectiveness of engagement practices before and during rule making;

After Clause 5 - continued

- (g) the skills base of the Authority's staff;
- (h) any other matter the skilled person considers relevant;
- (i) any other matter requested by a relevant Committee of the House of Commons or House of Lords."

Member's explanatory statement

This amendment suggests a generalised review, not linked to specific fault or failure, of a kind that exists in other jurisdictions.

LORD OATES
BARONESS KRAMER
BARONESS ALTMANN

31 Insert the following new Clause—

“Risk weight: existing fossil fuel exposure

In setting the capital requirements of an institution, the Prudential Regulation Authority must apply a risk weight of 150% to exposures associated with the funding of existing fossil fuel production and exploitation.”

Member's explanatory statement

The purpose of this amendment is to ensure that the 150% risk weight required under article 128 of CRR2 for “items associated with particularly high risk” is applied to exposures of an institution to existing fossil fuel production and exploitation.

32 Insert the following new Clause—

“Risk weight: funding of new fossil fuel exploration

In setting the capital requirements of an institution, the Prudential Regulation Authority must apply a risk weight of 1250% to exposures associated with the funding of new fossil fuel exploration, production and exploitation.”

Member's explanatory statement

The purpose of this amendment is to apply a 1250% risk weight to exposure to new fossil fuel exploration, production and exploitation, implying 100% equity funding and reflecting the fact that such activity is likely to result in a loss of capital as the world moves to net zero. The amendment replicates the approach taken in Article 89 of CRR in calculating the capital requirements of holding companies.

Schedule 3

LORD SHARKEY
BARONESS KRAMER

33 Page 82, leave out lines 7 to 10

Member's explanatory statement

This is a probing amendment to allow discussion of the merits of having regard to “the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities.”

LORD OATES
BARONESS KRAMER

34 Page 82, line 14, at end insert –

“(ca) the likely effect of the rules on the relative standing of the United Kingdom as an international leader in combatting climate change,”

Member’s explanatory statement

The purpose of this amendment and the amendment in the name of Lord Oates to page 82, line 20, is to require the PRA in making CRR rules to have regard to the UK’s international standing as a leader in tackling climate change.

BARONESS HAYMAN
LORD OATES
BARONESS ALTMANN

35 Page 82, line 14, at end insert –

“(ca) the likely effect of the rules on the United Kingdom meeting its international and domestic commitments on tackling climate change, and”

Member’s explanatory statement

This amendment would ensure the likely effect of the rules on the UK meeting its international and domestic commitments to tackling climate change is considered before CRR rules are made.

BARONESS JONES OF WHITCHURCH
LORD TUNNICLIFFE
LORD OATES

36 Page 82, line 14, at end insert –

“(ca) the target for net UK emissions of greenhouse gases in 2050 as set out in the Climate Change Act 2008 as amended by the Climate Change Act (2050 Target Amendment) Order 2019, and”

Member’s explanatory statement

This amendment would require the PRA to have regard to the 2050 net-zero target when making Part 9C rules.

LORD OATES
BARONESS KRAMER

37 Page 82, line 20, at end insert –

“() For the purposes of subsection (1)(ca), the PRA must consider the United Kingdom’s international and domestic obligations to tackle climate change including but not limited to –

- (a) the agreement adopted under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015,
- (b) the United Kingdom’s nationally determined contribution under the United Nations Framework Convention on Climate Change done at Paris on 12 December 2015, and

Schedule 3 - continued

- (c) the UK's net zero target for greenhouse gases set out in the Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (S.I. 2019/1056)."

Member's explanatory statement

The purpose of this amendment and the amendment in the name of Lord Oates to page 82, line 14, is to require the PRA in making CRR rules to have regard to the UK's international standing as a leader in tackling climate change.

BARONESS BOWLES OF BERKHAMSTED

- 38 Page 82, line 23, at end insert "and inform the relevant committees of the House of Commons and the House of Lords of the matters discussed and conclusions."

Member's explanatory statement

This is to inform Parliament regarding discussions between the regulator and HMT concerning equivalence.

- 39 Page 82, line 44, at end insert –

- "() The explanation in subsection (1) must include specific, detailed and quantitative elaboration, with worked examples, showing where and how the rules have been influenced including (where applicable) comparisons to previous rules or other references.
- () If either House of Parliament by resolution declares that a consultation or proposed CRR rules are void on the grounds that the accompanying explanation under subsection (1) is inadequate, the consultation is to be deemed not to have been carried out under section 138J and the proposed CRR rules may not be made."

LORD TUNNICLIFFE

LORD EATWELL

- 40 Page 83, line 2, at end insert –

"144DA Parliamentary engagement on rules

- (1) When publishing a draft of proposed CRR rules published in accordance with section 138J(1)(b), the PRA must make arrangements with the Treasury for the draft to be laid before each House of Parliament.
- (2) The PRA may not make the rules contained in the draft unless –
- (a) a committee of the House of Commons charged with doing so and a committee of the House of Lords charged with doing so have, within the relevant period, each published a report on the proposed rules, and –
- (i) each committee in their respective reports consents to proposed rules being made, or
- (ii) the PRA has, having had regard to any objections contained within the reports, responded to those objections in writing, or
- (b) the relevant period has elapsed without any report being published.

Schedule 3 - continued

- (3) In this section “the relevant period” means the period –
- (a) beginning with the first day on which both Houses of Parliament are sitting after the day on which the draft was laid before each House as mentioned in subsection (1), and
 - (b) ending with whichever of the following is the later –
 - (i) the end of the period of 20 Commons sitting days beginning with that first day, and
 - (ii) the end of the period of 20 Lords sitting days beginning with that first day.
- (4) For the purposes of subsection (4) –
- (a) where a draft is laid before each House of Parliament on different days, the later day is to be taken as the day on which it is laid before both Houses,
 - (b) “Commons sitting day” means a day on which the House of Commons is sitting, and
 - (c) “Lords sitting day” means a day on which the House of Lords is sitting.”

Member’s explanatory statement

This amendment would allow committees of both Houses to opine on draft prudential rules proposed by the PRA, with a scrutiny period of 20 sitting days (approx. 5 weeks) and a requirement for the regulator to reply to any objections in writing.

41 Page 83, line 4, leave out “and 144D” and insert “to 144DA”

Member’s explanatory statement

This amendment is consequential on a previous parliamentary scrutiny amendment tabled by Lord Tunnicliffe.

After Clause 6

LORD OATES

BARONESS KRAMER

BARONESS BENNETT OF MANOR CASTLE

42 Insert the following new Clause –

“Requirement to amend the Credit Rating Agencies Regulation

- (1) The Treasury must by regulations amend the Credit Rating Agencies Regulation to make provision related to the issuing and use of credit ratings to require such ratings to give due consideration to the level of exposure of a credit institution to climate-related financial risk.
- (2) Regulations under subsection (1) must be made by the Treasury within six months of the day on which this Act is passed.”

Member’s explanatory statement

The purpose of this new Clause is to require HM Treasury to make regulations requiring credit rating agencies to assess climate related financial risk in determining credit ratings.

Schedule 4

BARONESS KRAMER

43 Page 91, line 6, at end insert—

“2A In Article 92(1) (own funds requirements) after “institutions” add “(with assets in excess of £100 billion (sterling)).”

Member’s explanatory statement

This is designed to ensure that capital requirements for medium sized banks are proportionate.

After Clause 15

BARONESS NOAKES

BARONESS BOWLES OF BERKHAMSTED

LORD HOLMES OF RICHMOND

44 Insert the following new Clause—

“Continuity of contract

If the FCA exercises one or more of the powers under Article 23D of the Benchmarks Regulation in respect of a benchmark, any reference to or description of that benchmark in a contract, security or instrument must be, with effect from the date of such exercise, interpreted as a reference to or description of the benchmark as modified by the FCA under its powers under Article 23D.”

Member’s explanatory statement

This amendment would ensure that if the FCA revised a benchmark under Article 23D (inserted by Clause 15) there would be continuity of contract by replacing references to the earlier benchmark with the revised one.

45 Insert the following new Clause—

“Safe harbour for use of benchmarks

The exercise by the FCA of one or more of its powers under paragraph 2 of Article 23D of the Benchmarks Regulation in respect of a benchmark (“the relevant benchmark”) shall not give rise to any claim or cause of action or liability in damages or otherwise in respect of either—

- (a) the determination or calculation of amounts by reference to the relevant benchmark in respect of any contract, security or instrument; or
- (b) the making of any consequential changes to any contract, security or instrument in respect of the relevant benchmark where such consequential changes are, in the opinion of any party to such contract, security or instrument, reasonably necessary for the use of the relevant benchmark or any determinations made in connection with it.”

Member’s explanatory statement

This amendment would ensure that where the FCA imposes changes on a benchmark under the Benchmark Regulation, paragraph 2 of Article 23D, the use of that benchmark for contracts cannot lead to legal actions.

Clause 22

THE LORD BISHOP OF ST ALBANS
LORD SIKKA
BARONESS BENNETT OF MANOR CASTLE

46 Page 28, line 23, at end insert –

“32B Gibraltar-based persons: taxation reporting

- (1) A Gibraltar-based person carrying on an activity approved under Schedule 2A, or which has permission by virtue of relevant Gibraltar provision to carry on an activity, in the United Kingdom must, as soon as reasonably practicable after the end of each financial year, submit to the Treasury a statement in respect of that year of the gross profit made from carrying on that activity or, where it is carrying on more than one such activity, from carrying on each activity.
- (2) The report under section 32A must specify –
 - (a) the number of Gibraltar-based persons who submitted a statement under subsection (1) in the reporting period concerned,
 - (b) the number of persons referred to in paragraph (a) who, at any time in that reporting period, were also authorised persons on some other basis under section 31,
 - (c) the total of the amounts of gross profit in each statement submitted under subsection (1) in that reporting period, and
 - (d) the total of the amount of tax chargeable in the United Kingdom on the amounts specified under paragraph (c) and, where tax is chargeable on a different basis for different amounts, the amount chargeable on each basis.
- (3) The report under section 32A must include an analysis of the difference between the taxation regime in the United Kingdom on profits made from carrying on activities of the kind referred to in subsection (1) and the equivalent regime in Gibraltar.
- (4) The report under section 32A must, in the light of the analysis under subsection (3), include such recommendations as the Treasury considers appropriate for improving transparency in the processes in the United Kingdom, and in the processes in Gibraltar, for levying and collecting tax on activities of the kind referred to in subsection (1).
- (5) A failure to submit a statement under subsection (1), or a failure to submit a statement under that subsection which is complete and accurate, is to be treated as a breach of the general prohibition.
- (6) A reference to a relevant Gibraltar provision is to be read with section 23 of the Financial Services Act 2021.”

Member’s explanatory statement

This amendment would require any Gibraltar-based person carrying on activities in the UK to provide an annual statement to the Treasury of the profits it has made from those activities. The Treasury would then report to Parliament on the amount of tax chargeable on those profits and make any recommendations it thinks appropriate for improving transparency.

After Clause 23

LORD TUNNICLIFFE
LORD EATWELL

47 Insert the following new Clause –

“Parliamentary statement: market access for Gibraltar and Crown Dependencies

Within 12 months of the day on which this Act is passed, the Treasury must lay before both Houses of Parliament a statement, or statements, containing an assessment of –

- (a) the Gibraltar Financial Services Commission and its regulatory framework, as it applies to approved activities,
- (b) the compatibility of that regulatory framework, as it applies to approved activities, with equivalent provisions in the United Kingdom,
- (c) the current position regarding financial services market access enjoyed by the Crown Dependencies, and
- (d) the case for extending, in whole or in part, financial services market access provisions for Gibraltar (under sections 22 and 23) to the Crown Dependencies.”

Member’s explanatory statement

This probing amendment aims to understand how the Government will assess regulatory alignment between the UK and Gibraltar, by requiring an initial assessment within 12 months of Royal Assent. It also seeks to understand why the Government is not exploring opportunities to improve market access for (and regulatory cooperation with) the Crown Dependencies.

After Clause 28

LORD OATES
BARONESS HAYMAN
BARONESS JONES OF WHITCHURCH
BARONESS ALTMANN

48 Insert the following new Clause –

“Requirement for disclosure of climate-related financial risk

- (1) An organisation specified in subsection (2) may not operate in the United Kingdom after 31 December 2022 unless it –
 - (a) has made disclosures consistent with the recommendations of the final report of the Task Force on Climate-Related Financial Disclosure, and
 - (b) has made a statement in its annual financial report confirming that it has made such disclosures.
- (2) Subsection (1) applies to the following organisations –
 - (a) premium listed companies, and all issuers of standard listed shares on the FCA’s Official List,
 - (b) private companies operating in the financial sector with a turnover above the thresholds of a “medium-sized company” as defined by section 465 of the Companies Act 2006,

After Clause 28 - continued

- (c) PRA regulated banks, building societies, PRA-designated investment firms, and their groups,
- (d) UK PRA-regulated insurance and reinsurance firms and groups,
- (e) UK-authorized asset managers, defined as—
 - (i) MiFID investment firms who provide portfolio management services;
 - (ii) alternative investment fund managers (AIFMs), including small authorised AIFMs that have managing permissions;
 - (iii) UCITS management companies and UCITS funds;
 including fund managers for occupational pension schemes, and
- (f) life insurers and FCA-regulated pension scheme providers.”

Member’s explanatory statement

The purpose of this amendment is to bring forward to 2023 a mandatory requirement for climate related disclosure consistent with the recommendations of the 2017 final report of the Task Force on Climate-Related Disclosure. The Government and FCA are currently suggesting that the recommendations should not become mandatory until 2025.

After Clause 30

LORD TUNNICLIFFE
LORD EATWELL

49 Insert the following new Clause—

“Review of penalties for insider dealing and financial services offences

- (1) Within six months of the day on which this Act is passed, the Treasury must commission a review of penalties for insider dealing and financial services offences (“market abuse”).
- (2) The review under subsection (1) must include statistics relating to—
 - (a) the perceived level of market abuse,
 - (b) the number of arrests for market abuse, and
 - (c) the number of successful convictions for market abuse
 in each of the last five financial years.
- (3) The review under subsection (1) must also contain a summary of steps being taken by Her Majesty’s Government to ensure market abuse offences are identified and punished.
- (4) Within one month of the review under subsection (1) being completed, the Treasury must—
 - (a) lay the document before both Houses of Parliament, and
 - (b) make a statement responding to the review, including a declaration of whether and how the Treasury will act to—
 - (i) increase the resources available to those charged with investigating market abuse,
 - (ii) modernise and reform the United Kingdom’s suspicious activity reporting regime, and
 - (iii) ensure greater consistency in the intensity of supervision across different parts of the financial services sector.

After Clause 30 - continued

- (5) After the requirements under subsection (4) have been met, the Treasury may by regulations enact such reforms of market abuse provisions that are identified in the review.
- (6) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

This probing amendment seeks to understand what steps the Government is taking to improve identification and punishment of market abuse. It asks for the Treasury to outline proposals for enacting recommendations from a 2018 evaluation by the Financial Action Task Force, the global money laundering and terrorist financing watchdog.

Clause 31

LORD EATWELL

50

Page 37, line 29, at end insert –

“() In section 327, after subsection (2B) insert –

- “(2BA) A deposit-taking body (defined in section 340(14) as a business which engages in the activity of accepting deposits, or the National Savings Bank) charged with an offence mentioned in paragraph (a) (concealing criminal property) or (b) (disguising criminal property) of subsection (1), consisting in whole or in part of concealing or disguising the ownership of criminal property (see subsection (3)), has a defence if it can demonstrate that it relied upon information in a publicly accessible, verified register of the beneficial ownership of companies registered in the United Kingdom, operated in accordance with recommendations of the Financial Action Task Force.
- (2BB) For the purposes of subsection (2BA), the beneficial owner of an entity means any individual who ultimately owns or controls the entity, or on whose behalf a transaction is being conducted, including an individual who exercises ultimate effective control over the entity.
- (2BC) For the purposes of subsection (2BB), ultimate effective control over an entity includes ownership or control exercised through a chain of ownership or by means of control other than direct control.
- (2BD) Once in each year from the date of the passing of the Financial Services Act 2021 and until such a register as is described in subsection (2BA) is in operation, the Secretary of State must lay a report before Parliament on progress towards establishing it, including progress towards agreement on funding.”

Member’s explanatory statement

This amendment would allow a deposit-taking body charged with an offence to demonstrate, as part of its defence, that it relied on information contained in a publicly accessible, verified register of beneficial ownership of UK companies. Until that verified register is operational, the Government would have to report annually on progress towards establishing it.

After Clause 33

LORD HOLMES OF RICHMOND
BARONESS ALTMANN

51 Insert the following new Clause –

“Know Your Customer regulations review

Within six months of the passing of this Act, the Secretary of State must commission a review of the current Know Your Customer regulations, with the aim of –

- (a) enabling greater inclusion,
- (b) enabling greater efficiency, and
- (c) removing outdated measures.”

LORD SIKKA

51A Insert the following new Clause –

“Consolidation of anti-money laundering supervisors

The Secretary of State may by regulations amend regulation 7 of and Schedule 1 to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 so as to transfer supervisory authority functions from one or more of the professional bodies listed in Schedule 1 to the FCA.”

Clause 34

BARONESS COUSSINS
BARONESS MORGAN OF COTES
LORD ROOKER
BARONESS KRAMER

52 Page 40, line 15, leave out “and (4)” and insert “, (4) and (4A)”

Member’s explanatory statement

This amendment, and the amendment to page 40, line 32 in the name of Baroness Coussins, would require that the Statutory Debt Repayment Plan element of the debt respite scheme would have to come into force before 1 May 2024.

LORD HOLMES OF RICHMOND

53 Page 40, line 30, at end insert –

“(d) provision for individuals in the scheme to receive debt advice.”

LORD STEVENSON OF BALMACARA
BARONESS BENNETT OF MANOR CASTLE
LORD HOLMES OF RICHMOND
BARONESS MORGAN OF COTES

54 Page 40, line 30, at end insert –

“(4B) The regulations may also include the following as part of the scheme –

Clause 34 - continued

- (a) provision to ensure that debt advisers that are responsible for the delivery of debt advice in support of a plan for the repayment of some, or all, of an individual's debts have been properly authorised by the FCA;
- (b) provision to ensure that when an individual is deemed suitable to enter into a plan for the repayment of some or all of their outstanding debts, the organisation holding funds on behalf of the individual and making the agreed repayments to creditors must be a charity or other not-for-profit organisation properly authorised by the FCA;
- (c) provision to ensure that the aggregate provision payable in respect of the costs of operating the repayment plan, other repayment plans, the debt respite scheme and the wider debt advice services being provided meets the reasonable annual costs of the organisations involved;
- (d) provision that the debts that are dealt with under a plan for repayment include those owed to Her Majesty's Government and those owed to other UK public bodies and service providers;
- (e) provision that when an individual has entered into a plan for the repayment of some or all of their outstanding debts, they will receive protection from any warrant or action from bailiffs appointed by a UK court."

Member's explanatory statement

This amendment probes the nature and content of the regulations which will establish the Statutory Debt Management Scheme, foreshadowed by the Debt Respite Scheme.

BARONESS BENNETT OF MANOR CASTLE
THE LORD BISHOP OF ST ALBANS

55

Page 40, line 30, at end insert –

- “(4B) The regulations must also include the following as part of the scheme –
- (a) provision to ensure that any debts appearing on a repayment plan, which have either –
 - (i) been sold by originating lenders to debt purchasing companies prior to the debtor entering the scheme, or
 - (ii) been sold by originating lenders to debt purchasing companies whilst the debtor is in the scheme,
 are subject to what is to be known as a “fair debt write-down”;
 - (b) that the level of the fair debt write-down must be calculated by the amount paid by the debt purchasing company for the debt plus no more than twenty per cent of the value of the debt;
 - (c) that no more than the amount calculated under paragraph (b) may be collected in respect of any debts to which a fair debt write-down applies throughout the course of the debt repayment plan; and

Clause 34 - continued

- (d) that at the end of an individual's debt repayment plan, any outstanding amount in respect of debts to which a fair debt write-down has applied is unenforceable against the debtor and must be treated as if fully discharged by virtue of section 251I of the Insolvency Act 1986 (discharge from qualifying debts)."

Member's explanatory statement

This amendment seeks to ensure that debts which have been sold by originating lenders on the secondary debt market are written down to a fair level.

LORD LUCAS

56 Page 40, line 30, at end insert –

- “(4B) The regulations may provide for circumstances in which the breathing space moratorium period may be extended.”

Member's explanatory statement

This refers to the “breathing space moratorium” under Part 2 of the regulations, which lasts for 60 days. This amendment would allow that period to be extended, for example, for the purposes of allowing a benefit claim to be processed.

57 Page 40, line 30, at end insert –

- “(4B) The regulations may provide for circumstances in which the date of the midway review of the breathing space moratorium may be varied.”

Member's explanatory statement

This amendment is to cover circumstances where there is nothing to review.

58 Page 40, line 30, at end insert –

- “(4B) The regulations may provide for circumstances where it is permissible to exclude specified categories of debt from the process.”

Member's explanatory statement

This amendment is intended to exclude from the scheme certain categories of debt, such as to private landlords, friends, and service providers such as nurseries, to avoid such creditors from being notified of a breathing space moratorium or statutory debt repayment plan process, where inclusion might have detrimental consequences for the debtor.

59 Page 40, line 30, at end insert –

- “(4B) The regulations may provide for penalties to be imposed on creditors who do not comply with requirements under the regulations.”

Member's explanatory statement

This amendment is to encourage creditors to comply.

60 Page 40, line 30, at end insert –

- “(4B) The regulations may require annual reports to be laid before Parliament on the ways in which processes for managing personal debts may be improved.”

Member's explanatory statement

This is intended to secure that the breathing space and statutory debt repayment plan processes are self-improving, and that gaps in the range of solutions available, and barriers to access, are highlighted.

61 Page 40, line 30, at end insert –

“(4B) The regulations may provide for circumstances in which the time allowed for the creditor to comply with regulations may be varied.”

Member's explanatory statement

The breathing space regulations require the debtor's account to be placed on hold immediately. If notified electronically the notice is likely to be given one day, with the Breathing Space taking effect from the following day. This amendment is to allow more time, for example, for information to be passed to any subsequent debt purchaser.

62 Page 40, line 30, at end insert –

“(4B) The regulations may provide for circumstances in which the breathing space moratorium does not apply to all parties to a debt.”

Member's explanatory statement

This amendment is to probe how the moratorium applies to debt rather than an individual and, for example, whether an action against a wealthy debtor should be prevented because they have an estranged partner who is subject to breathing space moratorium.

63 Page 40, line 30, at end insert –

“(4B) The regulations may not commence until the Insolvency Service portal is fully functional.”

64 Page 40, line 30, at end insert –

“(4B) The regulations may not commence until court notification procedures are capable of same-day functionality.”

Member's explanatory statement

This is intended to ensure that the courts are able to manage the proposed procedures against other priorities.

65 Page 40, line 30, at end insert –

“(4B) The regulations may provide for circumstances in which the interest remitted under the regulations is restored if the debtor does not engage effectively with the breathing space process.”

Member's explanatory statement

This is intended to encourage debtors to engage.

66 Page 40, line 30, at end insert –

“(4B) The regulations may provide for circumstances in which a debt in respect of which legal action has already commenced, and is undefended, may be finalised by the entry of default judgment as the debt enters the breathing space process.”

Member's explanatory statement

This is intended so that the creditor does not incur double costs if the breathing space does not lead to an agreement.

BARONESS COUSSINS
BARONESS MORGAN OF COTES
LORD ROOKER
BARONESS KRAMER

67 Page 40, line 32, at end insert –

“(4A) After subsection (8), insert –

“(9) Regulations under this section must come into force on or before 1 May 2024.””

Member's explanatory statement

This amendment, and the amendment to page 40, line 15 in the name of Baroness Coussins, would require that the Statutory Debt Repayment Plan element of the debt respite scheme would have to come into force before 1 May 2024.

LORD HOLMES OF RICHMOND

68 Page 40, line 37, at end insert –

“(6) The Secretary of State must publish a timetable for the establishment of the debt respite scheme.

(7) The debt respite scheme must start to take on clients no later than 31 December 2024.”

69 Page 40, line 37, at end insert –

“(6) Within six months of the passing of this Act, the Secretary of State must launch a consultation on funding for providers of debt advice to individuals in the debt respite scheme, including non-profit providers, leading to publication of a report on a long-term strategy for such funding.”

After Clause 34

LORD STEVENSON OF BALMACARA
LORD HOLMES OF RICHMOND

70 Insert the following new Clause –

“Review of provisions relating to personal debt

(1) Within two years of the day on which this Act is passed, the Secretary of State must undertake a review of the impact on debt of the changes made by section 34 of this Act.

(2) The review under subsection (1) must consider the effects of the debt respite scheme on –

(a) households,

(b) individuals with a protected characteristic as defined under section 4 the Equality Act 2010 (the protected characteristics),

(c) small companies as defined under Part 15 of the Companies Act 2006 (accounts and reports), and

After Clause 34 - continued

- (d) charitable bodies and not-for-profit bodies authorised by the FCA to administer the debt respite and the statutory debt management schemes.
- (3) A Minister of the Crown must, as soon as practicable upon completion of the review, lay a statement outlining its findings before both Houses of Parliament.”

Member’s explanatory statement

The amendment proposes that, within two years of Royal Assent, a review of the impact of the Debt Respite and Statutory Debt Management Schemes should be carried out, and presented to Parliament.

Clause 39

LORD SIKKA
 BARONESS BENNETT OF MANOR CASTLE
 BARONESS BOWLES OF BERKHAMSTED
 THE LORD BISHOP OF ST ALBANS

71 Page 45, line 32, at end insert –

“(za) in sub-paragraph (1), after “must not begin before” insert “the Treasury Committee of the House of Commons has made an assessment of the FCA’s conduct and –”,”

After Clause 40

BARONESS BOWLES OF BERKHAMSTED
 BARONESS KRAMER
 BARONESS ALTMANN

72 Insert the following new Clause –

“Warning regarding non-regulated activity

- (1) Financial services firms that are authorised for any regulated activity may not use reference to that authorisation in any communication, including by way of representation on letterheads or websites, as a reputational guarantee regarding non-regulated activity.
- (2) When non-regulated financial services activity is conducted by an authorised person or firm any communication relating to that activity must feature a prominent warning that it is outside the Financial Conduct Authority regulatory perimeter, and communicating the effect of that fact with respect to the Financial Ombudsman Service and the Financial Services Compensation Scheme.
- (3) It is an offence to imply that a non-regulated financial services activity is covered by an authorisation, and proceedings for an offence may be instituted under section 401 of the Financial Services and Markets Act 2000 (proceedings for offences).”

Member's explanatory statement

This amendment addresses a concern from the Gloster report that indicated lack of understanding of what was not regulated when conducted by an authorised firm.

73 Insert the following new Clause –

“Unconscionable conduct

- (1) Notwithstanding that a financial services transaction or contract is voluntarily entered into by a financial services provider or customer of such a provider, the Financial Conduct Authority may intervene and require change or redress, or impose penalties on firms or responsible individuals, where there is conduct that is unconscionable.
- (2) Conduct that is unconscionable under subsection (1) includes but is not limited to situations where –
 - (a) there is a system of conduct, or pattern of behaviour, that relies upon unequal power between the parties to impose disadvantage on consumers or small businesses or gain advantage for the larger party;
 - (b) notice or other compliance terms are imposed which make it impractical for consumers or small businesses to comply;
 - (c) there is use of notice terms to coerce consumers or small businesses into unfavourable contracts;
 - (d) conduct by a supplier causes a consumer or small business to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
 - (e) there are risks that the supplier should have foreseen would not be apparent to the customer or small business.”

Member's explanatory statement

This is a probing amendment bringing contracts involving small businesses into the regulatory perimeter.

BARONESS BOWLES OF BERKHAMSTED
BARONESS KRAMER
LORD SIKKA

74 Insert the following new Clause –

“Alignment of accounting to prudential standards

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

- (a) align the accounting numbers with the regulatory capital of the banking company which constrains the growth of a banking company and its ability to lend,
- (b) align the regulatory capital for going concern purposes with the accounting capital for going concern purposes,
- (c) align the regulatory capital and profits for remuneration purposes with the accounting capital and profits in accordance with the regulations for shareholder approval of director remuneration, and

After Clause 40 - continued

- (d) align the regulatory capital and profits for distribution purposes with the accounting capital and profits for distribution purposes.”

Member’s explanatory statement

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

BARONESS HAYMAN
LORD OATES
BARONESS ALTMANN
BARONESS BENNETT OF MANOR CASTLE

75 Insert the following new Clause—

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

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

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

Member’s explanatory statement

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

BARONESS HAYMAN
LORD OATES

76 Insert the following new Clause—

“Duty of PRA to report on climate risk

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

- (2) In paragraph 19—

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

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

- (b) after sub-paragraph (1) insert—

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

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

Member’s explanatory statement

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

BARONESS BOWLES OF BERKHAMSTED
 BARONESS KRAMER
 LORD SIKKA

77 Insert the following new Clause—

“Bank of England determination of accounting standards

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

Member’s explanatory statement

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

BARONESS MCINTOSH OF PICKERING
 LORD HOLMES OF RICHMOND

78 Insert the following new Clause—

“Short selling review

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

LORD TUNNICLIFFE
 LORD EATWELL

79 Insert the following new Clause—

“FCA duty to regulate buy now, pay later firms

- (1) Within 3 months of the day on which this Act is passed, the Secretary of State must lay before Parliament regulations which confer a duty on the FCA to regulate—
 - (a) buy now, pay later credit services, and
 - (b) other lending services that have non-interest-bearing elements.
- (2) The duty conferred in regulations under subsection (1) must take effect no later than 6 April 2022.

After Clause 40 - continued

- (3) Regulations under this section are subject to the affirmative procedure.”

Member’s explanatory statement

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

LORD SHARKEY

- 80 Insert the following new Clause –

“Sharia-compliant financial services

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

LORD GARNIER

LORD ROOKER

LORD FAULKS

BARONESS BENNETT OF MANOR CASTLE

- 81 Insert the following new Clause –

“Failure to prevent an economic criminal offence

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

- (2) In this section –

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

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

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

- (3) In subsection (2), “the UK financial system” has the meaning given in section 11 of the Financial Services and Markets Act 2000, and “integrity” of the UK financial system has the meaning given in section 1D of that Act.

After Clause 40 - continued

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

Member’s explanatory statement

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

LORD GARNIER
LORD ROOKER
LORD FAULKS
BARONESS ALTMANN

82

Insert the following new Clause –

“Failure to prevent an economic criminal offence

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

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

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

After Clause 40 - continued

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

Member’s explanatory statement

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

83

Insert the following new Clause –

“Failure to prevent criminal financial offences

- (1) A relevant body (B) is guilty of an offence if a person commits a criminal financial offence when acting in the capacity of a person associated with B.
- (2) It is a defence for B to prove that, when the criminal financial offence was committed –
 - (a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
 - (b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.
- (3) In subsection (2) “prevention procedures” means procedures designed to prevent persons acting in the capacity of a person associated with B from committing criminal financial offences.

After Clause 40 - continued

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

Member’s explanatory statement

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

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

84

Insert the following new Clause—

“Commission or facilitation of financial crime

- (1) A relevant body commits an offence if it—
- (a) facilitates a financial crime,
 - (b) uses the financial system for a purpose connected with financial crime, or
 - (c) fails to take the necessary steps to prevent a financial crime from being committed by a person acting in the capacity of the relevant body.

After Clause 40 - continued

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

After Clause 40 - continued

LORD BLACKWELL

85 Insert the following new Clause—

“Parliamentary oversight of regulators’ delegated powers

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

86 Insert the following new Clause—

“PRA and FCA joint coordination committee

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 3F (with-profits insurance policies) insert—

“3FA PRA and FCA joint coordination committee

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

After Clause 40 - continued

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

LORD HODGSON OF ASTLEY ABBOTTS

87 Insert the following new Clause—

“International competitiveness

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

Member’s explanatory statement

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

LORD SHARKEY
BARONESS KRAMER

88 Insert the following new Clause—

“Access to Sharia-compliant student finance

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

After Clause 40 - continued

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

Member’s explanatory statement

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

BARONESS JONES OF WHITCHURCH
LORD TUNNICLIFFE
LORD OATES
BARONESS HAYMAN

89

Insert the following new Clause –

“Contribution of financial services to climate change targets

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

Member’s explanatory statement

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

BARONESS BOWLES OF BERKHAMSTED

90 Insert the following new Clause—

“Equivalence

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

Member’s explanatory statement

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

BARONESS KRAMER

91 Insert the following new Clause—

“Access to the Term Funding Scheme

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

Member’s explanatory statement

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

92 Insert the following new Clause—

“Enhancement of Basic Accounts or provision through an alternate provider

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

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

Member’s explanatory statement

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

93 Insert the following new Clause—

“Access to cash

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

Member's explanatory statement

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

94 Insert the following new Clause –

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

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

Member's explanatory statement

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

95 Insert the following new Clause –

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

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

Member's explanatory statement

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

96 Insert the following new Clause –

“Establishment of an Office of the Financial Services Whistleblower

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

After Clause 40 - continued

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

Member’s explanatory statement

This expands protection for whistleblowers in financial services from detriment.

BARONESS BOWLES OF BERKHAMSTED

97

Insert the following new Clause—

“Whistleblowers

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

After Clause 40 - continued

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

98 Insert the following new Clause—

“Climate change as an FCA objective

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

“1EA The climate-related financial risk objective

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

Member’s explanatory statement

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

LORD STEVENSON OF BALMACARA
 LORD SHARKEY
 LORD HOLMES OF RICHMOND

99 Insert the following new Clause—

“Standard Variable Rates: cap on charges for mortgage prisoners

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

- “(7) The FCA must make rules by virtue of subsection (1) in relation to introducing a cap on the interest rates charged to mortgage prisoners in relation to regulated mortgage contracts, with a view to securing an appropriate degree of protection for consumers.
- (8) In subsection (7) “mortgage prisoner” means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following type of firms—
 - (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending; and

After Clause 40 - continued

- (b) unregulated entities, or firms not authorised for mortgage lending.
- (9) The rules made by the FCA under subsection (7) must set the level of the cap on the Standard Variable Rate at a level no more than 2 percentage points above the Bank of England base rate.
- (10) In subsection (9) “Standard Variable Rate” means the variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.
- (11) The FCA must ensure any rules that it is required to make as a result of the amendment made by subsection (7) are made not later than 31 July 2021.””

Member’s explanatory statement

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

LORD TUNNICLIFFE
LORD EATWELL

100

Insert the following new Clause—

“UK-EU regulatory equivalence

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

Member’s explanatory statement

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

LORD STEVENSON OF BALMACARA
LORD HOLMES OF RICHMOND

101 Insert the following new Clause –

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

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

Member’s explanatory statement

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

LORD TUNNICLIFFE
LORD EATWELL

102 Insert the following new Clause –

“International collaboration on financial services matters

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

Member’s explanatory statement

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

BARONESS NEVILLE-ROLFE

103 Insert the following new Clause—

“Impact assessments

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

104 Insert the following new Clause—

“Requirement to report to Parliament on impact on businesses

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

LORD HODGSON OF ASTLEY ABBOTTS

105 Insert the following new Clause—

“Regulatory cooperation with the European Union

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

Member's explanatory statement

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

106 Insert the following new Clause—

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

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

Member's explanatory statement

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

LORD SIKKA

BARONESS BENNETT OF MANOR CASTLE

107 Insert the following new Clause—

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

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

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

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

After Clause 40 - continued

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

108 Insert the following new Clause—

“Duty to take account of impacts on sustainable good work

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

109 Insert the following new Clause—

“Related disclosure of risk to sustainable good work

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

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

After Clause 40 - continued

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

110 Insert the following new Clause –

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

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

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

Member’s explanatory statement

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

LORD HOLMES OF RICHMOND
BARONESS MCINTOSH OF PICKERING
BARONESS ALTMANN

111 Insert the following new Clause –

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

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

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

LORD HOLMES OF RICHMOND
BARONESS MCINTOSH OF PICKERING

112 Insert the following new Clause –

“Designated artificial intelligence officer

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

After Clause 40 - continued

- (2) The AI officer under subsection (1) has responsibility for ensuring the—
 - (a) safe,
 - (b) fair,
 - (c) unbiased, and
 - (d) non-discriminatory,use of AI.
- (3) The AI officer under subsection (1) also has responsibility to ensure that data used in any AI technology is unbiased.”

113 Insert the following new Clause—

“Review of financial services regulations

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

114 Insert the following new Clause—

“Review of regulations relating to financial payments

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

115 Insert the following new Clause—

“Digital identification

- (1) Within six months of the passing of this Act, the Secretary of State must publish the Government’s plans for the development and deployment of a distributed digital identification (“Digital ID”) for individuals and corporate entities in the financial sector.
- (2) The Digital IDs should be—
 - (a) scalable,
 - (b) flexible, and
 - (c) inclusive.
- (3) The Secretary of State must also undertake a public engagement campaign around Digital IDs to raise awareness and participation in the process.

After Clause 40 - continued

(4) In this section—

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

“scalable” means capable of national deployment;

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

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

LORD SHARKEY

116

Insert the following new Clause—

“New fixed rate deals for mortgage prisoners

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

(2) After section 137FD insert—

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

(1) The FCA must make general rules requiring authorised persons involved in regulated mortgage lending and regulated mortgage administration to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA.

(2) In subsection (1)—

“mortgage prisoner” means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following type of firms—

- (a) inactive lenders, or firms authorised for mortgage lending that are no longer lending; and
- (b) unregulated entities, or firms not authorised for mortgage lending and which contract with a regulated firm to undertake the regulated activity of mortgage administration;

“new fixed interest rate deals” means the ability for the consumer to fix the rate of interest payable on a regulated mortgage contract for periods of 2 years and 5 years.

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

- (a) are up to date with payments or have aggregate arrears of no more than one monthly payment in the past 12 months,
- (b) have a remaining term of 2 years or more,
- (c) have an outstanding loan amount of at least £10,000, and
- (d) have not received consent to let the property.

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

After Clause 40 - continued

- (a) 60%,
 - (b) 75%,
 - (c) 90%,
 - (d) 100%.
- (5) In subsection (4) Loan-To-Valuation ratio means the current amount of the outstanding mortgage loan as a percentage of the valuation of the property which is subject to the mortgage.
 - (6) When specifying the interest rates required by subsection (1) the FCA should take into account the average 2-year and 5-year fixed rates available to existing customers of active lenders through product transfers.
 - (7) The FCA must ensure any rules that it is required to make as a result of subsection (1) are made not later than 31 July 2021.”

Member’s explanatory statement

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

117

Insert the following new Clause—

“Conditions for the transfer of a regulated mortgage contract

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

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

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

After Clause 40 - continued

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

Member’s explanatory statement

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

LORD HOLMES OF RICHMOND

118 Insert the following new Clause –

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

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

119 Insert the following new Clause –

“Digital operational resilience

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

LORD SIKKA

120 Insert the following new Clause –

“Supervisory Board

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

After Clause 40 - continued

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

Member's explanatory statement

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

BARONESS BOWLES OF BERKHAMSTED

121 Insert the following new Clause—

“Country-by-country reporting requirements

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

LORD HODGSON OF ASTLEY ABBOTTS

122 Insert the following new Clause—

“Regulatory principles - employees' share schemes

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

Member's explanatory statement

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

BARONESS BENNETT OF MANOR CASTLE

123 Insert the following new Clause—

“Regular impact assessments on the UK financial services sector

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

After Clause 40 - continued

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

124

Insert the following new Clause –

“Financial Scrutiny and Oversight Network

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

After Clause 40 - continued

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

LORD HOLMES OF RICHMOND

125 Insert the following new Clause—

“UK Centre for Applied Innovation in Financial Services

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

After Clause 40 - continued

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

126 Insert the following new Clause—

“Regional mutual banks

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

127 Insert the following new Clause—

“Sale of mortgage loan books

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

128 Insert the following new Clause—

“Transaction reporting requirements under MiFID and EMIR

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

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

After Clause 40 - continued

129 Insert the following new Clause –

“SME rights of action for breaches of FCA handbook

- (1) The Secretary of State must, within 3 months after the date of the passing of this Act, lay before both Houses of Parliament draft regulations to allow small and medium-sized enterprises rights of action for breaches of the FCA handbook.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”

130 Insert the following new Clause –

“Mandatory regime for open finance

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

131 Insert the following new Clause –

“Financial Policy Committee: financial exclusion

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 9C (objectives of the Financial Policy Committee) –
 - (a) after paragraph (1)(b) insert –
 - “(c) monitoring exclusion from financial services in the United Kingdom.”
 - (b) after subsection (6) insert –
 - “(6A) The Committee must lay a report before both Houses of Parliament every quarter on its findings under subsection (1)(c).
 - (6B) The report under subsection (6A) must include –
 - (a) the number of individuals in the United Kingdom without a current account,
 - (b) the number of small and medium-sized enterprises who rely on cash, rather than financial products, and
 - (c) how financial technology solutions are improving financial inclusion.”

132 Insert the following new Clause –

“Digital operational resilience

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

After Clause 40 - continued

133 Insert the following new Clause—

“Distributed ledger technologies and market infrastructure

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

134 Insert the following new Clause—

“Review of financial inclusion

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

LORD LEIGH OF HURLEY
BARONESS ALTMANN

135 Insert the following new Clause—

“Financial Ombudsman Service rules to include potential customers

- (1) Section 226 of the Financial Services and Markets Act 2000 (compulsory jurisdiction) is amended as follows.
- (2) After subsection (7) insert -

“(7ZA) The rules must provide that—

 - (a) potential customers of financial services, in addition to actual customers, are eligible to make a complaint, and
 - (b) any complaints by potential customers are dealt with under the scheme.””

THE LORD BISHOP OF ST ALBANS

136 Insert the following new Clause—

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

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

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

Member's explanatory statement

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

LORD HOLMES OF RICHMOND

136A Insert the following new Clause—

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

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

136B Insert the following new Clause—

“Report on financial technology strategic review

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

136C Insert the following new Clause—

“Review on cashback without a purchase

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

136D Insert the following new Clause—

“Scale up review

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

After Clause 40 - continued

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

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

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

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

136E Insert the following new Clause –

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

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

BARONESS MEACHER

136F★ Insert the following new Clause –

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

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

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

After Clause 40 - continued

- (c) setting out which parts of this Act may or may not apply in respect of activities regulated by this section;
 - (d) making such supplemental provisions as necessary to carry out the functions of the regulator.
- (1D) If an order under subsection (1C) has not commenced within 2 years of the passing of the Financial Services Act 2021, an activity of the type described in subsection (1C) is to be a regulated activity notwithstanding the lack of an order under subsection (1C).”

Clause 42

LORD BRUCE OF BENNACHIE

137

Page 47, line 10, at end insert—

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

Member’s explanatory statement

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

Financial Services Bill

PROVISIONAL FOURTH
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

26 February 2021
