PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

FINANCIAL SERVICES (BANKING REFORM) BILL

First Sitting

Tuesday 19 March 2013

(Morning)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 130) 2012 - 2013

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 23 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Dr William McCrea

† Ashworth, Jonathan *(Leicester South)* (Lab)
† Clark, Greg *(Financial Secretary to the Treasury)*
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Durkan, Mark *(Foyle)* (SDLP)
† Evans, Graham *(Weaver Vale)* (Con)
† Hands, Greg *(Chelsea and Fulham)* (Con)
† Jamieson, Cathy *(Kilmarnock and Loudoun)* (Lab/Co-op)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
† Mills, Nigel *(Amber Valley)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Mowat, David *(Warrington South)* (Con)
Qureshi, Yasmin *(Bolton South East)* (Lab)
† Rees-Mogg, Jacob *(North East Somerset)* (Con)
† Sharma, Alok *(Reading West)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
Stevenson, John *(Carlisle)* (Con)
† Thornton, Mike *(Eastleigh)* (LD)
† Williams, Stephen *(Bristol West)* (LD)
† Wright, David *(Telford)* (Lab)

Neil Caulfield, *Committee Clerk*

† **attended the Committee**

Public Bill Committee

Tuesday 19 March 2013

(Morning)

[Dr William McCrea *in the Chair*]

Financial Services (Banking Reform) Bill

8.55 am

The Chair: Before we begin, I want to make a few preliminary announcements. Members may, if they wish, remove their jackets during Committee meetings. Would all Members please ensure that all electronic devices are turned off or switched to silent mode during Committee meetings?

The Committee will first be asked to consider the programme motion on the amendment paper, on which debate is limited to half an hour. We will then proceed to a motion to report written evidence, which I hope we can take formally.

Motion made, and Question proposed,

That—

(1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 19 March) meet—

(a) at 2.00 pm on Tuesday 19 March;

(b) at 11.30 am and 2.00 pm on Thursday 21 March;

(c) at 9.10 am and 2.00 pm on Tuesday 26 March;

(d) at 9.10 am and 2.00 pm on Tuesday 16 April; and

(e) at 11.30 am and 2.00 pm on Thursday 18 April;

(2) the proceedings shall be taken in the following order: Clauses 1 to 7; the Schedule; Clauses 8 to 20; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 18 April.—*(Greg Clark.)*

Chris Leslie (Nottingham East) (Lab/Co-op): Good morning, Dr McCrea. It is a pleasure to serve under your chairmanship. I know how much you have come to enjoy these early morning starts. I appreciate that, after your swim in the Serpentine and run around Hyde park, this is late in the day for you.

We start the Bill's Committee stage under something of a cloud, given that the Parliamentary Commission on Banking Standards, which undertook a lot of the pre-legislative scrutiny—hence the fact that we have no evidence sessions today—has only partly concluded its work. Although it is useful to have the Programming Sub-Committee resolution before us setting out the sittings at which we can scrutinise the Bill, the Opposition would like to put on record their deep concern that the Committee is being held at an inappropriate stage. After all, the Bill is, in many ways, merely a vessel that will be populated by secondary legislation, some, but not all, of which the Minister has taken the trouble to publish in advance. Furthermore, we had hoped by now to have some recommendations from the Parliamentary Commission's laborious and extensive evidence sessions to inform us about the changes in standards, culture and governance that are necessary to improve the banking system.

The programme motion allows us a certain amount of time to discuss the shell of the clauses before us. The Opposition have also tabled a number of new clauses, which will obviously come up for discussion towards the end of our consideration—probably after we get back from the parliamentary recess in April. Looking through the programme motion and the amendment paper, it is surprising that Her Majesty's Government have tabled no amendments. That may be a good sign, and the Minister, having looked at the amendments tabled by Her Majesty's loyal Opposition, may be so taken with them that he anticipates adopting them. He likes to cultivate a reputation as a listening Minister, and I hope that is, indeed, the case—perhaps that is the "glass half full" approach we should take. However, a number of responses to the Parliamentary Commission's banking reform publication suggested the Government intended to table their own amendments in response to the Commission. I hoped that the programme motion would allow that iterative process, but the Government have tabled no amendments.

My general anxiety is that the Government are not showing sufficient respect for the Bill's Committee stage in the House of Commons. First, they have truncated the process and tried to conclude it before we even get to see the Parliamentary Commission's final conclusions. Now, they have not even tabled amendments in Committee so that we can properly look at their responses to the Parliamentary Commission. I sometimes feel as though the Government were treating this process as a bit of a rubber-stamping exercise and something that is just a parliamentary inconvenience. They think, "We have to get through the Committee stage process, so let's just get on with it, put our heads down and we will sort it all out on Report and in the House of Lords." It is absolutely vital, however, that in Committee, we take the opportunity to go through issues on a line-by-line basis and examine amendments in detail without having knives to truncate the debate.

I therefore look for some assurance from the Minister that, if the Government are going to bring forward amendments in response to the Parliamentary Commission's recommendations that we have seen so far, they still intend to do that at the Commons Committee stage and not just dump them on the House in one fell swoop on Report stage after the Queen's Speech under the carry-over process. We have a duty to ensure that we scrutinise matters properly.

Those are my anxieties about the programme motion. We do not particularly object to the time scales set out in it, but I thought it was important to put on the record our misgivings about how the Government have treated this process.

The Financial Secretary to the Treasury (Greg Clark): It is a pleasure to serve under your chairmanship, Dr McCrea. I welcome colleagues to an important and potentially historic Bill committee. As the hon. Gentleman said, we have had the benefit of advice not just from the Independent Commission on Banking, chaired by Sir John Vickers, but also from the Parliamentary Commission, whose work is ongoing.

Many of the amendments that we will come on to discuss are, of course, from the PCBS. I am delighted that the hon. Gentleman has said that was taking a

"glass half full" approach. It is certainly my intention that, in Committee and in later stages, we should have a full opportunity to consider the responses of all of the eminent commissions that have reported on these matters and the views of members of the Committee.

The Bill is relatively unusual in the sense that it reflects the views of a Parliamentary Commission, which reported in December. The Government responded to the scrutiny of the Parliamentary Commission in February, the Parliamentary Commission then responded to our response and, in the days ahead, I will respond to its response to our response. It could be that, in our debates about its response to our response, I might feel inclined to respond further to its response as we go on. I am conscious that this could lead us into an infinite regress of responses—and who knows where that will end?—but I say that just to make it clear to the Committee and reassure everyone that the discussions that we have here are important and significant.

In my conduct in taking the Bill through the House, I intend to respond positively and constructively to sensible points that are made. I do not think that a matter of such importance should be railroaded through this House or the other place. It is in the interests of all of us to ensure that the Bill is properly scrutinised. I will ensure that the Committee and the House can express themselves. When we bring amendments forward in response to the current and future recommendations of the Parliamentary Commission, I will ensure that the Committee has an opportunity to consider them, and I will keep its members up to date with the progress of that. As the hon. Gentleman said, we have already published some of the secondary legislation, although I remind the Committee that the secondary legislation will itself be the subject of further parliamentary procedures when it comes to be considered.

As for the timing of the sittings of the Committee, we have a lot to discuss, but I think Members of all parties are confident that we can make sufficient progress. As you would concede, Dr McCrea, to a certain extent that is in our own hands. The hon. Member for Nottingham East is a veteran of these procedures, and I am sure he is able to calibrate his contributions to ensure that we can make the best possible progress and give the Bill the scrutiny that it requires.

Chris Leslie: I know we are talking about the programme of consideration of the amendments, but is it not a rather peculiar process for the Government to have relied on the Opposition to table the amendments recommended by the Parliamentary Commission? The Government certainly have not signed up to those amendments. If we had not tabled them, presumably we would simply be having clause stand part debates throughout. Was it ever the Government's intention to table amendments reflecting the aspects of the Commission's suggested amendments that they agreed with?

Greg Clark: The hon. Gentleman should perhaps express his thanks to the Commission for its unusual courtesy in drafting the amendments, saving himself and his colleagues a great deal of work. Since it has done so, we had a certain expectation that they might be tabled, if not by the hon. Gentleman then by certain colleagues other on the Committee.

It is clearly helpful to have the words and recommendations of the Parliamentary Commission available to us to debate in the Committee. The device that has been used is helpful to the Committee and to the whole House. The hon. Gentleman is moving some of the amendments and moving some of his own, and reflecting the recommendations of the Commission, as it were.

Question put and agreed to.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Greg Clark.)*

The Chair: Copies of the memorandums that the Committee receives will be made available in the Committee Room.

Before we come to our line-by-line consideration of the Bill, a brief reminder of procedure may be useful to the Committee. The selection list for today's sitting is available in the room. It shows how the amendments selected for debate have been grouped together. Amendments grouped together are generally on the same or a similar issue. A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak to the amendments in the group. A Member may speak more than once in a single debate.

At the end of the debate on a group of amendments, I will call again the Member who moved the lead amendment, and before they sit down they will need to indicate if they wish to withdraw the amendment or seek a Division. If a Member wishes to press any other amendment in a group to a vote, they will need to let me know. I will work on the assumption that the Government wish the Committee to reach a decision on all Government amendments.

Please note that decisions on amendments do not take place in the order in which they are debated, but in the order in which they appear on the amendment paper. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following the debate on the relevant amendments.

As a general rule, I and my fellow Chair do not intend to call starred amendments, which have not been tabled with adequate notice. The required notice period in Public Bill Committees is three working days, therefore amendments should be tabled by the rise of the House on Monday for consideration on Thursday, and by the rise of the House on Thursday for consideration the following Tuesday. I hope that explanation is helpful. We now begin our line-by-line consideration of the Bill.

Clause 1

Objectives of Prudential Regulation Authority

Chris Leslie: I beg to move amendment 11, in clause 1, page 1, line 11, after 'that', insert

'reduces the risk of ring-fenced bodies assuming disproportionate exposure, enhances their capacity to cope with other exposure and otherwise'.

The Chair: With this it will be convenient to discuss amendment 13, in clause 2, page 2, line 42, after 'that', insert

'reduces the risk of ring-fenced bodies assuming disproportionate exposure, enhances their capacity to cope with other exposure and otherwise'.

Chris Leslie: If I may say so, Dr McCrea, your modernising approach to setting out the way in which a Committee works is refreshing. I have been in the House of Commons on and off since 1997, and I think this is the first time I have served on a Committee where anybody has actually said how the thing works. Learning by trial and error is one thing, but it is very helpful to have your exposition to guide us through the process.

Perhaps I can take the opportunity to say, because it will be useful for the consideration of the amendments, that hon. Members may wish to get the documents that are not in the Committee Room from the Vote Office. In particular, there is the most recent report but one of the Parliamentary Commission on Banking Standards, which contained its agglomerated recommendations and draft amendments. There is a useful set of tables at the back of that document that set out the rationale behind the amendments they it suggested and the Government's response to them. Dare I say it, I also commend the Government's own Treasury paper—I shiver when I say that—which is the response to the Commission's first report, usefully setting out what the Commission has recommended and the Government's response. There have been plenty of other documents in the history of the preamble to the Bill, but if Members want to follow the Committee proceedings, those are the two key sets.

Clause 1 sets the scene for some of the meatier clauses in the Bill. We are moving towards the concept of ring-fencing and the quasi-separation of retail and investment banking. That came from the accumulated recommendations of the Vickers Independent Commission on Banking, which were then taken forward by the Parliamentary Commission.

I say the clause is a preamble to the meatier clauses because it addresses changes that are essentially prerequisites for the regulators, particularly the Prudential Regulation Authority and the Financial Conduct Authority. Members will remember that the Government have taken the view that they want to separate the functions of the Financial Services Authority into those two regulators.

The PRA is essentially an adjunct of the Bank of England. In fact, it has even moved out of Canary Wharf to locate itself in nice new shiny offices right next door to the Bank of England, at great expense, just to make that point absolutely clear. It is fair to say that the PRA has been given responsibility for what is known as micro-prudential regulation. The Financial Policy Committee at the Bank of England oversees macro-prudential regulation and all the downstream, firm-by-firm, individual business conduct issues are left for the FCA to field. We will talk about the FCA in a moment.

The clause makes changes to the general objectives of the PRA. Members will recall that we have not, unfortunately, had a rewrite of financial services legislation, which might have been a laborious and difficult process. The Government have chosen, for various reasons, to amend the Financial Services and Markets Act 2000. In a set of documents that I think have been circulated to Committee members, the Government have illustrated what a consolidated version of the 2000 Act might look like. I have not heard of a Keeling version, which is a new phrase for me, but that suggestion has been circulated. That version shows how question of continuity will be embedded in the new PRA's overarching strategic approach. That is the issue upon which it has been felt necessary to underpin the new arrangements on ring-fencing.

The PRA will have a number of duties, and its general objective will be to ensure that

"the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and…seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system."

Now, according to the changes set out in the Bill, its general objectives will also include

"discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to...ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services…ensure that the business of ring-fenced bodies is protected from risks...that could adversely affect the continuity of the provision...of core services, and...minimise the risk that the failure of a ring-fenced body could affect the continuity of the provision...of core services."

9.15 am

I wish I could claim credit for the amendments, but they are the brainchild of the august Parliamentary Commission on Banking Standards. In one of its reports, it helpfully set out some recommended amendments, in this case recommended amendments A and C. Inspired by the Commission's wisdom, we have tabled those measures for the delectation of the Committee this morning as amendments 11 and 13, which you have chosen to group together, Dr McCrea.

Amendment 11 deals with the PRA objectives, and amendment 13 deals with the FCA objectives. Essentially, they would insert into the Bill the same responsibilities for those two, mirroring regulators, which would be to reduce the risk of ring-fenced bodies assuming disproportionate exposure and to enhance the capacity of such bodies to cope with other exposures.

David Wright (Telford) (Lab): One of the key issues is to ensure that the regulatory body is effective, but also that organisations can actually fail, and, if they do fail, that they can fail in a managed way. It is crucial that we do not have a system that simply props institutions up; it must allow failure, but failure in a co-ordinated manner.

Chris Leslie: Absolutely. Discussions on this issue can get quite theoretical, but it is nevertheless important to have them, as our constituents know the downstream consequences of banking failure and the financial consequences for the taxpayer that have flowed from that ever since the crisis. It is crucial to ensure that we properly define the balance between continuity and the handling of risk exposure, as well as the approach to winding down or resolving problems in banks that get into difficulty. The regulator needs clear guidance on that.

Initially, the Commission was concerned that the Bill lacked a clear objective for the role of the regulator, which left its future operation vulnerable to changing

attitudes over time. The Government responded to that concern with the change in the continuity objective that is set out in clauses 1 and 2. Andrew Bailey, now the chief executive of the PRA, said in evidence to the Commission that he thought that the Government needed to go a step further than they had in the original draft Bill, which he felt was

"a bit too enabling without specifying how the objectives work."

He suggested having

"a better narrative regarding how the PRA's safety and soundness and continuity objectives interact."

Although the Bill has been improved somewhat, we are still worried that there could be a conflict between the concept of continuity and the important goals of safety and soundness. For example, is there a likelihood that at some point some risks will be ignored in furtherance of a "business as usual" approach, and that in retrospect we will see that those risks should have been tackled and rooted out? That is one of the key tensions that Andrew Bailey and others have seen.

The Vickers report, by the Independent Commission on Banking led by Sir John Vickers, said that three objectives were needed, and needed to be balanced, in the process of banking reform: first, making the resolution of troubled banks easier; secondly, insulating retail banking customers from investment banking activities; and thirdly, reducing the risk to public funds. Those were the core objectives. The Commission felt that the continuity objective as originally drafted did not adequately capture the three concepts, and recommended changes. In response, the Government agreed that

"the objectives of ring-fencing should be fully reflected on the face of the Bill".

Since then, changes to the objectives of the PRA and SCA have been brought forward to promote the safety and soundness of the institutions that they regulate. However, the Parliamentary Commission still feels that further amendments are needed to ensure that the formulation of the continuity objective adheres more closely to the Vickers objective on ring-fencing. We agree that those amendments are needed, because the regulator needs always to think about the risk exposure of the banking system and how any overexposure may be handled and eventually resolved. An explicit reference to reducing the chances of ring-fenced retail banks getting embroiled in excessive exposure to risk is a basic principle that should be stated in the Bill. That may seem like a statement of the bleedin' obvious, as somebody once said, but it is important that we say that we want the retail banks to be relatively boring, humdrum, safe and vanilla in their characteristics. It is really important that, having made the separation, the retail banks do not get tempted to accumulate excessive risks along the way. That is why we need to place that reference in the Bill.

It is also important to focus on how well retail banks are able to sustain themselves in a risk-exposed environment, because the banking system is interdependent and even under the ring-fenced environment those retail banks will often be doing business with other banks not just in the UK but globally. As we will discuss under later clauses, viewing some of the banking rules on a firm by firm basis is an anachronistic approach to regulation. We need to recognise that, from time to time, we need whole-system changes. That should be one of the key lessons from the financial crisis, and it is certainly one of the key lessons from LIBOR, because all banks interrelate and do business with one another. Recognition of that is another facet of the amendment.

I do not think that there are convincing arguments against including the statements contained in the amendments. Such arguments do not outweigh the potential advantages of putting those statements in the Bill for the regulator. For that reason, I felt that it was important to table the amendments to test the Government's attitude on the new regulatory arrangements.

Greg Clark: Before I speak about this set of amendments, may I put on record the sympathy of the whole Committee for my hon. Friend the Member for Carlisle, whose father died yesterday? He cannot be with us today, although he will join us for future sittings. I am sure that the whole Committee will want to send our condolences to our hon. Friend and his family.

On the matter in hand, I support, as does the hon. Member for Nottingham East, the principles and objectives of ring-fencing as recommended by the Independent Commission on Banking. The objectives that the Commission set out to improve bank resolvability, insulate vital banking services and—very importantly—curtail the possibility of taxpayer support being required are extremely important principles that are reflected in the Bill. In the Government's response to the ICB's report in December 2011, in the White Paper in June 2012 and in the draft Bill in October, we made clear our adoption of those recommendations.

The Parliamentary Commission on Banking, and some of the distinguished figures from whom it took evidence, made some further recommendations. Andrew Bailey, to whom the hon. Member for Nottingham East referred, expressed some concerns and made some direct recommendations about the continuity objective of the PRA. In response to that, we have made the continuity objective part of the safety and soundness objective of the PRA as a whole. Its prominence is clear, and that integration was Dr Bailey's suggested way of getting around any potential conflict between these objectives. We followed his sensible advice on the matter.

There is a broad consensus on what ring-fencing should do. Based on the PCBS's advice, we have amended the Bill before its introduction to clarify that the PRA's continuity objective is very much part of its general objective. The amendments that the hon. Gentleman has rightly tabled reflect some further suggestions from the Parliamentary Commission, and I am happy to consider the debate on them. There is no objection in principle to them, but I will set out some of the concerns we have at the outset, on which I will reflect during the debate. Hon. Members may have their own views.

The proposed amendments to both the PRA's objective and the FCA's objective would insert the words

"reduces the risk of ring-fenced bodies assuming disproportionate exposure"

into the clause. The question is who defines what "disproportionate" means. The danger is that, far from clarifying the objective and making it more certain and dependable, the amendment raises a question to which the answer may not be obvious. It would presumably not be the PRA that determined what disproportionate exposure would be, because we are talking about the PRA's governing objective and one would assume that someone other than the PRA would decide that. It is

[Greg Clark]

not clear, however, who would define the objective of the regulator, or, at least, who would determine what the word "disproportionate" meant, if the amendment is agreed.

There is a similar question around the use of the word "exposure". It prompts the question of, "Exposure to what?" It may be that it is not possible to specify what it means. Amendment 11 would amend proposed new paragraph (c)(i) in clause 1(2)(b), which relates to the internal policies of banks, but proposed new paragraph (c)(ii) in clause 1(2)(b) deals with external threats and ensures that the business of ring-fenced bodies is protected from risks that could affect the continuity of provision. "Exposure" implies exposure to things outside the bank. If that is the case, the appropriate place to locate an amendment of this type is new paragraph (c)(ii), which states that the PRA must

"ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services".

There is no ambiguity in that sub-paragraph. It is clear that any risks that could adversely affect the provision of core services are a matter for the PRA to act against. The current wording of new paragraph (c)(ii) means that if the PRA is required to protect the ring-fenced body from such external risks, their exposures, however defined, must be part of that objective already. Given that that is an absolute requirement, the need for the word "proportionate" is overtaken as a harder test in the current draft of subsection (2) than would be implied by the amendment.

9.30 am

I am happy to consider the contributions of Members on this matter. There is no difference of principle between us, but on looking at the intentions behind the PCBS's report, we think that the test for the PRA to ensure that external exposures are taken into account is addressed explicitly and in a more exacting way in new paragraph (c)(ii).

The Chair: Before we go any further I should like to join the Minister, as I am sure all Members would, in extending our sympathy to the hon. Member for Carlisle. We send him our good wishes.

Chris Leslie: I join you, Dr McCrea, and send the Opposition's sympathy to the hon. Member for Carlisle.

The Minister was very thoughtful in his response, in a way intimating that he could see why the amendments had been tabled and that he would take them away to chew over. I wonder whether I should apologise at this stage to the PCBS, which relied on the Opposition to table these amendments and on me in particular, with my hon. Friend the Member for Kilmarnock and Loudoun. Somehow we have added the stain of the unclean to the amendments, which has deterred the Government from simply accepting them, merely because they have been tabled by the Labour party. I do not think that should deter the Minister. It would be quite useful in future if we have these big commissions for at least one member of that commission to serve on the Committee considering the Bill. I always find it slightly peculiar that they go to all the trouble of dreaming up a whole set of amendments, then rely on those of us who have not been party to the discussions to table them.

Greg Clark: Perhaps I should confirm immediately for the record that the fact that the hon. Gentleman has tabled recommendations from the PCBS in no way diminishes them in our eyes. Whether they are the product of his own reflections or come from others, we will be open-minded in this Committee. When I say that we are unconvinced that these amendments are necessary, it is not because the hon. Gentleman moves them, it is a genuine reflection, forensically, I hope he would concede, of our view that they do not add anything that is not in the Bill. He is experienced enough to know that, when it is possible and appropriate to agree with suggestions, the convention is that they are taken away and checked by the similarly expert parliamentary draftsmen. I hope the Commission and the Committee will accept my assurances that we intend to approach this constructively.

Chris Leslie: The Minister was doing so well that I felt born again, renewed and reinvigorated. At last I was a genuine citizen, a player even in this legislative process. But then he fell back on the usual, "Oh well, we are not going to accept anything at the Committee stage anyway. We are going to ask for these things to be withdrawn." "Come on, Minister," is what I would say to him. "Show that you are an independent, free-thinking, albeit junior Minister, and accept the occasional Opposition amendment, tabled with the support of the Commission. Go back and tell the Chancellor. You are a free thinker." It is important occasionally for plucky up and coming Ministers to show that they have that free spirit.

David Wright: My hon. Friend has been a Minister, and I have been a Government Whip. Does he predict that the amendments might return on Report, miraculously converted into Government amendments?

Chris Leslie: I would prefer the amendments to be accepted in Committee, but history suggests that that will not happen. We digress, however.

The Minister took issue with several aspects of the amendments. He relied on the age-old device of simply questioning the word "disproportionate" and asking who would define it. It is clear that the PRA would define it. I disagree with the argument that that is externalised from the PRA's capability. The amendments would ensure that the PRA discharges

"its general functions…in a way that seeks to ensure that the business of ring-fenced bodies is carried on in a way that reduces the risk of ring-fenced bodies assuming disproportionate exposure."

I believe it is clear that the PRA must determine and define that for itself, so the Minister's argument is not particularly strong.

Greg Clark: This is a genuine question. Why does the hon. Gentleman think that the amendments, especially the word "disproportionate", strengthen the already explicit statement that the PRA must ensure that ring-fenced bodies are

"protected from risks…that could adversely affect the continuity of the provision in the United Kingdom of core services"?

How would the introduction of the word "disproportionate" do anything other than weaken that test?

Chris Leslie: First, the continuity of core services is slightly different from the capacity to cope with exposure to risk. If the clause included the concept of disproportionate exposure, the PRA would have more latitude to interpret the legislation and to ensure that retail banks behave better. That was the Commission's objective.

Mark Durkan (Foyle) (SDLP): The Minister said that the PRA "must ensure", but the wording in the Bill is

"in a way that seeks to ensure",

which is very different. Why does my hon. Friend think that the Minister believes that the amendments would lead to a more externalised judgment than would the current drafting?

Chris Leslie: My hon. Friend has pointed out a flaw in the Government's initial rebuttal of the amendments, although the textual disagreements between the Government and the Opposition are not major ones.

Alok Sharma (Reading West) (Con): Having sat on Bill Committees with the hon. Gentleman for several years, I know that progress will probably be quite slow. Of course, we must scrutinise the Bill clause by clause and consider the meaning of individual words, but whether banks behave well will depend, ultimately, on whether they follow the spirit of the law, and on the culture of banking. That is a key area that we should consider, even though it is not part of the Bill. We can debate the details—indeed, we will probably do so until late in the evenings—but we must bear in mind that this should be about banks following the spirit of the law, rather than about individual words.

Chris Leslie: I take the hon. Gentleman's point that we should consider both the letter and the spirit of the law. We want to discuss the spirit of the law, but right now we are discussing the letter. For that purpose, we need to finalise the questions that remain about the amendments from the Commission. The Minister has tried to distinguish between internalised risks for the bank and externalised risks—between new paragraphs (c)(i) and (c)(ii)—but that distinction should not be drawn in respect of disproportionate exposure. Obviously those exposures are from external actors, but they are also internalised within the banks themselves, so that is a bit of a red herring of an argument. However, I will allow the Minister the latitude and flexibility to consider the issues that I have raised, so I am "happy" to withdraw the amendment. If the Government can find a version of it with which they are satisfied, that will obviously be preferable. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Cathy Jamieson (Kilmarnock and Loudoun) (Lab/Co-op): I beg to move amendment 12, in clause 1, page 1, line 18, after 'services,', insert

'in particular by securing the orderly handling of circumstances in which ring-fenced bodies have encountered or may encounter financial difficulties,'.

The Chair: With this it will be convenient to discuss amendment 14, in clause 2, page 3, line 6, after 'services,', insert

'in particular by securing the orderly handling of circumstances in which ring-fenced bodies have encountered or may encounter financial difficulties,'.

Cathy Jamieson: It is a pleasure to serve under your chairmanship this morning, Dr McCrea. Like my hon. Friend the Member for Nottingham East, I was grateful to you for setting out how the Committee would proceed.

The hon. Member for Reading West suggested that progress would perhaps be slow at various points. Those of us who have served on a number of Bill Committees with my hon. Friend the Member for Nottingham East know that if progress is slow, it is because we are scrutinising both the letter of the law, line by line, and its spirit. That is what is required of Committees.

Alok Sharma: I thank the hon. Lady for clarifying that, but may I say that I hope we will not get to the Committee's last sitting with large chunks of the Bill not having been examined? That has happened in the past when the hon. Member for Nottingham East, and indeed the hon. Lady herself, have been going through Bills.

The Chair: Order. I therefore think it is important that we do not waste time talking about past Committees and that we instead get on with the business of this Committee, which is to scrutinise the Bill.

Cathy Jamieson: Thank you for that clarification, Dr McCrea. We have tabled several new clauses, and we will of course seek to get to them. Those who have served on Bill Committees with me will know that, if we can deal with amendments in a few words rather than speak at length and still scrutinise the Bill properly, I believe that that is the correct way to proceed.

On that note, I turn to the amendments. They arise as a result of recommendations made by the Parliamentary Commission on Banking Standards. We have already heard about the importance of the role of the Banking Commission in ensuring that we have amendments to consider in Committee, and I echo the comments of my hon. Friend the Member for Nottingham East about the Government's role. It is important to hear what they have to say, and as he suggested, I hope that we have a listening Minister here. It would certainly break the mould if we had a Minister who listened enough to acknowledge that an Opposition amendment—and the Banking Commission—had merit. There may also be an opportunity for him simply to accept some of our amendments rather than reconsider matters elsewhere.

The amendments relate to the objectives of the Prudential Regulation Authority and the orderly handling of the risk difficulties facing the ring-fenced banks. It is clear from the Banking Commission's report that it feels that amendments are needed to ensure that the formulation of the continuity objective more closely adheres to the Vickers objectives on ring-fencing. That aim has run through all the debates and discussions on the Bill. The question is how we can take the principles and objectives of the Vickers report and ensure that they are crystallised in the letter of the law. We all understand and have talked about what the spirit of the law ought to be.

[Cathy Jamieson]

The amendments correspond to the Commission's proposed amendments B and D. They are intended to make the Bill more explicit about the need for the retail banks to be overseen by regulators who will help with the orderly handling of circumstances in which they might encounter financial difficulties. That relates to the point that my hon. Friend the Member for Telford made in an intervention. We are not saying that there will not be circumstances in which difficulties arise or banks fail for one reason or another, but in those circumstances there should be a correct and proper process of oversight.

We, as well as the Commission, take the view that the amendments are needed on the face of the Bill for a number of reasons. As I have already outlined, they would better achieve the goals set out by the three Vickers principles for ring-fencing; in particular, they explicitly set out the role of the regulators in the resolution process. The regulators are tasked with making it easier to sort out retail banks that get into trouble, rather than simply leaving it to what has been described as a market-oriented insolvency situation.

9.45 am

The orderly handling of those difficulties is also needed to promote public trust and confidence. That is something we should all have in mind during scrutiny of this Bill because many members of the public looking at the technical issues will want to know not only whether the legislation has been strengthened, but also whether the culture will change. That has already been mentioned during the discussion this morning. It will be very important, and should also form part of the implied assurances undertaken by the regulatory process.

I look forward to hearing what the Minister has to say in response to these points on the amendments. I recall points that he made in relation to earlier amendments, and if these amendments are not drafted in exactly the terms that the Government would wish to see or if they are not located in the right place in the Bill, I hope he will outline that in his comments. I also hope he will give us an assurance that if the Government agree with the principle and with what the Commission has said—even if they do not agree with the fine-tuning of the amendments—they will table suitable amendments at a later stage. I therefore look forward to the Minister's response.

Greg Clark: I can start with that assurance. Certainly, if there are any amendments—whether advanced on behalf of the Commission or from elsewhere in this Committee—that we agree with and think sensible, but which have some deficiency in the wording, I make a commitment to bring them back at a later stage.

The amendments, which the hon. Lady has said reflect the views of the Commission, address the really important issue of supporting the resolvability of ring-fenced banks. The hon. Member for Telford quite rightly made the point that the provisions of the Bill are designed not to ensure that no bank ever fails, but to ensure that when a bank does fail, it can do so safely, without affecting the continuity of core services and without causing taxpayers to have to contribute their own resources to it. We just need to look at the events in Cyprus this week to see how important it is to have these robust arrangements put in place, in which people can have confidence in advance, to avoid the kind of uncertainty and negotiations that have taken place in this country and others before and are happening in Cyprus as we speak. The objective of making it easier to deal with failing banks without recourse to the taxpayer was, of course, an objective given to the House by the Vickers Commission and we totally agree with it.

As a preface to my remarks about the amendments before us, the structure of this clause is important in how it reflects the Vickers Commission's recommendations. We touched on this in an earlier set of amendments, but in clause proposed new paragraph (2)(c), we effectively have three sub-headings. Proposed new sub-paragraph (i) deals with the internal affairs of the banks, ensuring that the business of ring-fenced banks is carried on in a way that avoids an adverse effect on the continuity of services. Proposed new sub-paragraph (ii), as we discussed earlier, deals with external risks, ensuring that ring-fenced activity is protected from such risks arising in the United Kingdom or elsewhere. New sub-paragraph (iii) deals with resolution—the safe resolvability of banks. It states that the authority should

"minimise the risk that the failure of a ring-fenced body could affect the continuity of the provision in the United Kingdom of core services."

There is a clarity to the structure of the Bill; it is there for a reason and it is important to respect it. My hon. Friend the Member for Reading West is absolutely right that we should consider the spirit as well as the letter of the law, but one thing we should bequeath to practitioners and regulators who will make use of what I hope will become an Act of Parliament is a resistance on our part to the temptation to add curlicues and additions to the wrong parts of the Bill. That could end up confusing the clear structure of the Bill and the clear statement that it makes. That point applies to the amendments, as I shall explain.

Cathy Jamieson: I look forward to hearing the Minister's explanation about why he feels as he does about "curlicues", to use his term. Has he thought about the time the Commission took to consider the issue and the fact that it proposed the amendments? Presumably, the Commission did not see the amendments as unnecessary, but as something that gave greater clarity rather than causing any confusion.

Greg Clark: I have respect for the Commission, which is why I said earlier that it might want to respond to my response to its response to my response to its original response. If the Commission intended something not captured in the amendment, I will be happy to consider that. There is no difficulty about the principle of what the Commission recommends—that it should be clear that banks should be resolvable without recourse to the taxpayer.

Let me address precisely why, so far, I am not convinced that the amendments are necessary. As I said, the resolution objective is captured in new sub-paragraph (iii), relating to the PRA and FCA—specifically, that the PRA should seek to

"minimise the risk that the failure of a ring-fenced body could affect the continuity of the provision in the United Kingdom of core services."

The amendments would amend new sub-paragraph (ii) rather than new sub-paragraph (iii); the former, as I have explained, is about the external risks rather than resolution per se. I would be interested to hear from the hon. Member for Kilmarnock and Loudoun, or any other hon. Member with an insight into the mind of the Commission, about why it proposed the amendment not to the resolution provisions in the Bill but to the external risks provisions.

However, wherever it is, the amendment would add the notion of orderly handling. Let us pause to consider that. No one in the Committee could object to the concept that the resolution of a bank should be handled in an orderly way. However, the word "orderly" is a little vague. In a world where we need real clarity about what is intended and what will be interrogated later, we should pause before simply accepting the amendment just because the Commission has suggested it. We should know a little more about why it thinks the amendment necessary and whether "orderly" is the mot juste to capture what it has in mind.

The PRA has asked for clear objectives. It has expressly said that it did not want a set of objectives that it was forced to interpret in the face of what inevitably would be lobbying by vested interests from all sides. It has asked that the terminology be clear and unambiguous from the outset.

Proposed new paragraph (c)(iii), which deals with resolution, requires the PRA to act in such a way that the continuity of core services is protected if a ring-fenced body fails. If this objective is enacted by Parliament and becomes an objective of the PRA, then if the continuity of core services has been protected, it seems to me to follow that it must have been handled in an orderly way. Moreover, the amendments refer to:

"securing the orderly handling of circumstances in which ring-fenced bodies have encountered or may encounter financial difficulties".

This may again seem pedantic—and this is my personal study and weighing-up of the Bill—but it seems to me that it is not the circumstances of a bank's prospective failure that concern us. Those circumstances could be a macro-economic shock, a bad lending decision or some other ill, but it is the bank's failure that must be handled in an orderly fashion, not its response to the circumstances.

I am more than happy to listen now to the contributions of Members who may be able to clarify some aspects of the Commission's intention in terms of where this particular amendment should properly be located, or whether this question of orderly resolution is not fully captured by the requirement to secure the continuity of services. Having reflected on it, my feeling is that these provisions are in the Bill. It may be possible to make some more progress here, but if I have missed something in response to the hon. Lady then I finish where I began. If there is something specific that I do not think divides us, I am very happy to come back at a later stage and reflect that.

Jacob Rees-Mogg (North East Somerset) (Con): May I say, Dr McCrea, what a pleasure it is to serve under your chairmanship. This is subject to the one qualification that the monstrous calumny that you are a moderniser is squashed. I have always had confidence that if there was one party in Parliament in which I had a number of soulmates, it was the Democratic Unionists, who are proper old-fashioned-isers rather than modernisers. Having made that point, I come to the amendment, which I find quite attractive. It seems to me that it is trying to bring to the United Kingdom the approach followed in America by the Federal Deposit Insurance Corporation, whereby if a bank fails, the depositors who are protected are immediately moved to another bank with almost no loss of service. The advantage of that is that small banks can fail, and the failure of small banks is actually rather important to reduce moral hazard and ensure that the financial system has genuine underlying stability. This is because knowing that the whole business can fail reduces the amount of risk that will be taken in, for example, a Northern Rock circumstance. What we currently have—or had at the time of the banking crisis—is a feeling that nobody at all could fail.

It may be impossible to come to any answer to the "too big to fail" question. It may always be the case that Governments have to prop up the biggest banks if they get into real trouble, and therefore the need is to regulate away from that real trouble. In a United States context it seems to be possible to allow dozens and dozens of small banks to fail without threatening the underlying financial stability. Having said that, I think the Minister's point, that the amendment should come not in new sub-paragraph (ii) but in new sub-paragraph (iii), looks to be correct. I am not absolutely certain of this, but it is a very convincing argument.

On a straight reading of new sub-paragraph (iii), a ring-fenced body could affect the continuity of the provision of core services in the United Kingdom. This seems to me to mean not the core services provided by the individual institution but those in the United Kingdom as a whole. Therefore, small banks, where the continuity of their services affects only their customers and not the core of the United Kingdom, are not really covered by new sub-paragraph (iii). I would like to indicate a broad sympathy with this amendment. I think the basic idea, the model from the United States, is one that we could beneficially follow. It might actually help us to set up more small banks to produce more competition, and get away from the model of a small number of big banks upon which the whole economy is dependent. It would then ensure that those small banks can, if necessary, have an orderly transition into other banks if they fail, with the protection of the depositors up to whatever limit the Government decides to set.

10 am

Mike Thornton (Eastleigh) (LD): Thank you, Dr McCrea, for letting me talk. I think that it is quite interesting that that is how insurance companies tend to work in this country, but I do not actually understand this amendment. I am sorry, but I do not like to look at something that I do not understand. It is probably because I am new to Parliament and do not properly understand parliamentary language, so forgive me, but it does not seem to make any sense. I obviously do not want to say anything disrespectful, or anything that might imply that it has not been thought seriously about, but it seems to me to be saying

"in particular by securing the orderly handling of circumstances"

—I am not sure how you can handle those—

"in which ring-fenced bodies have encountered or may encounter financial difficulties".

[Mike Thornton]

I thought that this Bill was about banks that have encountered financial difficulties. By definition, we are dealing with institutions that have had financial difficulties, otherwise none of these clauses would be necessary. Therefore, we already have institutions with financial difficulties, so I am not sure why we should be inserting a clause about it. I apologise if I am misunderstanding, but I would like to hear why we need to insert a provision about an institution having financial difficulties when that is what the Banking Reform Bill is all about.

The Chair: I assure the hon. Gentleman that it would not be disrespectful to honourably say that one does not fully understand the amendment.

Cathy Jamieson: I was about to look for a particular piece in the Banking Commission report which perhaps would have assisted the hon. Gentleman, but we may have the opportunity to do that later in the process. It has certainly taken me some time since coming to this place, having served in another Parliament, to understand the procedures and processes and the ways in which these Committees operate, so I am sure the hon. Gentleman will enjoy this particular Bill as his first outing. Sometimes it does us no harm to be asked what particular things mean.

I was slightly perturbed to hear the hon. Member for North East Somerset suggest that he was attracted to some of the wording that had been put forward because, although he and I may not always agree on things, I respect his views. I began to wonder if somewhere along the line we had got it wrong, given that the hon. Member seemed to be beginning to support it. He did, of course, then go on in his characteristic style to explain why—not withstanding the attraction to the principle—he felt that the amendment might be better located elsewhere. We were asked to think about what was in the mind of the Commission when it decided to suggest this amendment in the place that it is. I would hesitate to say that I could get inside the mind of the Commission, which has done such a huge amount of work on this, but I believe that it had good reason to suggest that further strengthening of the Bill was required. Once again, perhaps slightly unfortunately, we have heard from the Minister that, notwithstanding the principle—he said he had no difficulty with the principle of what we were trying to achieve here—he was not convinced about where the amendment would be inserted.

There has also been some discussion about nobody having any objection to orderly handling, but perhaps this was a bit vague. What we have tried to do here, and what the Banking Commission had in mind, was to try to ensure that, at every possible stage, this wording would not only give additional strength to the Bill but send a message to the public—this has been raised in a number of interventions—that gives them confidence and trust, and ensures that, when financial institutions get into difficulty, all circumstances are looked at, whether macro-economic or closer to home. Customers and those who have resources in banks would then be confident that everything possible would be done not only to address those issues but to ensure that whatever happened would be done in an orderly fashion and would not cause them particular problems.

I heard what the Minister said in relation to the placing of such an amendment. I will try to tempt the Minister. Even if he cannot say at the moment whether he would seek to bring this amendment back and insert it in another sub-paragraph, will he give an assurance that he will look favourably on the principle—he seems to agree with it—and perhaps table an amendment either in new sub-paragraph (iii) or elsewhere that would achieve the same purpose? I would like to hear what he has to say on that before I decide how to proceed with this matter.

Greg Clark: This Committee is establishing itself already as one in which anything is possible: the Democratic Unionist party describes itself as a modernising force; my hon. Friend the Member for North East Somerset finds himself in full agreement with the Labour Front-Bench Members; and my hon. Friend the Member for Eastleigh describes words that Lord Lawson and others have committed themselves to as not making any sense—he is a braver man than me. I think that we will have an entertaining time over the next few weeks.

Let me address the points made. It has been clearly communicated that there is a unity of purpose: we all absolutely agree that it is important for banks large and small to be able to fail while the provision of services to customers continues, but with no consequences for taxpayers. That is why new sub-paragraph (iii) as drafted refers to protecting the continuity of services.

David Wright: May I make the point to the Minister, following on from the hon. Member for North East Somerset, that it is not always about smaller banks failing and being swallowed by larger institutions; it is really important that larger banks can fail in an orderly manner and be divided up into smaller banking organisations. We should not see this as a conveyor belt to increase the size of banks and financial institutions; it ought to be possible to go the other way as well.

Greg Clark: The hon. Gentleman is absolutely right. A problem we face in this country is that there are too few banks and they are over-concentrated, with negative consequences for competition. The arrangements that we put in place should not, therefore, lead to an inevitable further concentration of banking into larger and larger groups if, in the future, a bank—large or small—were to fail. That is absolutely the Bill's intention, and I am sure that that is the intention of the movers of the amendment, and indeed the Commission, which is why we have specified the protection of the provision of services in the Bill rather than the protection of the institutions themselves. That is the point that we want to get across.

I said that this was turning out to be an unusual and surprising Bill Committee, so let me add a further note of novelty. As is tradition, I have a note from my officials with advice that says, "resist this amendment". Let me turn away from my officials and say that, having listened to the contributions from my hon. Friend and the Opposition Members, if it is possible, as I think it may be, to locate in the right clause of the Bill—I think that this particular resolution clause is the one—a more explicit assurance that the clause deals with the importance of continuing core services if a bank were to fail in future, I dare say the ingenuity of my officials and

possibly of members of the Banking Commission themselves may enable us to find a form of words that satisfies Members that we have put in place something that addresses that.

Cathy Jamieson: It is indeed a very unusual Committee already. I am surprised and very pleased to hear the Minister give those assurances. Having been a Minister myself in another Parliament, I remember well the notes that used to appear in front of me all the time basically saying, "Resist absolutely everything", and telling me to repel any Opposition amendments. In the words that officials might use, I think the Minister has made some brave decisions already this morning. The Whips and others will now be panicking and wondering what will come later. On this occasion, I am glad to have tempted the Minister so far. He may find himself pulled back on some kind of rope later on in the day. I hope not. I will take his assurances in the spirit in which they were given. I look forward to his tabling an appropriate amendment, in an appropriate place, at an appropriate point in the future. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Yes, this is certainly a novel Committee, hearing my party described in the manner it has been. I will try, as Chair, to lead myself from the other side of that and be a stabilising force for good.

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: I will not take up a great deal of the Committee's time because we have had some healthy exchanges. We should, however, put on record how important the clause is. We have had assurances from the Minister and we have already seen how exciting a Financial Services (Banking Reform) Bill Commons Committee stage can be. That has perhaps been a surprise to all of us. It just shows, Dr McCrea, what your modernising approach can do to permeate a different culture and a different approach. That change in culture and approach is something we want to see in the banking sector and throughout financial services. Again, that is why the report from the Commission is so important.

I noted a couple of points that my hon. Friend the Member for Nottingham East made at the outset. He said that retail banks should be boring, safe and humdrum. We also want to ensure that retail banks can operate in that context. We have had a good debate and discussion on the ways in which the clause can be improved. I have no objection to the clause standing part of the Bill. I look forward to making similar progress on the next set of clauses and amendments.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

MODIFICATION OF OBJECTIVES OF FINANCIAL CONDUCT AUTHORITY

Question proposed, That the clause stand part of the Bill.

Greg Clark: I think we could possibly do this formally as the debates we have had referred to clauses 1, 2 and, in effect, 3. I think we have had a full enough discussion. It is amazing to see what can happen when the back of the hon. Member for Nottingham East is turned. *[Interruption.]*

10.15 am

Cathy Jamieson: Some of the comments made by the Whips from a sedentary position may tempt me not to move at such speed. Seriously, it is important just to put a couple of points on the record. The clause mirrors in many ways the changes made further upstream to the PRA, with consequential changes to the objectives of the Financial Conduct Authority. As hon. Members may remember, those of us who sat on the Committee that considered the Financial Services Bill last year, including myself and my hon. Friend the Member for Nottingham East, spent considerable amounts of time discussing the objectives of the respective parts of those organisations. At that time, we talked about how important it was that there should be harmony in the way the PRA and the FCA worked in practice. Considerable numbers of hours were spent discussing that issue in detail.

We are pleased to see the way the recommended changes have been implemented in the clause. However, I have a couple of points that I hope the Minister will elaborate on, in relation to how the FCA would work in respect of the high level of continuity issues that are set out in the clause. The PRA may well be sending out routine investigatory inquiries to retail banks, and the FCA will, presumably, audit the arrangements periodically. I would like to hear the Minister explain how that will be co-ordinated. Will we end up with two sets of continuity regulators? That could lead to difficulties and lack of co-ordination. How will the bodies split their activities?

I do not want to reopen the question, which we discussed in the Committee that considered what is now the Financial Services Act 2012, whether it is sensible to have both the FCA and the PRA in the way that is determined in the Act, and we do not oppose the clause. However, it would be helpful to hear some reassurance and explanations from the Minister.

Greg Clark: I am of course happy to speak to the clause and respond to the hon. Lady's questions. In essence, the inclusion of the clause relating to the FCA is a piece of future-proofing. All of us intend and expect that the burden of responsibility for the arrangements will be on the PRA. That is absolutely our intention in terms of the activity that has been specified from the beginning, which is the regulation of deposits; that is very much going to be a PRA responsibility. However, during the course of scrutiny mention has been made that, as in future there could be an activity that came under the FCA's remit, it would be sensible to make the same provisions available to the FCA in the Bill. Members who have studied the Bill will see—it has been clear in our discussion of the amendments that we have considered so far—that the provisions will apply to the FCA and the PRA in an identical way.

The hon. Lady made some reasonable points about the arrangements for ensuring that there is no difference of view or in approach between the PRA and the FCA in the event, unintended though that is, that activities

[Greg Clark]

would fall across the different regulators. As she and other Members will know from sitting on previous Bill Committees, there are arrangements to co-ordinate the work of the PRA and the FCA. Indeed, the two institutions are required to co-ordinate their functions under new section 3D of the Financial Services and Markets Act 2000, and are also required to maintain a current memorandum of understanding as to how they work together. We should also reflect on the fact that the arrangements for mutual contact between the PRA and the FCA are well established, and the FCA's objective in this case is narrowly focused on only those activities related to the conduct regulation of particular firms.

We should regard the clause as a measure for the purpose of ensuring that we do not have to come back to the House for primary legislation should there be some activities in future that the FCA needs to look into. Bearing in mind the extensive discussions to ensure that the two bodies under the twin peaks model are co-ordinated, and in the light of the discussions we have had about the powers of the PRA and the FCA, I hope that the Committee will find itself satisfied.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

AMENDMENT OF PRA POWER OF DIRECTION

Question proposed, That the clause stand part of the Bill.

Cathy Jamieson: Given that the Minister is in listening and answering mode, I want to ask a couple of questions about clause 3. In general, the Opposition have no problem with the clause, which amends section 3I of the Financial Services and Markets Act 2000 to allow the PRA to require the FCA to refrain from certain action if the PRA believes that such action would

"threaten the continuity of core services".

As we discussed in relation to clause 2, it is important to have clarity on the distinct roles and powers of the PRA and the FCA, with a view to preserving the continuity of core services in the event of a crisis, and the Minister has taken that on board.

For the record, will the Minister give us some examples of scenarios in which the PRA might want the FCA to hold back from intervention? I see some Government Members nodding in agreement, which I take as a sign that they also consider the question to be important. Which of the FCA's routine activities on the provision of core services will the PRA be able to supersede? In terms of ensuring transparency, and renewing and restoring public confidence, will any overrule of the FCA be made public? Who will know that that has happened and when it happened? Will Parliament or the Treasury Committee be able to find out about such circumstances, and if so, how? I hope that the Minister will be able to answer those points.

Greg Clark: The Financial Services and Markets Act 2000 already gives the PRA a veto over a variety of the FCA's activities, and clause 3 simply extends that veto. Given that the objectives of the PRA and the FCA now include the continuity objective for the provision of core services, we need to extend the veto to cover that objective. Not only is clause 3 in the spirit of FSMA, but it would create an anomaly not to extend the financial stability powers that FSMA gives the PRA over the FCA to cover the new objective. The clause allows the PRA to exercise a veto on the grounds that a particular activity threatens the continuity of core services.

The hon. Lady asked for examples. Such a power is to be used in a bespoke way for particular institutions if, in the judgment of the PRA, there is a threat to the continuity objective—in other words, to the stability of the banking system in the UK—but the nature of such matters makes it difficult to specify precisely what they might be. The whole reason for creating a forward-looking and more agile set of institutions is to allow a greater opportunity to spot things that are coming up.

Cathy Jamieson: If the Minister gives an example, that might answer my question. In discussion of previous clauses, some concern was expressed about vagueness. I simply seek to understand, and to put on the record, the types of circumstances in which such a power would be used.

Greg Clark: The power would be used if, in the judgment of the PRA, a proposed action by the FCA would affect the continuity objective, which is to say that it could trigger a rupture in the continuity of banking services to the people of this country. Let me give an example. Suppose, on conduct grounds, the FCA were to propose immediately to ban particular products and the PRA were to judge that that would cause, perhaps because of the associated revenues, an immediate problem for the funding position of a bank. The judgment then has to be weighed up as to whether the necessary in due course requirements to change the way in which products are sold, or the products themselves, can be reconciled with the stability of the group. It is for the PRA to state and to certify that that, in its judgment, would threaten the continuity objective. In those circumstances, it would have the ability to stay the hand, as it were, of the FCA.

Cathy Jamieson: I thank the Minister for giving way once again. He has obviously thought about the matter in detail. He provides the example of where products may have to be banned. What does he have in mind? From past experience or looking to the future, does he have any particular concerns?

Greg Clark: I do not have any particular product in mind, but one can imagine a circumstance in which a product is important to a bank's current trading position and balance sheet. The purpose of getting banks to be more robust and to have better provision for capital, for which the Bill provides, is to reduce the circumstances in which the measure may be necessary, but it is theoretically possible that the sale of a particular product may be sufficiently important to a bank's trading position that to interrupt it immediately could have consequences for its funding position and stability. The proposal is not expected or intended to be used frequently. Indeed, it is not intended to be used at all, as the Bill provides for greater resilience in the banking system.

However, as all hon. Members would accept, if there were a circumstance in which the perfectly proper in due course restrictions for conduct reasons of a bank engaging in a particular activity were to have, without regulators being able to do anything about it, huge and disproportionate consequences for the banking system, it is right to have the ability—it is why the two institutions were created—to have such questions available for separate determination. In those circumstances, the stability of the system and of the continuity objective has to—

David Wright: That has serious consequences for the consumers of financial products. If the agencies are working together to sustain a bank, but consumers are using a rogue product, how will that work? It really is a serious point.

Greg Clark: The hon. Gentleman is right. We debated the arrangements for co-operation between the FCA and the PRA under the previous clause, and those arrangements are there to ensure that any prospective risk to the financial stability of one of the conduct aspects for which the FCA is responsible is made known to the PRA. Consequences can then be reflected back. The hon. Gentleman is absolutely right that the situation should never arise. The PRA ought to have, and is required to have at all times, a view as to the solvency and resolvability of the banks. However, if it came to the crunch and a bank was of such systemic importance that it would interrupt the PRA's continuity objective, the action could not be indeterminate. There must be the ability and—the hon. Gentleman is quite right—FSMA establishes the precedent that the PRA has a veto in such matters over the FCA's decisions.

Another thing that the PRA could do, for example, is to delay the imposition of a fine that the FCA might have determined was appropriate to levy on a particular firm. If the imposition of that fine with immediate effect would jeopardise the immediate position of the firm and drive it into failure, that is something that needs to be addressed. It does not in any way protect the institution from the consequences of its action, but it allows the PRA to take a view as to whether, in this case, the timing would be deleterious. That is the purpose of the amendment.

10.30 am

Nick Smith (Blaenau Gwent) (Lab): The Minister talked earlier on about a memorandum of understanding between the two institutions, and that was important, but he was not able to respond to a question from my hon. Friend the Member for Kilmarnock and Loudoun about the parliamentary oversight of the working between the two institutions. Could he tell us a bit more about that please?

Greg Clark: In relation to the oversight, the provisions in FSMA are, for these matters, not to be made public because to communicate the fact that, for example, it was necessary to delay the payment of a fine because otherwise a bank could fail, would be to release information that was very highly sensitive to the markets. It could trigger precisely the kind of reaction that these powers exist to prevent. Members of the Committee will know that the constitution of the PRA—through the Financial Services Act 2012—requires reports of its activities to be made retrospectively to the various committees of the Bank and the Select Committee that scrutinises the PRA. In due course, they will have the opportunity to review the policies and practices of the PRA, but in regard to the exercise of this power, to do what the hon. Member for Blaenau Gwent implies or what was, perhaps, behind the perfectly reasonable question from the hon. Member for Kilmarnock and Loudoun—to simultaneously publicise the exercise of this power; tempting and desirable in principle though it is—would have the perverse consequence that must be obvious to all.

The memorandum of understanding, of course, is subject to parliamentary scrutiny: it is laid before Parliament and subject to scrutiny by the Select Committee. Therefore, the arrangements in advance and the types of circumstances in which the PRA would exercise these powers are set out in advance and are subject to clear public scrutiny and should be agreed. The particular moment of exercise, however, is something that has to be between the regulators.

Alok Sharma: My right hon. Friend will forgive me if I should probably know the answer to this, but where the PRA exercises this right, what will be the precise role of the Treasury? What will be the roles of the Chancellor of the Exchequer and the Financial Secretary himself?

Greg Clark: All these matters concerning the ability of the PRA to veto the activities of the FCA were considered and debated during the passage of the Financial Services Bill. We need to beware in our discussions of this Bill of the possibility of doing something to misalign that Act, which was considered and put into force, including the arrangements for the exercise of the power in question. It is important that through this clause, we should simply reflect on making a concomitant change to the powers of the PRA in respect of the exercise of the veto to mirror the proposed extension of the change in the objectives of the PRA. I think my hon. Friend is a veteran of that Bill committee, and he will know that there is no role for the Treasury in that; it is a matter for the regulators to decide.

It is possible to rerun the debates about the prospective powers of the PRA and the FCA across the board, and we can do that if that is what the Committee wants, but we need to bear in mind that this change that reflects a tweak to the institution's continuity objective.

Cathy Jamieson: I do not wish, as I am sure other hon. Members do not, to rerun the whole debate that took place on the previous Bill. However, my hon. Friend the Member for Blaenau Gwent made an important point about what the memorandum of understanding covers. I am still unclear about how the Treasury Committee would find out about the circumstances in which the overruling would take place. The Minister has made it clear that that would not be publicised, and I can understand the reasons why, but I am not entirely clear about the process by which the Treasury Committee and Parliament would be able to scrutinise the workings of that.

Greg Clark: The memorandum of understanding is scrutinised in advance by Parliament. The Select Committee has the opportunity to suggest in public the inclusion of

[Greg Clark]

specific circumstances in which the powers are exercised. The reviews of the PRA's performance by the Bank of England and the Treasury Committee can be concerned with ex post scrutiny or knowledge of decisions that the PRA has taken in pursuit of the objective. The Treasury Committee can request, from time to time, a report on whether and when the powers have been used. It would be a reasonable judgment by the PRA to disclose them once the moment of danger had passed, but the arrangements are available.

Mark Durkan: Proposed new subsection (c) contains the phrase

"threaten the continuity of core services provided in the United Kingdom."

Can that be read to include threatening the continuity of core services provided in a distinct part of the United Kingdom? Can it only be read as being about the UK as a whole, or can it apply to part of the UK where there is a distinct banking market that does not have the same range of players? Indeed, some players may well be shaken out of it, given the changes in Irish banking and so on. The clause is meant to deal with future-proofing and risk anticipation. Could it lead to the PRA requiring the FCA to refrain from products in a particular regional banking market, because there could be implications for other existing banks and their core services? Could the provision apply to a distinct part of the UK, as such an issue could arise in Scotland and certainly does arise in the context of Northern Ireland?

Greg Clark: The hon. Gentleman makes an important point. Before I respond to it, let me provide further clarification on some points made about the disclosure of information on decisions and directions that the PRA has made. The PRA is required to include information on directions under section 3I of FSMA in its annual report, which is laid before Parliament. Therefore, there is the ability annually to scrutinise the directions that have taken place.

The hon. Gentleman asked about the continuity objective, regarding particular parts of the United Kingdom. Clearly, the intention is that ordinary people should have continued access to their deposits. It is for the regulator to interpret that and, through the statutory instruments that implement the objective, we will set out the provisions in detail. However our view is that the area of the UK that he represents, and other areas such as Scotland, would be considered significant because an interruption in the continuity of service there would constitute a breach of the continuity objective.

Cathy Jamieson: I had not anticipated that we would have so much debate and discussion about those points, but I am glad that we have been able to get some clarity on issues that concern me and other hon. Members. In particular, it is helpful to have a reminder about the requirements regarding the PRA annual report, which the Minister mentioned.

It is also helpful to have had the Minister's assurances about the memorandum of understanding and about the Treasury Committee's potential role in requesting information and reports. No one is suggesting that Select Committees, or indeed Parliament, would want to do anything that caused further problems, but it is important that there is a degree of oversight so that Select Committees and Parliament have the ability to scrutinise. It is also important that they have the ability to give information and suggestions about how processes may be approved.

I recognise that the clause essentially does something that has already been done in other legislation, but it was important to put those points on the record. On that basis, however, I have no difficulty with the clause standing part of the Bill.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Ring-fencing of certain activities

Cathy Jamieson: I beg to move amendment 15, in clause 4, page 3, line 33, leave out from 'order' to end of line 35 and insert—

'(a) would significantly enhance the stability of the UK financial system or provide other significant benefit to the economy of the United Kingdom, and

(b) would not pose a risk to the continuity of the provision in the United Kingdom of core services.'.

The Chair: With this it will be convenient to discuss amendment 16, in clause 4, page 5, line 13, leave out from 'circumstances' to end of line 15 and insert—

'(a) would significantly enhance the stability of the UK financial system or provide other significant benefit to the economy of the United Kingdom, and

(b) would not pose a risk to the continuity of the provision in the United Kingdom of core services.'.

Cathy Jamieson: I think we are making good progress this morning, Dr McCrea. We now come to clause 4. For those following the twin tracks of the amendments to the Bill and the amendments suggested in the Parliamentary Commission on Banking Standards report, amendments 15 and 16 relate to Commission amendments E and F.

A number of amendments have been tabled to the clause, and I suspect it will take slightly more time to deal with than some others. If I can say this is a vegan, it is, in many ways, the meat of the Bill, and we must discuss many of the major changes to FSMA. The clause introduces the concept of ring-fenced retail banking and sets out the rules governing how it will work. Many hon. Members will want to make points about the whole principle of ring-fencing when we debate clause stand part. That theme has run through all the discussions on the Bill.

In the Bill, the Government propose that they should be able, in certain circumstances, to set out by order classes of financial institution that are to be exempted from the ring-fencing rules. The Parliamentary Commission on Banking Standards has voiced some concerns about those exemption arrangements. We discussed some of the issues involved on Second Reading, and the Committee gives us the opportunity to scrutinise them in more detail.

I want to put a number of points to the Minister, and I hope he will be able to respond in the same helpful and forward-looking way as he has on some of the other amendments. The Opposition see the logic of excluding smaller building societies, but proposed new section 142A(2)(b) makes provision for the Treasury to exempt other classes of bank, and those are as yet unspecified. Although the Government agreed with the Commission that the tests for exempted or prohibited activities needed to be tough, which is right and proper, the Bill needs to be amended to set out more clearly what those tests and thresholds look like. As the Commission said, merely saying that an exemption must not have a significant adverse effect on the continuity of core services is not adequate. Why should an exemption be made when there is any adverse effect, whether significant or not? Those are some of the issues we need to tease out in more detail.

Alok Sharma: Looking at amendment 15, I have some sympathy with proposed new paragraph (b), but in proposed new paragraph (a), the hon. Lady suggests an incredibly huge burden of proof over whether an institution is enhancing the stability of the UK financial system. Will she explain how she would practically go about proving that? I cannot see how it will work in law.

Cathy Jamieson: I thank the hon. Gentleman for that intervention. He was perhaps suggesting that I was suggesting that, but I remind hon. Members that the amendments come from the robust work of the Banking Commission. I support the amendments so that we can have further debate and discussion.

10.45 am

Alok Sharma: That is fine, but the hon. Lady is the one who tabled the amendments, so she should explain the reasons why.

Cathy Jamieson: I take the hon. Gentleman's point on board, but it is important to recognise that the amendments came from recommendations of the Banking Commission. I shall say more about that.

The amendments specify that any exemptions must positively enhance the stability of the financial system and have proactive benefits for the economy more broadly. In our view, that is a welcome and forward-looking suggestion, which is why we tabled the amendments—to support the Banking Commission's work and its recommendations. The proposal is positive because exempting a class of financial institution would supplement the condition that any caveat does not pose a risk to core service continuity, which moves us forward from some of the issues that we debated earlier.

In order to be helpful and make progress, will the Minister give us his view? Does he agree that exemptions need be made only if a positive benefit flows as a result? There are concerns, which I think have been raised already, that exemptions should not be made merely because small institutions find ring-fencing onerous, which is the question here. After all, before a series of people say that it was all the fault of the Labour Government, it is worth looking again at the history of what happened in 2008-09 and at some of the smaller institutions that found themselves in difficulty during the global financial crisis.

We are grateful to the Banking Commission for its suggestions. I would like to hear what the Minister has to say before deciding whether it is appropriate to push the amendment to a Division or simply allow them to act us probing amendments that help us to understand the Government's intentions and help them to come back with an amendment at a later date.

Jacob Rees-Mogg: I fully support the Government. I hope that they do not accept the amendment. It would take us in completely the wrong direction. So as not to have unintended consequences, ring-fencing has to be treated extremely carefully. It is worth bearing in mind that had there been a ring fence prior to the financial crisis, it would not have stopped Northern Rock or HBOS from getting into trouble and it would not have allowed Barclays bank to get out of trouble. There must be an onus on the Government to say that somebody not being exempted would cause real harm.

Another point worth making is that although the Government are great, wise, noble and full of men and women of the finest intelligence—there are more brain cells in this Government than in any Government in the history of mankind—Governments none the less have an appalling record of picking winners in business. They have not been trying to pick winners in the financial sector, but they have tried to do it in other sectors. The positive requirement that the amendment would introduce would expect the Government to be able to work out to what extent an un-ring-fenced bank would work, in a way they failed to do with British Leyland, British Steel, the National Coal Board and so on.

Nigel Mills (Amber Valley) (Con): I hesitate to ask my hon. Friend a question on what he is saying, but the clause allows the Government to exempt a class of businesses, not an individual. I am sure that he would normally agree that for the Government to take such a power is slightly concerning. We are ring-fencing everything except for a whole class of things that we might choose not to at some point. Maybe his concern should be directed at whether that power is to the good.

Jacob Rees-Mogg: Whether the power should exist at all is a good question, but we do not have an amendment to get rid of the power altogether, though I suppose we could come to that argument on clause stand part. The exemption for a particular class brings us to the point about trying to avoid a fundamental risk to the economy. We may want to exempt a class that could not under any circumstances be fundamental to the economy, or a class of international banks that would simply close down operations in this country if it was subject to a strict ring-fence clause. The flexibility that the Government are allowing themselves by requiring a negative test is much better than the proposal of a positive test, so I hope that the officials are sending the Minister notes saying "Resist, resist, resist".

Greg Clark: Given my performance on the previous clause, the officials are probably going to wrestle me out of the room before I have the chance to respond. I agree

[Greg Clark]

with my hon. Friend about the reason for being careful about the exercise of these provisions. In essence, it relates to the point that the hon. Member for Telford made. There are objectives to be balanced. We need to have the necessary safeguards that the Bill provides, but not gold-plate them so much that we prevent new banks, perhaps smaller banks, from coming in to provide competition to the incumbents by imposing on them regulatory burdens that will make no particular contribution to the stability of the system.

James Morris (Halesowen and Rowley Regis) (Con): The Minister is making an important point. One of the unintended consequences of the amendment may be to increase large banks' market concentration and preclude the improvement of the competitive market that we are all seeking.

Greg Clark: My hon. Friend is right. Later in the Bill we will consider some of the measures to promote further competition in banks. One of the things that we are concerned we do is ensure that the barriers to entry are as minimal as they can be, consistent with the protection that depositors and the financial systems need. That is the essential balance that we are discussing.

It is important to reflect, as the hon. Member for Nottingham East did, that the ring-fencing provisions in the Bill are not the only recommendations of Vickers on reforming the banking system. Not everything that Vickers has recommended is to be pursued through the ring-fencing route. The capital requirements of banks and the resolution plans that are required are measures that will helpfully put in place a raft of different arrangements to provide the greater certainty and reassurance that is needed.

The Vickers report, as members know, is written in a very readable way—in fact, I think it is a compelling read—and the Vickers Commission produced a good table going through examples of some of the failed banks of recent years and considering which of its recommendations would have prevented or mitigated the failure of those different banks. Ring-fencing applies particularly to the bigger banks, rather than to the small ones which, nevertheless, can cause problems in that regard. It is for that reason that we have introduced this de minimis clause, which the Commission itself has agreed with.

The amendments pertain to the power to make exemptions, which is being given to the Treasury. Amendment 15 is about the definition of the ring-fence body, and amendment 16 is about the excluded activity of dealing in investments as principal. The case for making an exemption for small banks is clear. There are fixed costs of ring-fencing, which will be proportionately greater for smaller banks than for larger ones. Without an exemption, those higher costs could place smaller banks at a comparative disadvantage, and therefore at a competitive disadvantage, compared with their larger rivals. Meanwhile, the benefits to financial stability of requiring small banks to ring-fence are obviously quite limited, because the failure of a small bank is less likely to have systemic consequences and more likely to be manageable through these other arrangements by the authorities.

Indeed, as the Parliamentary Commission acknowledged, a de minimis exemption from ring-fencing for smaller deposit-taking institutions represents a sensible compromise between maintaining financial stability and encouraging new entrants into the banking industry. The Government propose to set the threshold for the exemption at £25 billion of core deposits. As the Committee will have seen from the draft statutory instrument that I made available on 7 March, that will be subject to further scrutiny in due course.

The PCBS recommended that the factors that must be considered in creating an exemption should be in the Bill, and that the impact on competition should be explicitly included among those factors. We agree with the PCBS that clarity over the circumstances in which an exemption may be created or varied in future is important, to give as much certainty as possible about how the powers in the Bill will be used.

Cathy Jamieson: The Minister is referring to some of the issues that were in the Government's response to some of the Banking Commission's work. That response expressed particular concern about the tests for exemptions under proposed new sections 142A(2)(b) and 142D(2) and said that the Government would consider further amendments to ensure that the tests deliver the policy intention. Can he explain what deliberation there has been? Is it still his intention to bring forward further amendments?

Greg Clark: Yes, we will keep under close scrutiny the provisions that are required. We started with the minimal requirements, which I think is the right approach to take, and we have sought to provide clarity in the Bill. As the hon. Lady mentioned, we made clear in the Government's response to the PCBS the conditions we think should be met before an exemption is created. New section 142A(3) requires that before the Treasury creates an exemption it must be satisfied that doing so would not be likely to have a significant adverse effect on the continuity of provision of essential core services, which under the current definition would be access to deposits and the like. Because of that requirement, the amendment is unnecessary. The safeguard is already there.

There is a danger that the amendment could prevent the Treasury's ability to balance the need for financial stability against economic considerations such as competition. The and/or formulation implies that the possibility of judging the relative importance of those things is taken away. The amendment would require the Treasury to be satisfied that an exemption would either actively advance financial stability or provide some significant economic benefit. It is contrary to the logic of requiring the balance between those forces to be met.

Similarly, as proposed, the requirement would be that an exemption would actively promote financial stability rather than doing no harm to it. We should reflect on the fact that that is quite an increase in the height of the test. The provisions of the Bill are intended to ensure that banks are resolvable and that core services continue to be provided. However, if the test is to promote financial stability actively, demonstrating that might be quite a high hurdle for a small bank to overcome.

Cathy Jamieson: I hear what the Minister says, but I refer him back to the wording of the Bill, which states that:

"An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services."

The Banking Commission raised the issue of what a significant adverse effect is, how that would be decided and how that process would be gone through. Will the Minister explain the difference between an adverse effect and the point at which it is scaled up to being significant enough for the Treasury to have to act under this type of order?

11 am

Greg Clark: We have put the power in the Bill, and that is right; it was required by the Commission. When it comes to the exercise of that power, the de minimis threshold will be set in secondary legislation. That is the place where the proposed use of the power has to be made. That decision will be vested with Ministers in the Treasury, and there will, of course, be parliamentary scrutiny of the order that would implement that. That is the test there.

The amendment would increase the height of the hurdle, going beyond the Hippocratic principle of doing no harm to a higher test of positively doing good. I think that is unnecessary. Setting the principles for the future exercise of the de minimis power, which have to be justified before the House when it comes to it, is the right balance to strike between the objectives expressed by both sides of the House—of allowing and encouraging banks to enter the financial system, while protecting financial stability.

Cathy Jamieson: The Minister is being generous in dealing with these points, but it is important to have them on the record. Will he again pick up the point, made earlier by the hon. Member for Amber Valley, about the difference between an individual institution and a class of institutions? What type or class of institution does he have in mind?

Greg Clark: Let me give an example. There could be a class of small banks, which we often think of as challenger banks. Rather than having institution-by-institution exemptions, it may be possible to define them in such a way. We should also reflect on our hope that, if the Bill becomes an Act of Parliament, it will endure for some time.

In the past, this country has had financial innovation that led to institutions coming into existence that, by definition, were not there before. In future years, there may be a new set of bodies, just as we have had a building society movement that has been very important to financial services in this country. Through the entry of new institutions, different types of bodies may emerge and cohere over time into a class that can be identified as such. Subject to statutory instruments being brought before the House to exempt such classes of institutions, to take provision for the ability to do that seems a sensible piece of future-proofing for a world in which institutions and the character of institutions may change.

Again, it is important to emphasise that the Bill's provisions do not themselves create the exemption, but empower the House and indeed Parliament to consider it in future.

Nigel Mills: I gently say to the Minister that we have a tradition of an annual Finance Bill; if a new entrant was greatly attractive to the UK economy, we would have an annual chance to change the Bill to allow them without needing such a broad secondary power. People are concerned about what exactly could be done with that power, and that is perhaps not quite what Parliament thinks it is doing at the moment.

Greg Clark: It is important to have the essential architecture of the future regulation of financial services in the Bill. The Bill sets out the provisions for ring-fencing; addressing in it the possibility that individual institutions and institutions by size may be exempted, and also that potential new classes of institution may be exempted, makes the provisions self-contained and is the right way to proceed.

The Parliamentary Commission was pretty exacting in its recommendations for parliamentary scrutiny of various aspects of the Bill, and we have been able to agree with it on a number of matters. The Commission agreed with the point that it is appropriate to have details for these matters brought forward in secondary legislation in future, because the area is one that is subject to change. It is also important to bear in mind that when it comes to a future class that might be exempted from being ring-fenced, the same logic and criteria in terms of their limited impact on the stability of financial services will apply to the decision to exclude that class. There will not be a blanket get-out for any institution of that type.

Cathy Jamieson: I do not want to go back to previous Bills, but there have been concerns before, which I think are reflected here, about giving fairly wide powers to the Treasury to do things by secondary legislation without being entirely clear about what consultation and what processes will come into play. The Minister has given us assurances on that, but, for the record, does he intend those statutory instruments to be brought forward under the negative or affirmative procedure, given that such instruments could be very significant?

Greg Clark: The hon. Lady is right that this is a significant area. The Government's intention is to follow the recommendations of the Delegated Powers Committee for each measure.

Relatively close to the beginning of the Committee's work as we are, this is an appropriate point to reflect on the fact that the Bill is designed to establish the essential architecture of regulation. There is some recognition of and support for the fact that getting that architecture in place is the business before us; the details of how the powers will be exercised will be subject to debate when we come to the statutory instruments.

It is absolutely the Government's intention that those statutory instruments, which are by no means a trivial matter, should be subject to the fullest possible debate, and in each case, as I say, we will follow the views of the Delegated Powers Committee. *[Interruption.]* In terms

[Greg Clark]

of the exercise of this particular power, inspiration has just struck me that it will be subject to the affirmative procedure, so it will enjoy the scrutiny that that particular procedure allows.

Mark Durkan: The Minister has referred to the fact that the Bill's provisions are very much designed to future-proof in not too exacting a way, without trying to over-prescribe or over-predict what may happen. Will he say how far the possible changing face and form of what might be termed "supermarket banking" is in the Treasury's thinking in this regard?

Many supermarkets and retail chains offering so-called banking services do so in partnership and are fronting for other established, conventional banks, but some are doing so on their own, which may become increasingly common. That was seen to be allowed for specifically in the Financial Services Act 2012. How far is the Treasury thinking about the new forms and set-ups of banking that might be established?

Greg Clark: We are keen to have new entrants to the sector. We know that some supermarkets have made some steps in that direction and it is important to maintain an openness to new entry. We need to reflect on the types of institutions that might come in.

Some of the new entrants are unlikely to want to engage in the kind of universal banking—investment as well as retail—that ring-fencing will, because of the abuse that we have seen, provide safeguards against. There are other provisions, not least the powers that the PRA and FCA have, to ensure that even core retail-focused banks operate in a way that is safe for their depositors; that is what we want to see.

The same logic would apply to new entrants of the type that the hon. Gentleman described as it would for any other bank: an exemption can happen only if it would not harm the requirement that there should be the continuity of core services. That test applies to all entrants, no matter what their character.

Cathy Jamieson: We have had a useful discussion to consider this group of amendments. We brought them forward because they were recommended in the Banking Commission report. I was struck by the fact that—I have asked the Minister about this—in the Government's response to the recommendations, they said that they

"will consider further amendments to ensure that the tests deliver the policy intention."

So the Government and the Minister seem to be in a thinking mode and are prepared to consider further amendments, and that is why it is important to tease out issues on the amendments.

I did not want to reopen the debate we had in Committee on the previous Financial Services Bill on whether a growth agenda should be built into the requirements of legislation, or whether it is enough simply not to harm the economy. However, the principles here are similar in terms of the Banking Commission's report: should the legislation be constructed in such a way to ensure that the actions encourage a positive impact on the economy, or is it simply about trying to avoid damage?

I was particularly interested in the definition of whether the Treasury has the decision on something that would "adversely affect" or have a "significant adverse effect". That may seem like semantics, but it is quite important, as it is also to understand what the process would be and what Ministers have in mind.

I was heartened to hear the Minister—when inspiration struck him—give confirmation that an order-making power would be subject to the affirmative process, because something as significant as looking at exempting a whole class of banking or financial institutions ought to be subject to proper parliamentary scrutiny in an open, detailed process. That confirmation is helpful.

I hope that the Minister will consider the points raised during the course of the discussion. I will not push the amendment to a vote, but a number of points have been made that we may wish to come back to on implementing the spirit of the Commission's report as well as improving the legislation. I am sure that we will have further discussions on that in the next set of the amendments. In light of that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Cathy Jamieson: I beg to move amendment 26, in clause 4, page 3, line 35, at end insert—

'(3A) In making an order under subsection (2)(b) which—

(a) provides an exemption for UK institutions holding deposits below a specified amount, or

(b) varies the amount previously specified for the purposes of such an exemption,

the Treasury must aim to enhance competition among UK institutions which have a Part 4A permission relating to one or more core activities (in particular by having regard to the likely effect on the number of UK institutions applying for or obtaining such a permission for the first time).'.

Amendment 26 relates to Commission amendment P, for those following this in the report. It talks about the impact of de minimis exemption from ring-fencing rules on competition in the sector.

I will explain a couple of points and the context of the amendment. When and if Ministers decide, under proposed new section 142A(2)(b) of FSMA, that a set of banking institutions should be exempted from the ring fence, that will clearly have an impact on the operation of the financial services market and the choices presented to consumers.

We discussed previously whether we should be looking for the positives or simply trying to avoid the negatives. However, the reality is that—this is why I was so keen to tease out what the process would be and whether it would be affirmative—whenever the exemptions from ring-fencing are used, there will be such an impact. We are trying to tease that out in some more detail with the amendment.

11.15 am

We have already heard about issues around competition in the banking sector, and I am sure that other hon. Members will want to speak about that. We know that competition is already limited. The big five banks—HSBC, Barclays, RBS, Lloyds and Santander—dominate the current account, mortgage and loan markets. One reason why the banking system needs reform is to tackle that near-monopoly scenario, which can have an impact on those seeking credit and those who want a return on

their savings and investments. This discussion is timely, given what is happening in the wider world at the moment; of course, we discussed much of this on Second Reading.

The Parliamentary Commission on Banking Standards suggests that the Bill needs to ensure that due consideration is given to the impact of the de minimis exemption rule on the market and choice for consumers. Once again, if we look at the Government's responses to the Commission, they have indicated that they accept that in principle and may want to bring forward amendments—perhaps the Minister will say something on that—but it is important that we test the issue in Committee in some further detail.

I want to put it on the record and stress that we want new entrants in the banking sector. It may be that the de minimis exemption rule needs to accommodate all the hurdles and obstacles that can prevent challengers from coming on to the scene. We had some reference to that during the previous debate.

Without wishing to jump ahead to matters that we will discuss at a later stage, and assuring the Government Whips that we do want to reach our new clauses, we have already tabled a new clause that would require a review to be conducted into the obstacles and issues preventing new entrants into the financial services retail market. When we reach that point, we will suggest that it should be a priority for the Treasury.

Amendment 26, requiring the de minimis exemption arrangements to aim for enhanced competition, is a positive way to view the impact of ring-fencing on the nascent banking entities wishing to enter the market. I appreciate that time is short in this sitting, but I hope the Minister will be able to elaborate on Government plans to start up banking institutions, to get more people into the market and, of course, to encourage new mutuals. We have heard much discussion and comment in the past about that, and there is at least apparently tacit support from the Government for the mutual sector, although we are yet to see exactly how that translates into practice, particularly in terms of new entrants.

I would like to hear from the Minister in the time available not only about his views on the amendment, but also about the context of what we need to do get new entrants into the banking sector in a way that will give better deals and security for customers. Several hon. Members mentioned that on Second Reading and in Committee this morning.

Members of the public looking on, and those moved to read the record of the Committee's proceedings word by word afterwards—I am sure at least one or two people will do that—will want to see not only that the Opposition have proposed the amendments suggested by the Banking Commission, but what the Government intend to do about them.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): My hon. Friend is making a strong point about the importance of mutuals, co-operatives and other banks coming into the sector. Like me, she has no doubt reflected on the situation in other countries—particularly in Germany and Canada, where such organisations are much stronger. That underlines why we need to move towards such a system to allow new entrants to come in and create a much stronger, more diverse banking sector.

Cathy Jamieson: My hon. Friend is right. We must put our house in order in respect of the banking sector, and I come back to the issue of the culture.

I refer back to the comments made earlier by my hon. Friend the Member for Nottingham East. The public will not be convinced that things are moving on until they see a change in the culture of banking. Issues continue to be raised with all hon. Members about bonuses and people perceive many, although not all, of those at the top of the banking sector as being out of touch with what the public want.

We want to ensure that the Government have not only fully understood that, but actively undertaken work to ensure that new entrants can come into the process and, as my hon. Friend the Member for Cardiff South and Penarth suggested, to encourage the setting up of new mutuals. It would not be appropriate for me to go into all the international examples, but there are opportunities for co-operative and mutual solutions in the banking sector. We could also look more broadly at how not only new entrants but existing small institutions can be supported.

I would be happy to hear the Minister's view of the amendments and what plans the Government have to encourage new entrants, support consumers and ensure that we make the changes so desperately needed to the culture of banking.

Greg Clark: That is a lot to fit into two minutes, but I dare say we will have a chance after the break to cover the points that have been raised.

I find myself back in my previous mode of being tempted by the hon. Lady's amendment, although it is fair to say that she could have given her speech, commendable though it was, in opposition to her previous amendments. Nevertheless, she has arrived at the right point: we should strengthen competition in the banking sector, and I hope that one theme of this Committee, and indeed of the Bill's passage through both Houses, is that we will make it unambiguously clear in what we say and what we put in the Bill that new entrants should see the British banking industry as an attractive place to compete and put some of the existing institutions under pressure. I therefore have no difficulty in accepting the Parliamentary Commission's pressure and encouragement in that direction.

Amendment 26 would make it explicit in the Bill that the Treasury should be mindful of competition in banking when creating or varying the exemption from the ring fence for small banks. As I said, the goal of promoting competition is central to the logic of a small banks exemption; that is why we had the debate this morning about the de minimis level. When setting an exemption, the Treasury would therefore naturally have to consider the impact on competition. As the Government made clear in their first response to the PCBS, we accept the case for including competition among the conditions for setting exemptions from the ring fence in the Bill.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.