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Public Bill Committee

FINANCIAL SERVICES AND MARKETS BILL

Sixth Sitting

Thursday 27 October 2022

(Afternoon)

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Monday 31 October 2022

The Committee consisted of the following Members:

Chairs: Mr Virendra Sharma, † Dame Maria Miller

† Bacon, Gareth *(Orpington)* (Con)
Bailey, Shaun *(West Bromwich West)* (Con)
† Davies, Gareth *(Grantham and Stamford)* (Con)
† Davies, Dr James *(Vale of Clwyd)* (Con)
Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Eagle, Dame Angela *(Wallasey)* (Lab)
Grant, Peter *(Glenrothes)* (SNP)
† Griffith, Andrew *(Arundel and South Downs)* (Con)
† Hammond, Stephen *(Wimbledon)* (Con)
† Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hart, Sally-Ann *(Hastings and Rye)* (Con)
† McDonagh, Siobhain *(Mitcham and Morden)* (Lab)
† Mak, Alan *(Havant)* (Con)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Siddiq, Tulip *(Hampstead and Kilburn)* (Lab)
† Tracey, Craig *(North Warwickshire)* (Con)
† Twist, Liz *(Blaydon)* (Lab)

Bradley Albrow, Simon Armitage, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 27 October 2022

(Afternoon)

[Dame Maria Miller *in the Chair*]

Financial Services and Markets Bill

Clause 28

Treasury power in relation to rules

2 pm

Stephen Hammond (Wimbledon) (Con): I beg to move amendment 48, in clause 28, page 40, line 39, at end insert—

"3RF Requirement to publish specified information

(1) The Treasury may at any time, by notice in writing, direct a regulator to measure its performance against specified metrics and to publish such information if—

(a) the regulator does not already publish such information, or

(b) the Treasury consider the information published is insufficient for the purposes of holding the regulator to account.

(2) A direction under subsection (1) may—

(a) specify the element of the regulator's performance to be measured;

(b) specify the appropriate metrics to be used;

(c) specify the period for which performance must be measured; and

(d) specify the date by which the performance information must be published.

(3) As soon as practicable after giving the direction under subsection (1) the Treasury must—

(a) lay before Parliament a copy of the direction, and

(b) publish the direction in such manner as the Treasury considers appropriate.

(4) A direction under subsection (1) may be varied or revoked by the giving of a further direction."

I again guide the Committee to my entry in the Register of Members' Financial Interests. Clause 28 amends the Financial Services and Markets Act 2000. It gives the Treasury the power to make or to direct rules. A key element of our discussions has been transparency and accountability, and the amendment is designed to make things a little clearer by ensuring that regulators report regularly and transparently on key metrics. The regulators are already mandated to report to His Majesty's Treasury in their annual reports, which have to contain some performance metrics; the issue is that those metrics are selected by the regulator themselves. At the moment, an oversight body has the power to send for "persons, papers and records", but it does not have the power to mandate regulators to report on specific performance metrics over time. I think that that leaves a hole in terms of both accountability to Parliament and transparency of regulators.

I accept the evidence that Martin Taylor gave the Committee that Parliament and the Government have a huge amount of influence. Equally, though, the chief executive of the Prudential Regulation Authority, when asked elsewhere for his thoughts on the competitiveness objective, described a lot of it as a "red herring". When asked how he would report on the competitiveness objective, he said that he had "no convincing answer". It is important that there is a convincing answer, and that is, in effect, what my proposed new section 3RF of the 2000 Act would provide.

As I have stated quite clearly, I do not believe that this is about a race to the bottom. We need a well-regulated, tough regulated, transparently regulated jurisdiction. Regular accountability on performance is in no way an infringement of a regulator's independence; I think that it would enhance the regulator's reputation. The amendment therefore sets out a number of metrics on which a regulator might be asked to report. That could work relatively easily. For instance, the Treasury could use its powers to set out more clearly the elements on which the regulator should measure and report its performance. It could also set out definitions that are relevant to the measures themselves. I think that the direction potentially should be able to be scrutinised by the public, and particularly by Parliament and the Treasury Committee, and that the information should be published, and published more frequently.

My amendment is designed to ensure that the regulator not only has the objective, but has to report on it on a very clear set of metrics, which would then allow us in Parliament and the public to ensure that it is meeting the objective.

Tulip Siddiq (Hampstead and Kilburn) (Lab): I thank the hon. Member for tabling the amendment. In principle, Opposition Members are supportive of providing regulators with clearly defined metrics to assess their performance. We would need further information about how it would work in practice before we could lend our support to the amendment, but in principle we are in agreement with the views that the hon. Member has outlined.

The Financial Secretary to the Treasury (Andrew Griffith): I am grateful to my hon. Friend the Member for Wimbledon for raising this important issue, and I note the potential, in-principle support of the hon. Member for Hampstead and Kilburn, speaking for the Opposition.

The Government agree that it is vital to have appropriate public metrics for holding regulators to account on their performance. FSMA already requires regulators to report annually on how they have discharged their functions, advanced their objectives and complied with their other duties. In addition, schedules 1ZA and 1ZB to FSMA provide that the Treasury may direct a regulator to include such other matters as it deems appropriate in the regulator's annual report.

As part of their annual reports, both the Financial Conduct Authority and the PRA publish data on operational performance. The FCA annually publishes operating service metrics relating to authorisations, timeliness of responses to stakeholders, and regulatory permission requests, among other things. In April 2022, the FCA also published a comprehensive set of outcomes and metrics that it will use to measure and publicly report on its performance. The PRA annually publishes data on its performance of authorisation processes.

Amendment 48 seeks to allow the Treasury, in addition, to determine what metrics the FCA and the PRA should use to measure their performance and over what period, and other technical aspects of the measurement

and publication of metrics. Let me reassure my hon. Friend of the importance that I attach to the matter he has raised. I have discussed it with the CEOs of the PRA and the FCA since taking up my role, and I will continue to do so. I am open to discussing the matter with my hon. Friend outside the Committee to see what further reassurance the Government could give, or what further measures we could take. I therefore ask him to withdraw his amendment.

Stephen Hammond: I thank the Minister for his response, and I thank the hon. Member for Hampstead and Kilburn for hers. Clearly, there is a willingness across the House to look at this matter again, so I am going to take the Minister at his word—as I always do—and accept his kind reassurance. Perhaps he might ask the hon. Lady to join us in that discussion, because it would be beneficial. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Andrew Griffith: Clause 28 enhances FSMA by enabling the Treasury to place an obligation on the FCA or the PRA to make rules in a certain area of regulation. Equivalent provision for the Bank of England and the Payment Systems Regulator is made in clause 44 and in paragraph 7 of schedule 7.

FSMA requires that regulators advance their objectives when they make rules, set technical standards and issue guidance. The regulators must also take into account eight regulatory principles when discharging their functions. It is generally up to the regulators to determine what rules are necessary, but as set out in the future regulatory framework review consultation in November last year, that approach may not always be sufficient. There must be a means for the Government and Parliament to require the regulators to make rules covering certain matters, in order to ensure that important wider public policy concerns are addressed. That approach has already been established in legislation through the Financial Services Act 2021, which required the FCA to make rules that applied to FCA-regulated investment firms.

Clause 28 enables the Treasury to make similar regulations and place an obligation on the regulators to make rules in a certain area. The clause aims to strike a balance between the responsibilities of the regulator, the Treasury and Parliament now that we are outside the EU. It does not enable the Government to tell a regulator what its rules should be; it simply enables the Government, with the agreement of Parliament, to say that there must be rules relating to a particular area. The FCA and the PRA must continue to act to advance their objectives and take into account their regulatory principles when complying with the requirements set under this power. The Treasury cannot require the regulators to make rules that they would not otherwise have the ability to make.

I assure the Committee that this power will always be subject to the affirmative procedure. That is the most appropriate procedure, as it means that Parliament will be able to consider and debate any requirements set in this way. It also ensures that the Government are able to act to ensure that these requirements stay up to date with changing markets, rather than setting them out in primary legislation, where they could quickly become out of date. The clause enhances the FSMA model, enabling the Treasury to ensure that key areas of financial services continue to be regulated following the repeal of retained EU law and in the future. I commend the clause to the Committee.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

MATTERS TO CONSIDER WHEN MAKING RULES

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): I beg to move amendment 1, in clause 29, page 41, line 7, at end insert

', and also to financial inclusion.

(2A) For the purposes of this section, "financial inclusion" means the impact on those who might be prevented from accessing financial services as a result of the new rules made by either regulator, or from accessing them on the same terms as existed before the making of the new rules.'

The Chair: With this it will be convenient to discuss the following:

New clause 2—*FCA: Regard to financial inclusion in consumer protection objective*—

'(1) FSMA 2000 is amended as follows.

(2) In section 1C (The consumer protection objective), after subsection (2)(c) insert—

"(ca) financial inclusion;".'

New clause 3—*FCA duty to report on financial inclusion*—

'(1) The FCA must lay before Parliament a report, as soon as practicable after the end of—

(a) the period of 12 months beginning with the day on which this Act is passed, and

(b) every subsequent 12-month period,

on financial inclusion in the UK.

(2) A report under this section must include—

(a) an assessment of the state of financial inclusion in the UK;

(b) details of any measures the FCA has taken, or is planning to take, to improve financial inclusion in the UK;

(c) developments which the FCA considers could significantly impact on financial inclusion in the UK; and

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

Emma Hardy: My amendments relate to the issue of financial inclusion, which those who serve on the Treasury Committee have heard me talk about many times before. I will start with an explanation, which is much better than the one I tend to give, that I found in the written evidence from the Financial Inclusion Commission of what financial inclusion actually is. It speaks about its vision for

"a financially inclusive UK where financial services are accessible, easy to use and meet people's needs over their lifetime, and where everyone has the skills and motivation to use them."

I would think that that aim and ambition would be supported by everyone. I will add that the Financial Inclusion Commission is a cross-party, cross-organisation group that recommends financial inclusion.

[Emma Hardy]

The commission also said in its evidence that

"over a million people in the UK do not have a bank account, one in four households lack insurance protection and one in five adults would not be able to cover more than one month of living expenses if they lost their source of income."

Financial inclusion is a hugely important and relevant issue. Some 22% of UK adults have less than £100 in savings. The commission says that it believes the Financial Conduct Authority

"does not have the powers to adequately reflect vulnerable consumers' interests when considering potential regulatory changes."

That was its argument for my amendment, which is about "have regards".

I also came across written evidence from the Phoenix Group. I was a little surprised by it, but in a happy way. The Phoenix Group is a FTSE 100 company, and it also argues for the FCA to have regard to financial inclusion. It says in its evidence:

"Financial exclusion is one of the biggest drivers of poor consumer outcomes in the UK – it is a clear oversight that there is no specific statutory requirement for the FCA to address, or even consider, financial inclusion issues across its work."

It goes on to talk about this in relation to pensions, in particular. It said one of the problems it encounters in the

"long-term savings and pensions space"

is what it calls the "guidance gap" when it comes to making decisions about pensions. It believes that requiring the FCA to have regard to financial inclusion could start to address some of these issues. I have to say that before I read all of the evidence, I had not heard a FTSE 100 company arguing for that.

In oral evidence, the FCA pushed back on the need for a "have regard" for financial inclusion. We might have expected that; people tend to push back on having things added to their workload, even when the evidence says something else. The push-back tends to suggest that the FCA has a consumer duty and therefore does not need a "have regard" for financial inclusion. However, there is a big difference between the consumer duty and the "have regard" that I am talking about.

The consumer duty deals with people who are able to access products, but I am talking about the people who cannot access products at all because they are excluded from the financial market. The clients I am referring to are the ones the market does not want. That is happening more and more as we face the cost of living crisis. In real life, the people we are talking about end up being disadvantaged by paying more for credit, more for insurance and more for services, as we heard in evidence from Martin Coppack of Fair By Design.

The financial inclusion forum, chaired by HMT and the Department for Work and Pensions, addresses some issues, but it has been criticised as a closed talking shop. There are no selection criteria for who is invited and very little is published on what it does, what it discusses, or its actions and outcomes. Many of the organisations that back the "have regard" requirement for the FCA sit on that group already, and they recognise that what we have done is not enough, which is why they are calling for the requirement. In addition, we cannot get the toughest issues talked about at the financial inclusion forum—many allies have asked for the poverty premium to be on the agenda, but with no luck—and it does not seem to have many positive outcomes.

2.15 pm

The "have regard" for financial inclusion is also supported by the Finance Innovation Lab and the Finance for our Future coalition, which think the Bill is a real opportunity to deliver financial inclusion.

I will stop here because of time, but I refer back to the evidence from the Financial Inclusion Commission, which put it so much better than I could:

"Such a principle would allow the UK economy to grow and compete on the international stage in an inclusive manner, for the benefit of all members of society."

That is surely something we would all support, so I will press the amendment to a vote.

Dame Angela Eagle (Wallasey) (Lab): It is a pleasure to follow my hon. Friend the Member for Kingston upon Hull West and Hessle, whose comments I wholeheartedly support. I suspect there will be widespread support among Committee members for the objectives of her amendment. Perhaps the Minister will argue that a "have regard" to financial inclusion is the wrong way to go about it, but I would argue that not having these things in mind when an industry is being regulated can make a situation worse.

We know the level of financial exclusion because my hon. Friend mentioned the figures. I do not intend to go over all that, but essentially what we have—this has developed because of the way the market works—is a retail financial services sector that is very focused on a set of quite complex products. It is also very focused on its distribution networks and not so much on the customer. Retail financial products have often focused on the relationship between those who introduce products and those who sell them on to the ultimate customer, often with quite rewarding levels of sales commission. The bad end of that kind of financial services model is that we get a structure that is not focused enough on consumers, and a range of ever-increasing complexity that costs more and excludes more people who might be on basic incomes.

Over time, the dynamic of that structure means that the financial services sector gets more and more complex, more and more focused on the distribution networks, and less and less focused on the end customer. One understands that when the industry starts complaining about the lack of financial education. There is some truth in that, but there is also truth in the fact that the opacity of the price mechanisms and the complexity of the products that the industry comes up with make it confusing, and of course that increases the cost base, which excludes more low-paid people.

A previous Administration that I might have been a member of tried to address the issue with stakeholder products that were meant to be much simpler with very up-front but capped pricing that everybody would understand. Those were throttled out of existence because the industry did not really want them to succeed, and what has happened since—not by anyone's design but by the dynamics of the way the market works—means that there is less and less available for those who have small amounts of income because the products are simply not profitable in the current structure of our retail financial services.

This is a systemic issue that needs to be solved, because we need a financial services retail sector that serves everybody. We do not have one, and we are getting to a

stage where market dynamics make it less and less likely that we will have one; they are actually excluding more people. I think that a "have regard" that prompts thought about structures and, perhaps, about the regulation of some simpler products that could be made available is a really important part of addressing that market failure.

Like my hon. Friend the Member for Kingston upon Hull West and Hessle, I am worried that the Minister will say that we have consumer protections in place. This is not about those who are currently consuming the products; it is about those who cannot even afford to have basic bank accounts, those who have to go to money lenders because they are in such precarious circumstances, and those who pay the poverty premium because accessing financial services costs so much more as a percentage of their overall income than it costs someone on a higher income. I can tell the Minister—I am sure he has come across this in his own constituency—that many people who exist on very tight incomes, and who really have to budget, shy away from having basic accounts because they cannot afford to go into deficit and be charged a fee. That would destroy all their very careful balancing.

This issue is particularly important for people who are on benefits and have them paid into a bank account at a set time, but who have bill payments coming out at a different time. I would really appreciate it if the Minister would think profoundly about how the problem can be solved, so that our financial services sector can get to a stage where it can make profit—a modest profit perhaps, but some profit—out of dealing with people on much more modest incomes. After all, there are millions of them, and the dynamic of the market structures we have at the moment is moving provision away from people on lower incomes.

Emma Hardy: On my hon. Friend's point about consumer duty, the evidence suggests that one of the unintended consequences is that it can make some currently marginally profitable products unprofitable, thereby excluding more people from them, so one of the things that the consumer duty is trying to address is actually making it more difficult for some people in society to have anything.

Dame Angela Eagle: I agree with my hon. Friend.

I will wrap up. Given that this is a systemic issue, a "have regard" is the best way of dealing with it. I hope that the Minister will think carefully about that and about how it might help us arrest the dynamic that is taking financial services away from people on modest incomes, and making it less and less profitable for the industry to serve them, leaving them much diminished in their attempts to engage appropriately in our society in ways that many people take for granted, such as by having a credit card and bank account, or being able to conduct electronic cash transfers and so forth.

Siobhain McDonagh (Mitcham and Morden) (Lab): I rise to support my hon. Friend the Member for Kingston upon Hull West and Hessle. Like her, I am on the Treasury Committee, and I have to say to this Committee: please pass the amendment, so she can stop talking about it in our meetings! *[Laughter.]* To be fair to her, it is something that she repeats and that bears repeating, because I fear that if the FCA is not responsible for having regard to financial inclusion, the responsibility continues to sit with us as MPs. Who became aware that closing bank branches in town centres was getting to be a problem? Who was concerned about access to ATMs, especially free ATMs? It was MPs, through their constituents raising the issue with us. This is a cross-party effort. It is not the sole responsibility or the sole campaign issue of one side of the House.

More and more of our hard-working, respectable constituents are being excluded from financial products. They desperately want to insure their cars, but if they pay their car insurance monthly, they pay more. They desperately want to contribute to their pensions and life insurance policies to give comfort to their families. They want to do all those things, but an increasing proportion of them are being excluded from those products. If the FCA had regard to how the issue affects an ever growing part of our society, we would at least have a different way of looking at it.

An issue that I know is close to your heart, Dame Maria, is women's exclusion from many financial products, given the nature of their work, including part-time work and periods off work for raising children. In the end, the taxpayer picks up the bill if those products are not available. It is in the interests of all of us—our constituents and our parties—to support the amendment in the name of my hon. Friend the Member for Kingston upon Hull West and Hessle.

Tulip Siddiq: When I was first elected, I was told by another MP here that I should pick an issue, stick to it and talk about it constantly. I pay tribute to my hon. Friend the Member for Kingston upon Hull West and Hessle for following that advice to a tee. I follow in the steps of my hon. Friends the Members for Kingston upon Hull West and Hessle, for Wallasey and for Mitcham and Morden, who spoke about financial inclusion and how it affects us all. Later, we will debate essential face-to-face banking services. For now, I want to focus on the poverty premium, which my hon. Friend the Member for Mitcham and Morden mentioned: the extra costs that poorer people have to pay for essential services such as insurance, loans or credit cards.

We believe that everyone should have access to financial services—whether it is savings schemes or insurance—when they need them, regardless of their income and circumstances. If the Government are serious about building a strong future for our financial services outside the EU, they should recognise that the Bill is an opportunity to rethink how financial resilience, inclusion and wellbeing are tackled in the UK.

We support amendment 1 and new clauses 2 and 3, which would give the FCA a new cross-cutting "must have regard" to financial inclusion measure as part of its regulatory framework. As the Minister knows, that would mean that the FCA would have to consider financial inclusion across all its activities and report on its progress.

In our evidence session, Fair by Design talked about the higher costs that poorer people have to pay for insurance products. Research from the Social Market Foundation, with which the Minister will be familiar, has shown that those who are unable to pay for their car insurance in annual instalments face an average extra cost of £160. Surely the Minister agrees that that is unjust, and that regulation must play a role in tackling the poverty premium. If he accepts that principle, what

[Tulip Siddiq]

is the argument against introducing a new "have regard" provision to empower the FCA to monitor how well financial services are meeting the needs of low-income consumers? For example, a "must have regard" for financial inclusion could allow the regulator to review practices such as insurers charging more to customers who pay for their insurance in monthly instalments.

Does the Minister recognise that exclusion from financial services is a growing problem in the UK? If he rejects the arguments for a "have regard", what solution does he propose instead? It is something we all see in our casework as constituency MPs.

Andrew Griffith: I thank hon. Members for their contributions. I appreciate the work of the hon. Member for Kingston upon Hull West and Hessle. I have been to Hull, but I think that everyone has constituents who face precisely the problem of which she speaks, so I will depart from my text.

The Government oppose the new clauses and the amendment. However, we have heard from the FCA its opposition to this measure and its contention that it is not required. It would say that—I understand that point. I would be happy to consider how the Government respond. That is the most worthy response I can make; I am not inclined to dismiss any of the hon. Lady's arguments.

2.30 pm

Indeed, we are not neutral actors, because as we raise the level of the regulatory burden, one of the unintended consequences, which the hon. Member for Wallasey precisely spoke about, is that we often raise the cost of accessing products, or exclude parts of society, because that increased regulatory burden means that providers sometimes withdraw from the sector.

Craig Tracey (North Warwickshire) (Con): Will my hon. Friend give way?

Andrew Griffith: I will give way; I do not propose to speak for very long on this point, anyway.

Craig Tracey: I am very much in favour of financial inclusion, but we have to be careful about how we achieve it. I was an insurance broker before coming here. The reason I left was that the cost of regulation on our business meant that we disappeared from the high street. That meant that vulnerable people had less access to insurance. We see more and more access points moving out, and having to go online, so people are losing out. Does the Minister agree that, although we must ensure that we are looking after the most vulnerable people, more regulatory burdens will put up the cost and affect the availability of products?

Andrew Griffith: I thank my hon. Friend for that intervention. He put it far better than I did, bringing to bear his personal experience, but that was precisely the point that I was making.

Siobhain McDonagh: Does the Minister agree, though, that unless we know what is happening and somebody keeps the figures, there can be unintended consequences? Martin Coppack from Fair by Design made the point that he has been trying to get this thing done for years and what he has found is that when he goes to the internal Treasury committee that considers financial exclusion, it says, "It's not our job to keep the numbers. Go to the FCA." The FCA says, "It's not our job to keep the numbers. Let's go back to the Treasury." Surely it needs to be somebody's responsibility, so that we understand and know the direction of travel.

Andrew Griffith: Once again, the Government will not oppose those points for the sake of opposing them. I would like to take this matter away. Powerful arguments have been made and the FCA has made its contention. I think it is entirely appropriate that the Government consider the matter further.

Emma Hardy: I will take Members back to the evidence given by the Phoenix Group as to why the FCA should "have regard". I think there is broad consensus that financial inclusion is important. The difference of opinion is regarding what we do to achieve it. This point relates to that made by my hon. Friend the Member for Mitcham and Morden. Phoenix said that the "have regard" responsibility should lie with the FCA because it is

"the single UK body with the clearest ability and access to information".

That is the main point. We heard evidence from a Minister from the Department for Work and Pensions and a Minister from the Treasury, because there is a question around where financial inclusion fits into social policy and financial policy; there is a bit of a mush over who is responsible. Sometimes when we find that lots of people are responsible for something, in reality no one is responsible, because everyone can always say that it is the other person who is responsible and not them. That evidence from Phoenix Group was powerful.

The organisation also said:

"With many of the most pressing issues falling in between the remits of government and regulators, this makes addressing financial inclusion problems more difficult."

We need the FCA to "have regard" for this matter, to act as that single body to gather the information and look at the issue more seriously, otherwise, we will be failing, as we have done for years, to achieve any real outcomes. I will therefore be pushing the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 4]

AYES

Eagle, Dame Angela	Siddiq, Tulip
Hardy, Emma	
McDonagh, Siobhain	Twist, Liz

NOES

Bacon, Gareth	Hart, Sally-Ann
Davies, Gareth	Mak, Alan
Davies, Dr James	
Griffith, Andrew	Morrissey, Joy
Hammond, Stephen	Tracey, Craig

Question accordingly negatived.

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

The Chair: With this it will be convenient to discuss clauses 30 to 32 stand part.

Andrew Griffith: Under the FSMA model, the detailed rules that apply to firms are generally set by the regulators, acting within a framework set by Government and Parliament.

FSMA requires the regulators to act in a way that advances their statutory objectives when discharging their general functions, including those of making rules, setting technical standards and, in the case of the FCA, issuing guidance. It is generally up to the regulators to determine which rules are necessary, and, when they make rules, to do so in a way that advances, and is compatible with, their objectives. They must also have regard to their regulatory principles. Clauses 29 to 32 ensure that relevant regulator actions, including rule making, are proportionate and reflect important matters of public policy as appropriate.

The objectives and regulatory principles in FSMA are cross-cutting and apply to everything the regulators do. They have not been designed to suit particular policy areas. That is why Parliament, through the Financial Services Act 2021, introduced a limited number of factors that the PRA and FCA must consider when making rules in certain areas—for example, when implementing the latest Basel standards.

Clause 29 therefore provides the Treasury with the ability to specify, by way of regulations, matters that the FCA and PRA must "have regard" to when making rules in a particular area. The regulators will be required to outline how they have considered these "have regards" in their public consultations, just as they do already for objectives and regulatory principles. The power for the Treasury to specify matters in regulations will always be subject to the affirmative procedure. That means that Parliament will be able to consider and debate any "have regards" introduced using the new power.

Clause 30 contains a mechanism to manage the interaction between the regulators' rule-making and supervisory responsibilities and the Treasury's deference decisions, including equivalence decisions. Deference is a process endorsed by the G20, in which jurisdictions and regulators defer to each other on relevant matters when it is justified by the quality of their respective regulatory, supervisory and enforcement regimes.

It is the responsibility of the Government to determine whether overseas regulatory and supervisory standards are equivalent to our own, and therefore whether to defer to an overseas jurisdiction. The rules that the regulators make will have a direct bearing on the criteria against which the Treasury assesses overseas jurisdictions for that purpose.

To manage that interaction, clause 30 creates a requirement for the FCA and PRA, when proposing changes to rules or supervisory practices, to consider the impact on deference afforded by the Treasury to overseas jurisdictions, and to consult the Treasury should they determine that the proposed action may lead the Government to review their deference decisions. That consultation process will allow the Treasury to provide regulators with its views on how their actions will impact existing deference decisions, and ensures that the regulators holistically consider deference when considering a change to their rules or supervisory practices.

Clause 31 has a similar purpose. It contains a mechanism to manage the interaction between the regulators' rule-making and supervisory responsibilities, and the Treasury's responsibilities in upholding the UK's international trade obligations. The Government are responsible for ensuring that the UK complies with commitments arising from international trade agreements that the UK has agreed.

The clause supports the existing FSMA model by creating a statutory requirement for the regulators when making changes to rules or supervisory practices to consider whether there is a material risk that these changes are incompatible with an international trade obligation. They must give written notice to the Treasury before proceeding if such a risk arises. Clauses 30 and 31 are necessary and proportionate measures to manage the respective responsibilities of the Treasury and the regulators in these areas.

Clause 32 inserts new section 138BA into FSMA to enable the Treasury to allow the FCA and the PRA to waive or modify their rules where appropriate. Setting the same rules for everyone can sometimes come with unintended consequences. Recognising this, existing section 138A of FSMA already gives the regulators some discretion; however, the existing provisions require the relevant regulator to have determined that a rule is "unduly burdensome", or would not achieve the purpose for which the rules were made, before modifying or disapplying rules.

We want our regulators to be more proportionate and more agile. The new power in clause 32 will therefore give the Treasury the ability to enable the FCA and the PRA to waive or modify their rules in a wider range of circumstances, which will make it easier for regulator rules to reflect different business models and practices where appropriate. Importantly, it will also ensure that some existing waiver regimes in retained EU law can be maintained. I therefore commend clauses 29 to 32 to the Committee.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clauses 30 to 32 ordered to stand part of the Bill.

Clause 33

RESPONSES TO RECOMMENDATIONS OF THE TREASURY

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

Andrew Griffith: Under section 1JA of FSMA 2000 and section 30B of the Bank of England Act 1998, the Treasury must make recommendations to the FCA and the Prudential Regulation Committee at least once in each Parliament on aspects of the economic policy of His Majesty's Government. The FCA and the PRC, as the governing committee of the PRA, should have regard to these matters when carrying out their functions.

Currently, there is no statutory requirement for the FCA and the PRC to respond to the Treasury's recommendations and explain how they have had regard to them. Clause 33 therefore amends section 1JA of FSMA 2000 and section 30B of the Bank of England Act 1998 to create a requirement for the FCA and the PRC to respond annually. The response must outline the action the regulator has taken or intends to take, or the reasons it has not taken and does not intend to take action, on the basis of the recommendations. The response will be laid before Parliament by the Treasury.

[Andrew Griffith]

The clause is therefore intended to increase transparency of how the FCA and the PRA have taken into account these recommendations. As a result, this clause aligns the FCA and the PRC with the statutory requirement for the Bank of England's Financial Policy Committee, which is already required to respond to the recommendation letters sent to it by the Treasury. Finally, this measure formalises an emerging practice, as the FCA and PRC have previously responded to recommendation letters from the Treasury. I therefore commend the clause to the Committee.

Tulip Siddiq: I have one quick question for the Minister. Are the Government required to consult or give advance notice before sending a policy letter to regulators? If not, is there a risk that the new "have regards" for different policy areas could be dropped on the regulators from nowhere, and could distract the FCA and PRA from their primary and secondary objectives?

2.45 pm

Andrew Griffith: That is, of course, possible, but it would be unusual. There is regular discourse between His Majesty's Treasury and regulators, and I consider the risk that the hon. Lady raises relatively small. The regulatory bodies would consult on that change if required.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

PUBLIC CONSULTATION REQUIREMENTS

Stephen Hammond: I beg to move amendment 49, in clause 34, page 47, line 38, at end insert—

"(2B) The FCA must publish a list of all of the consultees."

Again, I guide the Committee to my entry in the Register of Members' Financial Interests. The amendment is very simple. I welcome clause 34. It sets out public consultation requirements and, after proposed new section 1RA of FSMA 2000, inserts proposed new section 1RB, concerning requirements in connection with public consultation. The key word here is "public". Proposed new section 1RB(2) states:

"The FCA must include information in the consultation about any engagement by the FCA with…statutory panels".

That is a public consultation, or it should be. Therefore it seems only appropriate that the FCA and the PRA list all the consultees to the public consultation. That is what amendment 49, for the FCA, and consequential amendment 55, for the PRA, provide. That is a very simple request. If the Government cannot agree to it today, I hope that they will take it away about think about it very carefully.

Andrew Griffith: Amendment 49 seeks to require the FCA to publish a list of all respondents to any public consultation. I recognise that my hon. Friend the Member for Wimbledon intended for the requirement in amendment 49 also to apply to the PRA, where the same issues would arise.

The Government believe that policy making is at its most effective when it draws on the views, experience and expertise of those who may be impacted by regulation. Meaningful stakeholder engagement makes it more likely that final proposals will be effective, understood and accepted as fair and reasonable. The Government also recognise the importance of transparency in supporting the effective scrutiny of the regulators, and are bringing forward a number of measures in the Bill to support that.

I remind my hon. Friend that FSMA already requires the FCA to publish information regarding responses to their public consultations. In particular, section 138I of FSMA requires the FCA to publish an account, in general terms—I accept that that is different from what my hon. Friend proposes—of representations made in response to consultation, and of the regulator's response to them.

Although I therefore support the ambition behind the amendment, there is a risk that the additional requirement on the FCA to publish a list of all consultees to every consultation could deter stakeholders that want to respond confidentially from engaging fully with the regulators' consultations.

The Government sympathise with my hon. Friend's point, but I ask him to withdraw his amendment. I am happy to meet with him, with officials, to see whether there is a different way in which he can obtain the comfort he desires, or in which we can take the matter forward.

Stephen Hammond: I am very pleased to hear what the Minister said, because he has broadly accepted the thrust of what I said. I think he is offering me the chance to explore with him the circumstances in which a body does not wish for its name to be published in respect of a consultation. I am prepared to have that conversation with him so that I understand why he thinks that that might constrain the FCA and PRA. With that reassurance from the Minister, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

The Chair: With this it will be convenient to discuss clause 35 stand part.

Andrew Griffith: FSMA 2000 requires the PRA and FCA to set up and maintain a number of stakeholder panels, also known as statutory panels. Those panels are intended to provide valuable insight, advice and challenge to the regulators' rule making, drawing on the experience and expertise of their respective memberships. The regulators have regular meetings and discussions with their panels. In those, most major policy and regulatory proposals are presented for comment at an early stage.

The FCA's statutory panels are the financial services consumer panel, the practitioner panel, the smaller business practitioner panel, and the markets practitioner panel. The Bill also puts the listing authority advisory panel on a statutory footing. The PRA's statutory panel is the practitioner panel, and the Bill also puts its insurance sub-committee on a statutory footing as the insurance practitioner panel. The Payment Systems Regulator has one statutory panel, which covers the full range of the PSR's responsibilities.

The additional responsibilities that the regulators take on following the repeal of retained EU law will result in the regulators making more rules across a broader range of topics. The UK's departure from the EU will therefore increase the opportunities and the need for the regulators to consult their statutory panels from the outset of policy and regulatory development; that was not possible to the same extent while the UK was a member of the EU. It will strengthen the panels' important ability to provide stakeholder input into the development of policy and regulation.

Clause 34 therefore requires the FCA and PRA to include information in their public consultations about any engagement that they have had with statutory panels. Clause 35 requires the regulators to provide information in their annual reports on their engagement with the statutory panels of the FCA, PRA and PSR over the reporting period. The FCA and PRA already voluntarily provide some information on panel engagement as part of their annual reports. This clause will formalise the existing practice, ensuring clear and consistent communication by the regulators.

The regulators, working with the panels as appropriate, will be responsible for determining how to meet these requirements. Importantly, the regulators will not be required to publish information that they deem to be against the public interest. That will ensure that the FCA and PRA can find the appropriate balance between transparency and the confidentiality crucial to ensuring an open exchange of views between panel and regulator. I therefore recommend that these clauses stand part of the Bill.

Tulip Siddiq: I will speak to clauses 34 and 35 together. Statutory panels make an invaluable contribution, based on panel members' experience and expertise, to the FCA's and PRA's policy-making functions. However, we feel that transparency is vital in ensuring that the public feel that financial services regulation is working in their interests. That is why we support these clauses, which we recognise will increase transparency by guaranteeing consistent communication by regulators about their engagement with panels. Does the Minister agree that representation of the voices of consumers and the public on the FCA's statutory panels also plays an important role in upholding the transparency of the regulatory process? Ultimately, it is the public, both as consumers and as taxpayers, who are most impacted when regulations go wrong and when regulators fail to adequately uphold consumer protections or financial stability.

I draw the Minister's attention to the written evidence to the Public Bill Committee from the Finance Innovation Lab. It recommended that

"the government mandate public interest representation of at least 50% on all groups and committees providing advice and making decisions about financial services policy and regulation."

I want to know whether the Minister has considered the Finance Innovation Lab's argument about the transparency of statutory panels, and whether that could be strengthened by

"ensuring that the voices of consumers and citizens are given at least equal weight to the voice of industry."

If he is not familiar with the written evidence, he is welcome to write to me later.

Dame Angela Eagle: I support the position of my hon. Friend the Member for Hampstead and Kilburn. Given the transfer of powers from Brussels to the UK and the fact that a lot of the current structure is up for discussion and potential change—although we hope it will not all change at once—there is bound to be much more interest in the regulators' decisions for lobbying purposes than there would be normally in any given year. That level of interest will last until the system settles down into whatever its future tracks will be.

In those circumstances, the regulators must be able to demonstrate robustly that there has been no kind of industry or regulatory capture via some of these panels, and that consumer interest has been properly represented. When I talk to consumer stakeholders and groups, there is certainly a view that the balance is not right at the moment, which is why I am so supportive of what my hon. Friend has said from the Front Bench.

We have to be able to demonstrate, in a transparent way, that meetings that may be confidential for very good reasons are not something else. Will the Minister give us some ideas about how consumer representation in these technical panels can be properly shown to be robust and how transparency can be improved, given the fluid context for a lot of these decisions and future structures?

Andrew Griffith: I thank the hon. Members for Hampstead and Kilburn and for Wallasey for their points. We must be alive to the risk of producer capture, and these clauses are a real step forward in bringing the required transparency to the composition of these panels and their recommendations. The Government recognise the importance of the consumer voice; panels that have diverse backgrounds and different expertise avoid group-think, which is an important aspect.

Through this Bill, the Government will introduce a requirement for regulators to maintain statements of policy in relation to their process for recruiting members to panels. That in itself is a step forward. However, it would not be right to move forward with a specific numerical threshold. The panels are there to challenge the policymaking process, in order to give a voice to practitioners, as well as consumers,. They are not of themselves representative. The representative function is one that we discharge here in Parliament, and I think that is the appropriate balance.

Question put and agreed to.

Clause 34 accordingly ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

3 pm

The Chair: We have a lot to cover this afternoon, so I urge Members to take note of the groupings of amendments so we can move through this at the appropriate pace.

Clause 36

Engagement with Parliamentary Committees

Andrew Griffith: I beg to move amendment 3, in clause 36, page 49, line 31, leave out

"and the regulatory principles in section 3B,"

[Andrew Griffith]

and insert—

"(ba) demonstrate that the FCA has had regard to the regulatory principles in section 3B when preparing the proposals,".

This amendment ensures that the notification provisions align with the duty in section 1B(5)(a) of the Financial Services and Markets Act 2000, for the FCA to have regard to the regulatory principles set out in section 3B of that Act.

The Chair: With this it will be convenient to discuss the following:

Government amendment 4

Clause 36 stand part.

Andrew Griffith: I will speak first to clause 36 and then turn to Government amendments 3 and 4. Parliament, through primary legislation, sets the overall approach and institutional architecture for financial services regulation. This includes the regulators' objectives and requirements to ensure appropriate accountability. Parliament therefore has a unique and special role in relation to the scrutiny and oversight of the FCA and the PRA. Given the regulators' wide-ranging powers, which they exercise independently of Government, it is vital that Parliament can continue to effectively scrutinise and hold the regulators to account. This is particularly important given that the regulators will have additional rule-making responsibilities following the repeal of retained EU law.

Parliament has a number of existing mechanisms to scrutinise the regulators, including the targeted scrutiny provided by Select Committees. The Government's view is that those are appropriate and flexible and should continue to be the principal ways in which Parliament holds the regulators to account. Clause 36 adds to these existing tools to support more effective accountability of the regulators to Parliament. The clause also addresses concerns raised in debates during the passage of the Financial Services Act 2021.

Members of both Houses highlighted the importance of the regulators having sufficient regard to the conclusions of parliamentary scrutiny, and the importance of parliamentarians receiving sufficient information from the regulators to facilitate their scrutiny and ensure that it is effective. The clause inserts new provisions in FSMA to require the FCA and the PRA to notify the Treasury Committee when they publish consultations on proposed rules, setting out how they exercise any of their general functions, or on proposals under a statutory duty.

The new provisions also require the regulators to draw the Treasury Committee's attention to certain key aspects of a consultation, including how proposals advance their objectives and have had regard to the regulatory principles. The clause also requires the FCA and PRA to respond in writing to formal responses to any of their public consultations from any parliamentary Committee. While it is expected that the regulators would always respond, this will give Parliament reassurance by placing this on a statutory footing. The Government consider that placing those requirements on the regulators on a statutory basis is appropriate due to the unique circumstances of the financial services regulators' wide remits, and their position as independent public bodies that are accountable to Parliament.

I now turn to amendments 3 and 4, which make a technical change to the new requirements for the FCA and PRA to notify the Treasury Committee when they publish a consultation. Clause 36 contains a minor drafting error, by requiring the regulators to set out how the proposed rules are "compatible" with the regulatory principles. The Government have tabled these amendments to correct that and remove any ambiguity, and to align the requirement in clause 36 with the broader requirements in FSMA.

Tulip Siddiq: The Minister has already said that he is open to discussion about this, but I specifically want to turn to the role of the Treasury Committee. The Opposition are pleased to see a strengthened role for the Treasury Committee in scrutinising financial services regulation. However, TheCityUK, in its written submission to the Committee, set out that, while the Treasury Committee has the power to send for persons, papers and records, it does not have the power to mandate the regulators to report on specific performance metrics over time.

TheCityUK argues that the efficiency and effectiveness of regulators, and the impact of their operational performance on UK competitiveness, would be improved by greater accuracy, transparency and accountability in operational performance metrics. It has proposed an amendment to give the Treasury powers to require regulators to report specified operational performance metrics, with the Treasury Select Committee consulted on the metrics to be reported. Those could include the regulator's performance against its secondary objective or its "have regard" for net zero targets, for example. I wanted to hear what the Minister thinks about those proposals.

Dame Angela Eagle: As a member of the Treasury Select Committee and—for an all too brief time—acting Chair, I am also very interested to hear what the Minister has to say about this.

Andrew Griffith: I am struggling to add incrementally to what the Government have said earlier today regarding our receptivity to the idea of greater transparency, and an ability to design or influence the metrics that are being reported. I observe that the Treasury Select Committee appears fairly formidable in its ability to compel witnesses and information, and I would be interested to hear more about any deficiencies or impediments that that Committee, under its acting Chair or its permanent Chair, feels exist. This would certainly be an opportunity to rectify those, but I suggest that either I meet with the hon. Member for Wallasey, or she writes to me in a little more detail about what would help the working of that important Committee.

Amendment 3 agreed to.

Amendment made: 4, in clause 36, page 50, line 41, leave out paragraph (b) and insert—

"(b) demonstrate that the PRA has had regard to the regulatory principles in section 3B when preparing the proposals,"—*(Andrew Griffith.)*

This amendment ensures that the notification provisions align with the duty in section 2H(2) of the Financial Services and Markets Act 2000 for the PRA to have regard to the regulatory principles set out in section 3B of that Act.

Clause 36, as amended, ordered to stand part of the Bill.

Clause 37

DUTY TO CO-OPERATE AND CONSULT IN EXERCISING FUNCTIONS

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

Andrew Griffith: The clause will insert proposed new section 415C into FSMA. The new section introduces a statutory duty for the Financial Conduct Authority, the Financial Ombudsman Service and the Financial Services Compensation Scheme to co-operate on issues that have significant implications for each other, or the wider financial services market.

The FCA is the conduct regulator for the financial services sector; the FOS is an alternative dispute resolution service for financial services complainants, such as consumers and smaller businesses; and the FSCS provides financial protection for eligible customers of financial services firms authorised by the FCA. While each has a distinct role within the UK's regulatory architecture, the work of each organisation will often be relevant to, or have implications for, the others. When issues with wider implications emerge, it is crucial for the functioning of the UK's regulatory system and achieving the best outcomes for consumers that those organisations co-operate to determine the most appropriate approach to managing them. The organisations already co-operate voluntarily through the wider implications framework. That voluntary framework was launched in January 2022 to promote effective co-operation on wider implication issues.

Clause 37 will enhance that co-operation and ensure that these arrangements endure over time. It will also ensure that the FCA, the FOS and the FSCS put appropriate arrangements in place for stakeholders to provide representations on their compliance with the new duty to co-operate on matters with wider implications.

I will now set out some of the detail of how the clause will function in practice. Proposed new section 415C(3) requires that each regulator maintains a statement of policy explaining how it will comply with this duty. Proposed new subsection (1)(b) requires that those organisations consult other organisations as appropriate, including other regulatory bodies, on wider implication matters. Proposed new subsection (6)(a) requires that they publish an annual report on their compliance with the duty, and proposed new subsection (7) requires that they outline representations received from stakeholders on their compliance with the duty to co-operate on wider implication issues.

Ultimately, this clause will support better outcomes for financial services firms and consumers by maximising collaboration among the FCA, the FOS and the FSCS on issues with wider implications. I have summarised the effects of the clause, and I therefore recommend that it stand part of the Bill.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clause 38

LISTING AUTHORITY ADVISORY PANEL

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

The Chair: With this it will be convenient to discuss the following:

Clause 39 stand part.

Amendment 51, in clause 40, page 54, line 26, after "persons" insert ", at least two of which must be external to the FCA, the Treasury, or the Bank of England,".

Amendment 52, in clause 40, page 54, line 31, at end insert—

"(9A) The FCA must consider representations that are made to it by non-governmental bodies and recognised industry or trade association bodies."

Amendment 53, in clause 40, page 54, line 32, leave out "from time to time" and insert "annually".

Amendment 54, in clause 40, page 55, line 22, leave out "from time to time" and insert "annually".

Clauses 40 to 42 stand part.

There is quite a lot in this group. If you refer to the selection list, you will see what is to be taken together.

Andrew Griffith: I will first speak to clauses 38, 39, 40, 41 and 42, and I will then turn to amendments 51, 52, 53 and 54.

Clauses 38 and 39 concern the FCA's and the PRA's statutory powers. As we have already discussed, FSMA 2000 requires the PRA and FCA to set up and maintain stakeholder panels, also known as statutory panels. These panels provide valuable insight, advice and challenge to the regulators' rule making, drawing on the experience and expertise of their respective memberships. The regulators have regular meetings and discussions with those panels, in which most major early policy and regulatory proposals are presented for comment. The confidentiality of the panel's contributions allows the regulators to engage the panels when policy is in the early stages of development ahead of public consultation, and enables the panels to act as a critical friend. The panels represent a diverse range of stakeholders, including consumers, small businesses and market practitioners.

In addition, the FCA also voluntarily operates the listing authority advisory panel, which operates in a similar manner to its statutory panels, and represents the interests of issuers of securities and advises on the FCA listing function. In addition to its statutory practitioner panel, the PRA voluntarily operates an insurance sub-committee for that panel, which represents the interests of insurance practitioners.

Clauses 38 and 39 amend FSMA, to place the FCA's listing authority advisory panel and the PRA practitioner panel's insurance sub-committee on a statutory footing. These clauses also set requirements for the FCA and the PRA in relation to these panels, in line with the existing requirements for other statutory panels. That includes appointing a chair to be approved by the Treasury.

Clause 40 requires the FCA and the PRA each to establish and maintain a new statutory panel dedicated to supporting the development of their cost-benefit analysis. CBA is an important part of the regulators' policymaking process. It helps the regulators to understand the likely impacts of a policy and to determine whether a proposed intervention is proportionate.

Under FSMA 2000, the FCA and the PRA are already required to undertake and publish a CBA when consulting on draft rules, unless certain exemptions are met. Respondents to the October 2020 future regulatory framework review consultation expressed significant concerns about the rigour and scope of the regulators' CBAs and supported enhanced external challenge as a way to improve the quality of the regulators' CBAs.

3.15 pm

Clause 40 addresses these concerns and requires the FCA and the PRA to consult their CBA panel on the preparation of a CBA. The Government recognise that requiring the CBA panel to provide detailed comments on all of the regulators' CBA before publication could cause delays to the policymaking process. To avoid these delays, or an overly burdensome process for minor rule changes, the clause enables the regulators to agree thresholds with the CBA panel for when the panel does not need to review an individual CBA before publication. These thresholds will be set out in the regulator's statement of policy on CBA, which is provided for in clause 41. The Government consider that the CBA panels can play an important role in improving the production of CBAs by the regulators.

Clause 41 responds to feedback from respondents to the FRF review consultation, who expressed concerns that it is not clear when and how regulators decide to conduct CBA and what the process involves. The clause creates a new statutory requirement for the regulators to each publish a statement of policy on their approach to cost-benefit analyses and sets out requirements regarding the information the regulators must include. This includes the regulators' methodology for preparing CBA. The clause also requires the regulators to set out in the statement how they ensure that they appropriately consider any comments on CBA in response to the consultations, and provides transparency of the regulators' CBA processes.

Clause 42 amends FSMA 2000 to require the PRA and the FCA to

"prepare and publish a statement of policy"

in relation to how they appoint members to their statutory panels. Ensuring the right membership of the panels is crucial to each panel's success in providing challenge, a range of expertise and differing perspectives, and to fulfilling their role as a critical friend to the relevant regulator. Respondents to the November 2021 FRF review consultation raised concerns regarding the lack of representation of some groups in the current panel membership: for example, vulnerable consumers. The clause therefore requires the regulators to make sure there is a clear and transparent process for appointing members to ensure that the membership of panels represents the full diversity of stakeholders.

Amendments 51 to 54 seek to introduce specific requirements for the FCA in relation to its approach to CBA and the creation of its CBA panel. Amendment 51 seeks to add a requirement for the FCA, when appointing persons to its CBA panel, to appoint at least two members who are

"external to the FCA, the Treasury, or the Bank of England".

I agree with my hon. Friend the Member for Wimbledon that the composition of regulators' panels is crucial. The Committee should be aware that the FCA's existing panels are already made up of external stakeholders. Given the important role of the panels to act as a critical friend to the regulator, it is implicit that their members are made up of those outside of the financial services, regulators and the Government.

Amendment 52 would require the FCA to consider representations made to it by non-governmental bodies and recognised industry or trade association bodies in relation to its development of a CBA. Section 138I of FSMA requires the FCA to undertake and publish a CBA when consulting on draft rules, unless certain exemptions are met. Therefore, the FCA is already required to consider any stakeholder representations relating to CBA.

Amendments 53 and 54 would require the FCA and PRA to publish annual responses to the representations made to them by their CBA panels. If taken with amendment 52, the FCA would also be required to publish annual responses to representations made to it by non-governmental bodies and recognised industry or trade association bodies. Amendments 53 and 54 would restrict the flexibility for the FCA and the PRA to choose how frequently to publish responses to representations from their CBA panels, which may indeed be the point that is being made.

The Government do expect the FCA and the PRA to publish responses to representations at appropriate intervals. That may generally be annually, but it could be more frequent if appropriate. It may not always be appropriate for the Government to direct the regulators on operational matters such as this in statute.

Although I am, again, sympathetic to the intention behind these amendments and I regret somewhat that we are even in this position—that, as the regulator perhaps does not have the industry's confidence in its existing CBA process, the Bill Committee would need to discuss this matter—I ask my hon. Friend the Member for Wimbledon to withdraw amendments 51 to 54. I commend clauses 38 to 42 to the Committee.

Stephen Hammond: Again, I direct the Committee to my entry on the Register of Members' Financial Interests. I warmly welcome the creation of cost-benefit panels. In my view, the greater the understanding of the cost and benefit of a regulation, the greater the understanding of the impact, and therefore the effectiveness, of the regulation, and the greater the transparency of that process.

I am pleased that the Bill includes this clause because it sets out the agenda, membership, metrics and outputs that each of these panels should make. I guess the real answer I am trying to get from the Minister—I have listened carefully and I think we have had most of the response, but I want to test him a little more—is that, if we are to get all the desirable outcomes from setting up these panels, we must know how much they are a creature of the regulator and how much they are independent of the regulator.

The Minister clearly said that there is an implicit assumption that the regulator would follow an independent line for these panels. If the purpose of the panels is purely to provide evidence and they are controlled by the regulator, those recommendations will be accepted, but it is key that there is an independent panel.

I agree that regulators are not in ivory towers, as Martin Taylor said in his evidence to us. I do not think there is substantial implicit control, nor do I think there is not an implicit desire to see independence, nor do I think that there is not implicit influence by His Majesty's Treasury. However, if we want to build the world's leading regulatory regime, it must be seen to be tough and proportionate, and that is why these panels are very helpful. I therefore support the aim of clause 40.

My amendments seek to address the concern that the panel has marked its own homework—the excuse that "the dog ate my homework"—and the point about independence.

I understand that members of the panel could already be external, but I want to make it clear that "could" is not enough; there should and must be external members. I hope that the Minister will be able to give me that further reassurance that that is very much the intention of the Bill.

I take on board exactly what the Minister said about my amendment 52, in that the FCA already has to consider the representations and place them on record. However, I am quite concerned by the wording. I think the Minister got my point, which is about the wording "from time to time". Those of us who have had the honour to stand at the Dispatch Box will have been asked questions such as, "When is that happening, Minister?", to which the response is often, "Soon," or, indeed, as we heard the Minister say this morning, "In due course."

The regulator might say to us that it is going to publish the responses "from time to time". I take the point that the Minister does not want to fetter the regulator, but I am concerned that, if there is not something either in implicit guidance to the regulator or potentially set out, "from time to time" could be whenever the regulator chooses and potentially not annually. Therefore, if it were to say "annually or more frequently" I would be a lot happier. I listened to the Minister's comments and I think he probably has sympathy with what I am saying, but I will listen to his response to my remarks.

The Chair: Before I bring in the next speaker, I apologise to the hon. Member for Wimbledon, who I probably should have brought in first. I apologise for that; it is a bit awkward.

Dame Angela Eagle: It is odd hearing the Minister's response before we have spoken to the amendments. I just want to make a few comments about cost-benefit analysis, which is not an easy science. I am an avid observer of the Government's attempts to do a cost-benefit analysis. Let us put it this way: it often leaves plenty to be desired when we start looking at how the Government have decided to cost the effect of their legislative suggestions, and we go into the detail of it and see how back-of-an-envelope and dubious some of it is. I do not want to sound too sarcastic, but perhaps if the CBA panels get to be good, they could teach the Government a thing or two about how to do their own analyses.

It is often a difficult but desirable thing to try to estimate the cost of particular suggestions, especially when regulators impose them in other areas. It is important that regulators think about proportionality for the industry itself. Also, in an industry where all the costs are likely to be passed on to the consumer, it is extremely important that it can be done sensibly, properly and in a way that stands up to scrutiny, and I hope that the scrutiny would be there for others to look at.

One often comes up against quite blank walls when trying to interrogate Government cost-benefit analyses, and one ends up going down dead ends and not really understanding how the judgments about the costs have been made, so the better we can get at the science in whatever context, the better for everybody.

It is important that clause 42 exists to try to provide balance and transparency about who will be on the panels, because we would not want them to be captured by particular parts of the structure. We need to have some objectivity if their work is to have credibility and deserves to be taken into account in regulators' decision making.

Andrew Griffith: Apologies if I spoke out of order.

The Chair: It was my error.

Andrew Griffith: I will be brief. The hon. Member for Wallasey has great experience of these matters. I suspect we are all familiar with the analogy of Government regulatory impact assessments, which, as the hon. Lady says, are probably vulnerable to the criticism of being opaque, with the science and data not fully laid out. Indeed, I am aware of past suggestions by bodies such as the Institute for Government that there be specialist committees and support given precisely for that purpose. That is analogous, although it concerns not the working of Government legislation, but regulators exercising their rule-making powers. All those observations are pertinent to this point.

My hon. Friend the Member for Wimbledon came back to me on the point about the reasonableness of the phrasing "annually or more frequently". He makes a good point. As we know, there are many cases in statute where it is specified that something should be annual. Every Government Department is required to lay its own annual reports before Parliament, and we impose that annual burden on many private and third sector enterprises, whether via the Charity Commission or the Companies Act 2006.

3.30 pm

Stephen Hammond: Indeed. We ask the FCA to produce an annual report as well, so this is not out of line with other expectations.

Andrew Griffith: My hon. Friend has finished my point for me. This is not uncommon in statute, so while the Government do not accept the amendment and will vote against it, I have committed—and I do so again—to meet my hon. Friend and consider these matters further before Report.

Stephen Hammond: Having listened to the Minister, I think amendment 51 might already be included in the Bill, amendment 52 appears to be fettering, and 53 and 54—it looks like I am going to enjoy substantial tea and biscuits at the Treasury next week. As such, I do not intend to press my amendments to a Division.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clauses 39 to 42 ordered to stand part of the Bill.

Clause 43

EXERCISE OF FMI REGULATORY POWERS

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

The Chair: With this it will be convenient to discuss clause 45 stand part.

Andrew Griffith: The Committee has previously discussed the repeal of retained EU law so that it can be replaced with an approach to regulation designed for the UK.

[Andrew Griffith]

As part of that, the Bank of England will take on additional responsibility in relation to the regulation of central counterparties and central securities depositories. Clause 43 sets statutory objectives for the Bank of England to advance, and regulatory principles for it to consider, when fulfilling those responsibilities.

Currently, the Bank has an objective to protect and enhance UK financial stability. Clause 43 confirms that that will continue to be the Bank's primary objective when regulating CCPs and CSDs, reflecting the vital role played by those financial market infrastructures. The clause also sets out further considerations to which the Bank must have regard when pursuing that objective. First, the Bank must have regard to the effect that its regulation may have on the financial stability of other countries where FMIs provide services. It must also have regard to the desirability of regulating CCPs and CSDs in a way that is not determined by the location of users of their services.

The UK is home to clearing and settlement markets used by market participants around the world. UK CCPs and CSDs are therefore pieces of important infrastructure used by firms in many jurisdictions. As such, it is right that the UK authorities, in regulating these firms, should consider their impact on the financial stability not just of the UK but of other countries.

The clause also introduces a new secondary objective for the Bank in relation to its regulation of CCPs and CSDs. This requires it to facilitate innovation in the provision of services as far as is reasonably possible, subject to pursuing its primary objective. The Bank will pursue this new objective with a view to improving the quality, efficiency and economy of these services. The Bank must also have regard to a set of general regulatory principles, which largely mirror those in place for other regulators.

However, there is also a new principle on the desirability of facilitating fair and reasonable access to services provided by CCPs and CSDs. This recognises that individual firms can often serve the majority of the market in their specialist areas and aims to ensure that their customers can continue to access these services on fair terms.

To further reflect the Bank's increased responsibility in this space, the clause also sets up a new statutory financial market infrastructure committee in the Bank of England and makes provision about its make-up. The committee will be responsible for the Bank's functions in relation to these matters but the Bank may also expand the committee's remit to cover other functions, if it deems that to be appropriate.

Clause 45 updates FSMA to reflect the Bank of England's increased responsibilities for the regulation of CCPs and CSDs, and ensures that the Bank has the appropriate powers to supplement its new general rule-making power. The clause also applies a range of accountability mechanisms to the Bank's regulation of CCPs and CSDs, which the Bill also introduces for other regulators. These measures have previously been discussed by this Committee and include, for example, the power for the Treasury to set out matters that the Bank must consider when making rules in specific areas of regulation.

Together, clauses 43 and 45 are vital in ensuring that the Bank is accountable for its use of the new powers and follows the appropriate public policy objectives when exercising its powers. I therefore recommend that these clauses stand part of the Bill.

Question put and agreed to.

Clause 43 accordingly ordered to stand part of the Bill.

Clause 44

BANK OF ENGLAND: RULE-MAKING POWERS

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

Andrew Griffith: Clause 44 closely relates to clauses 27 and 28, which the Committee has already considered. As we have discussed, clause 27 covers requirements for regulators to review their rules so that they remain fit for purpose, while clause 28 enables the Government to place an obligation on the regulators to make rules in certain areas. Clause 44 applies these same mechanisms to the Bank of England, in respect of its regulation of central counterparties and central securities depositories.

The clause introduces a new section of FSMA, which places a requirement on the Bank to ensure that the rules are reviewed regularly after implementation, to confirm that they remain appropriate and continue to have the desired effect. New section 300J of FSMA, which the clause will introduce, requires the Bank to publish a statement of policy for how it conducts rule reviews.

As the Bank takes on increased responsibility, there may be occasions when the Treasury considers that it is in the public interest for the Bank to review its rules, in the same way that we discussed earlier in relation to the PRA and FCA. Therefore, the clause introduces new section 300K of FSMA, which provides a mechanism for the Treasury to direct the Bank to review its rules. New section 300L of FSMA requires the Bank to report the outcome of the review and requires the Treasury to lay this report in Parliament. As with the corresponding measures for the PRA and the FCA, the Government consider that this offers a new avenue for challenge of the Bank's rule making where required, while maintaining its operational independence. The clause 44 also places conditions on the Treasury's exercise of the power, so that it will direct the Bank to review its rules only where it considers it to be in the public interest.

As discussed when the Committee considered clause 28, it is right that, in the context of increased responsibilities, the Treasury should have the ability to require the making of rules in certain areas of financial services regulation. This is equally true of the Bank in regard to its regulation of CCPs and CSDs. The clause therefore introduces new section 300M of FSMA, which enables the Treasury to place an obligation on the Bank to make rules in a certain area. The use of this power will be subject to the affirmative procedure in Parliament. The power does not enable the Government to tell the Bank what its rules should be; it simply enables the Government to say that there should be rules, with the agreement of Parliament.

The clause ensures that the same enhancements to the FSMA model that we have discussed will apply to the Bank as it regulates CCPs and CSDs. These are

important tools to ensure that the Bank's rules are relevant and appropriate. I therefore commend the clause to the Committee.

Tulip Siddiq: We support the clause, which will empower the Treasury to require the Bank of England to carry out a review of a specific rule, but let me ask the Minister again: does he not agree that such a mechanism is sufficient to highlight to the Bank of England where the Treasury believes a rule may not be working in the public interest and therefore requires a rethink? Surely the provisions under clause 44, and elsewhere in the Bill, provide the Treasury with sufficient powers to hold the Bank of England, the PRA and the FCA to account. Why is an intervention power necessary?

Numerous City stakeholders have written to us to warn of the dangers of such a measure. For example, Barclays stated in its written evidence that

"historically the UK has benefited from a global reputation for having a strong, stable and predictable regulatory framework, developed by effective institutions with clear roles and responsibilities. It is critical to ensure any new intervention powers do not risk or undermine this reputation."

The Minister was there when Martin Taylor told us that the proposed intervention power had a "bad smell". The Bank of England has warned that it could diminish the independence of our regulators in the eyes of the global markets. If the financial services sector is sceptical of an intervention power, and experts at the Bank of England have given powerful warnings of the risks of introducing such a power, why is the Minister even contemplating such a provision?

Andrew Griffith: I do not wish to detain the Committee further with a repetition of these points. The hon. Lady makes her points in a lucid fashion, but the Government simply disagree. It is appropriate for us to have laid out in statute the relevant responsibilities, both for the Treasury and for regulators. We are giving the regulators, including the Bank of England in this respect, vast areas of additional responsibility. There were previously intervention powers, which sat at the Brussels level. We are now repatriating those to create a rulebook that is appropriate for the United Kingdom.

The hon. Lady cites selectively, if I may say so, from the evidence that the Committee heard. If she engages widely with industry—as I know she does—she will hear other voices that talk about the need for us to have an agile and flexible system. As part of that, it is sometimes appropriate for us to direct.

Tulip Siddiq: I will not detain the Committee too long. The Minister keeps referring to the industry, which he seems to suggest is supportive of the intervention power, but no one has seen it. Has he consulted the industry? Everyone I have spoken to has said that they have not seen the details of the intervention power, so how does he know they support it?

Andrew Griffith: The hon. Lady makes a very good point, but how does she know that she opposes it? I suggest we come back to this debate another day, when I hope to fulfil my commitment to bring the intervention power in front of the Committee.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Joy Morrissey.)*

3.45 pm

Adjourned till Tuesday 1 November at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

FSMB43 UK Finance
FSMB44 Financial Services Consumer Panel