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The Bank of England and Financial Services Bill [HL] (Lords stages)

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Summary

This note summarises the debate in the House of Lords on the *Bank of England and Financial Services Bill.*

The Bill amends arrangements for the governance and accountability of the Bank. It includes changes to the Bank's court of directors and allows the Comptroller and Auditor General (C&AG) to undertake value for money studies, subject to some limitations. The status of the Prudential Regulation Authority is altered and the Bill extends the scope of, and makes changes to, the Senior Managers and Certification Scheme. The Bill allows the extension of the Government's Pension Wise scheme and makes changes to the rules governing the issuing of banknotes in Scotland and Northern Ireland.

During its passage through the House of Lords, the provisions relating to the governance of the Bank and its scrutiny by the C&AG received considerable attention. A number of speakers raised concerns about what they saw as a reduction in the role of the Bank's non-executive directors and the ability of the Bank to prevent the C&AG from examining certain areas of the Bank's work. In response to these concerns, the Government brought forward amendments at Report stage to strengthen the role of the non-executive directors and clarify the C&AG's remit.

Rather more changes were made to the provisions on the regulatory aspects of the Bill.

A number of new clauses were introduced by the Government, including one to give the Treasury the power to make recommendations to the Financial Conduct Authority (FCA) about aspects of government economic policy, which the FCA should have regard to in its duties. The second concerned rules about compulsory checking of advice in the forthcoming secondary annuity market.

1. Background

Like many countries, the UK has enacted a significant amount of new legislation in a short period of time in response to the financial crisis of 2008/9. Brief summaries of most of this legislation can be found in another Library Paper (Banking Services: reform and issues). In the UK, this legislation has established a new system of regulation; given those regulators new tools and powers; and placed new requirements on financial institutions and those who work within them. This Bill makes changes to some of these new provisions and extends them beyond their original scope.

The Bill also makes changes to the governance of the Bank of England, some of the Monetary Policy Committee's procedures and the role of the National Audit Office in scrutinising the Bank's work.[1]

The Bill, Explanatory Notes and other documents are on the Bill page of Parliament's website. The Bill was introduced in the House of Lords on 14 October 2015 and had its Second Reading on 26 October. It was considered in Committee on 9 and 11 November. Report stage took place on 15 December and Third Reading on 19 January 2016. Sections 3 to 5 of this note summarise the debate on the Bill in the House of Lords.

Prior to its publication, the Treasury had consulted on various technical aspects of the Bill.[2] The Commons Treasury Committee has also taken evidence on the Bill.[3]

1 The Monetary Policy Committee is the part of the Bank which is responsible for setting interest rates. There is more information on the MPC on the Bank of England website.

2 See consultation document and Government response

3 Treasury Committee, Oral evidence Bank of England Bill HC 455. Evidence was heard on 9 September 2015, 20 October 2015 and 22 October 2015.

2. Summary of main points of the Bill

2.1 Governance

The Bill introduces a number of changes to the governance of the Bank. The main changes include:

- Making the Deputy Governor for Markets and Banking (currently Dame Minouche Shafik) a member of the court of the Bank of England.[4]
- Giving the Government the power to make further changes to the membership of the court, by secondary legislation.
- Abolition of the Oversight Committee and transfer of its oversight functions to the full court.[5]
- Making the Financial Policy Committee (FPC) a committee of the Bank, rather than a sub-committee of the court.[6]

2.2 Monetary Policy Committee

The Bill also makes a number of changes to the procedures of the Bank's Monetary Policy Committee (MPC). These changes follow a report, Transparency and the Bank of England, prepared for the Bank by Kevin Warsh and published in December 2014.

The main changes introduced by the Bill are to require the MPC's minutes to be published "as soon as reasonably practicable" after the meeting, rather than within six weeks as currently required. The Bank is already doing this by publishing its minutes at the same time as the MPC's decision is announced.

The Bill also reduces the number of times the MPC must meet each year from twelve to eight. More information on the changes to the MPC are in a Commons Library Briefing Paper, Improvements to Monetary Policy Committee Transparency.

2.3 Role of Comptroller & Auditor General

The Bill sets out the framework within which the C&AG may undertake value for money studies of the Bank.

4 The court is the Bank's board of directors. It is responsible for determining the Bank's strategy and budget. See Bank of England website.

5 The Oversight Committee was established by the *Financial Services Act 2012* and is made up of the non-executive members of the court. Its role includes keeping under review the Bank's performance in relation to its objectives and strategy.

6 The FPC sets policy to meet the Bank's statutory objective for financial stability. See Bank of England website.

2.4 Financial services

The Bill makes changes to the regulatory architecture and to the conduct rules.

The Bill changes the status of the Prudential Regulation Authority (PRA), which, alongside the Financial Conduct Authority, was one of the new regulatory bodies established as a result of the financial crisis. The Bank now becomes the PRA and will exercise its functions through a new Prudential Regulation Committee.

The other main change is the extension of personal responsibility for actions taken by financial firms beyond the current boundary of banks, investment houses and credit unions, to all 'authorised persons'. The Regulators will have wider powers to make misconduct rules and greater powers to bring disciplinary actions against directors of companies.

Another provision authorises new banks in Scotland and Northern Ireland to be able to issue banknotes if they are part of an existing banking group that can already issue banknotes.

3. Lords Second Reading debate

3.1 Introduction

The Second Reading debate was held on 26 October 2015.

Lord Bridges of Headley, Parliamentary Secretary, Cabinet Office, introduced the Bill at Second Reading, saying it had four main objectives:

> First, the Bill will strengthen the governance, transparency and accountability of the Bank of England, as well as updating resolution planning and crisis management arrangements between the Bank and the Treasury. Secondly, it will extend the senior managers and certification regime across the whole financial services industry to increase the accountability of the sector and will build a new duty of responsibility into the regime, ahead of its introduction next year. Thirdly, it extends the scope of the Pension Wise guidance service. Finally, it makes technical changes to the Scottish and Northern Irish banknote issuance regime to allow new issuers to be authorised in place of an existing issuer to facilitate group restructuring.[7]

In the Second Reading debate, members of the House of Lords raised concerns about a number of aspects of the Bill, including the proposed governance arrangements for the Bank of England; the role of the National Audit Office (NAO); and the revised proposals for prudential regulation.

Lord Eatwell described the Bill as "seriously defective" and said it required amendment.[8] Lord Sharkey described the Bill as "unsatisfactory" and Lord McFall of Alcluith (a former chair of the Commons Treasury Committee) said he was "pretty disappointed in the Bill."[9] Lord Davies of Oldham said:

> if the Government think that the Bill is a relatively modest one, and even one with limited contentious issues within it, what has been established this evening is that it has much that we need to challenge them on.[10]

Not all speakers were critical of the Bill. For example, Lord Northbrook said "Overall I welcome the Bill and wish it safe passage through the House."[11]

3.2 Governance

Lord Eatwell expressed concerns about the proposal to abolish the Oversight Committee. He said "without ever having had the chance to prove itself, the oversight committee is to be abolished, and its functions handed back to the Court of Directors, the very body the activities of which it was supposed to oversee."[12] He described the

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7 HL Deb 26 October 2015 c1043
8 HL Deb 26 October 2015 c1050
9 HL Deb 26 October 2015 c1057
10 HL Deb 26 October 2015 c1078
11 HL Deb 26 October 2015 c1063
12 HL Deb 26 October 2015 c1047

proposed governance arrangements as "opaque and not fit for purpose".[13]

For the Liberal Democrats, Lord Sharkey was unconvinced about the need to abolish the Oversight Committee. He also raised concerns about the independence of the court, which would be composed of both executive and non-executive members, in contrast to the Oversight Committee which was made up entirely of non-executive directors. Concerns about independence were also raised by Baroness Kramer who said the Bill would allow Bank insiders to capture the oversight group.[14]

Lord Davies questioned why the number of non-executive directors was being reduced from nine to seven and why future changes to the court would be made by order rather than by primary legislation. Lord Davies also said that the Government would need to explain the rationale for removing the Oversight Committee.

Responding to the points on governance raised in the debate, the Minister, Lord Bridges said:

> The balance of non-executive and internal members will ensure external challenge, while the abolition of the oversight committee will ensure that the statutory oversight functions are the responsibility of the whole court. It is worth noting that Andrew Tyrie has welcomed this change.[15]

On the issue of reducing the number of non-executive directors from nine to seven, Lord Bridges argued that this would make the court a "more focused, unitary board". He also referred to the Bank's 2014 report *Transparency and Accountability at the Bank of England* which said:

> "consistent with best practice in the private sector, the Bank sees the value of continuing to evolve towards a slightly smaller body, with a non-executive chair and majority".[16]

3.3 Role of the Comptroller & Auditor General

Concerns about the provisions relating to the National Audit Office (NAO) were raised by a number of speakers, including Lord Eatwell, Lord Bichard, Baroness Kramer and Lord Davies.

Lord Eatwell mentioned the Comptroller and Auditor General's (C&AG) comments that the Bill placed restrictions on the NAO. This issue was also raised by Lord Sharkey who said the Bill would give the Bank a veto over what the NAO could scrutinise in its value for money studies.

Lord Bichard, Chair of the Board of the NAO, had "major reservations" about the audit proposals in the Bill. These concerns, which Lord Bichard said were shared by the C&AG, were about the NAO's independence. In particular, the C&AG would need the permission of

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[13] HL Deb 26 October 2015 c1048
[14] HL Deb 26 October 2015 c1073
[15] HL Deb 26 October 2015 c1080
[16] HL Deb 26 October 2015 c1080

the Court to carry out a value for money examination. This would limit the C&AG's freedom and is in contrast to most other areas of his work where he has much more freedom over the discharge of his duties.[17]

Lord Bichard also said that the Bill prevented the C&AG from examining "the merits of the Bank's general policy in pursuing the Bank's objectives". He argued that this was a "further unacceptable constraint on the independence of the NAO" and was again different from other areas of the NAO's work.[18]

He concluded by saying that he would seek to remove these clauses from the Bill unless discussions with the Government found "a way forward".[19]

For the Government, Lord Bridges said the Bill needed to strike a balance in protecting the independence of both the NAO and the Bank. He also said he looked forward "to discussing the mechanism we have chosen to achieve this in more detail in meetings and in Committee should that be useful."[20]

3.4 Prudential Regulation

The Minister described the Bill's provisions ending the Prudential Regulation Authority's (PRA) status as a subsidiary of the Bank as being in support of the Governor's strategy, "to conduct supervision as an integrated part of the central bank and not as a standalone supervisory agency that happens to be attached to a central bank". The Government, however, recognised the "PRA's strong brand" and that its operational independence needed to be protected.[21]

He highlighted the extension of the personal responsibility regime (the senior managers and certification regime) beyond its original boundary of banks and building societies, credit unions and some investment firms, to all sectors of the financial services industry.

Responding, Lord Eatwell said that these two proposals were "entirely sensible" unlike the "spineless surrender to industry lobbying on the issue of the burden of proof in the senior persons regime".[22] He reminded Peers that the Parliamentary Commission on Banking Standards had recommended a regime which would "reverse the burden of proof so that senior bankers will have to show that they did what was reasonable". He asked:

> So how is the Minister to explain Clause 22, which reverses the reversal? Can he explain in detail exactly why what was at the very heart of government policy two years ago is now to be abandoned before it has even been tried? Will the Minister also spell out in detail the rationale for ignoring the carefully considered arguments of the parliamentary commission?

17 HL Deb 26 October 2015 c1064
18 HL Deb 26 October 2015 c1064
19 HL Deb 26 October 2015 c1065
20 HL Deb 26 October 2015 c1082
21 HL Deb 26 October 2015 c1048
22 HL Deb 26 October 2015 c1047

> [...]
>
> So there we have it: the Bill will result in less comprehensive documentation and hence less awareness of responsibilities and less detailed examination of the relationship between responsibility and risk. That is what the Treasury's own impact assessment says. Is that what we want? Less clear responsibility and less appreciation of risk? The requirement to fully document was not an unintended consequence. We knew that effective regulation of individual responsibility would cost more, and so it should when the failure to exercise individual responsibility imposes heavy costs on the community as a whole.[23]

Lord Sharkey too was "very concerned about the U-turn on the reverse burden of proof".[24]

Having been quoted earlier in the debate, Lord Lawson commented on the matter of personal responsibility which he thought had to be "front and centre of the business of disciplining and supervising those in the banking system".[25] However, his view on the reversal of the burden of proof would not affect the personal responsibility regime. Lord McFall, however, thought that the proposal meant the "Government are jettisoning any chance of achieving that [accountability] in this Bill".

[23] HL Deb 26 October 2015 c1049
[24] HL Deb 26 October 2015 c1052
[25] HL Deb 26 October 2015 c1054

4. Lords Committee stage

4.1 Clauses 1 to 11: Governance and Financial arrangements

Clauses 1 to 11 were considered at Committee stage by the House of Lords on 9 November 2015.[26] A number of amendments were discussed but none of these clauses was amended at Committee tage.

Lord Eatwell introduced a probing amendment, designed to illustrate the lack of clarity over the term "the Bank" in the Bill. He said that the Bill provided for the Bank to exercise various functions without being clear which part of the Bank would be responsible for them. Lord Eatwell said:

> The amendment makes it clear that the term "the Bank", when used in the active sense, is an empty, amorphous expression and hence is designed to obscure.[27]

Lord Eatwell asked:

> will he [the Minister] tell us how it will be possible for Parliament to hold the Bank to account when the Bill sets out to obscure where within the institution responsibility for the exercise of vital powers may actually lie?[28]

Lord Tunnicliffe (Labour) said that the Bill was unclear about roles and responsibilities within the Bank and said that the Bill needed to be clear about "who does what, with what authority".[29]

Replying for the Government, Lord Bridges of Headley said that:

> The Bank of England is defined in the Interpretation Act 1978, which tells us:
>
> "Bank of England means, as the context requires, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England".
>
> Acts amended by this Bill either refer to "the Bank" and define that expression as "the Bank of England", or refer initially to "the Bank of England", so that it is clear what the subsequent references to "the Bank" mean.[30]

The Minister said that the Court was responsible when powers and duties were conferred on the Bank, rather than on a particular committee of the Bank. The Minister said: "As the governing body of the Bank, the court is responsible for deciding how powers given to the Bank should be exercised and ensuring that the Bank fulfils its duties."

Lord Eatwell withdrew his amendment but said that the Government would still need to amend the Bill at Report stage.

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26 HL Deb 9 November 2015 cc1851-1877 and cc1881-1908
27 HL Deb 9 November 2015 c1853
28 HL Deb 9 November 2015 c1853
29 HL Deb 9 November 2015 c1855
30 HL Deb 9 November 2015 cc1855-6

Clause 1: Membership of the Court of Directors

A number of participants in the debate were unhappy with changes to the court which they felt would reduce the scrutiny and challenge provided by the non-executive directors.

Lord Sharkey moved an amendment which would set the number of non-executives on the court to nine. Lord Sharkey said that while the Bill did not change the current requirement for *up to* nine non-executives, the Governor had decided to reduce the number to seven. This would change the composition of the court from nine non-executives and four from the Bank to seven non-executives and five from the Bank. This would reduce external scrutiny of the Bank which would be a concern, especially if the Bill abolished the Oversight Committee and made the court responsible for its functions.

Baroness Noakes, a former member of the court, pointed out that the proposed arrangements maintained a majority of non-executives. She said, "what the Government are proposing is perfectly sensible and in line with general corporate practices. It seems to be entirely defensible."[31]

Lord Eatwell said "the Bill reeks of the feeling that non-executive directors are a nuisance. Everywhere, we find the role of the non-executive directors in the Bank being reduced."[32] He argued that the *Financial Services Act 2012* had been introduced to remedy the lack of challenge within the Bank during the financial crisis. The Act had only been in force for a short period of time and there was no evidence that the arrangements put in place by the 2012 Act needed to be changed.

Replying for the Government, Lord Ashton of Hyde said that the Bill did not change the requirement of the *Bank of England Act 1998* that the court contain no more than nine non-executive directors. He said that the Government's plan to reduce the number of non-executives from nine to seven would strengthen governance of the Bank by making the court a "smaller, more focused unitary board".[33] A smaller board would allow for more meaningful participation by each member and the Bank itself had highlighted the benefits of moving to a smaller board. Seven high calibre non-executives would provide independent scrutiny and would remain in a majority on the court.

Lord Starkey withdrew his amendment but remained critical of the lack of justification for the change and said that he would want to return to the issue on Report.

Clause 3: Abolition of the Oversight Committee

Lord Sharkey argued against Clause 3 arguing that it was a "significant weakening of the oversight of the Bank".[34] The Oversight Committee was composed entirely of non-executive directors and was thus very different to the court which included Bank officials. He said that the

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31 HL Deb 9 November 2015 c1862
32 HL Deb 9 November 2015 c1862
33 HL Deb 9 November 2015 c1864
34 HL Deb 9 November 2015 c1870

Oversight Committee had been established by Parliament as an important part of the Bank's governance. Lord Tunnicliffe agreed saying that the "the Government's proposals significantly reduce the power of the non-executives to hold the executives to account."[35] Lord Eatwell pointed out that abolition of the Oversight Committee would reduce Parliament's ability to hold the Bank to account and that the Oversight Committee, which evaluates the performance of the Bank, should not include the Governor or Deputy Governors.

For the Government, Lord Bridges argued that oversight would be carried out better by the executives and non-executives working together rather than in "silos". Furthermore, he said the Bill was in line with the recommendation of the Treasury Committee's 2011 report and the Parliamentary Commission on Banking Standards for a unitary board. Parliament would continue to see the performance reviews reports commissioned by the court.

Clause 11: Examinations and reviews

This clause relates to value for money (VFM) studies of the Bank to be carried out by the C&AG and the NAO. There was considerable criticism that the Bill gave the Bank an effective veto over the C&AG's value for money studies. For example, Baroness Noakes said "Public audit can be effective only when it is unfettered, and the concept of fettering the Comptroller and Auditor-General is, frankly, unacceptable."[36] It was suggested that further discussions might take place between the C&AG and the Bank to resolve the issue before Report stage.

For the Government, Lord Bridges said:

> I start by letting your Lordships know that detailed discussions are ongoing between the Bank, the NAO and the Treasury to find a way forward on this issue that all sides find acceptable. These discussions have not yet concluded but I hope to be able to update the Committee before Report.[37]

He went on to say:

> Turing to the Bill, a number of your Lordships expressed concern that the provisions in Clause 11 fetter the independence of the Comptroller and Auditor-General. As your Lordships know, this view is shared by the NAO. Others, including the Bank, have been concerned to ensure that the proposals do not undermine the role of court and infringe upon the vital independence of our central bank. The position put forward in this Bill is therefore one of compromise, as my noble friend Lord Young of Cookham eloquently pointed out. It is a unique arrangement that seeks to strike a balance and protect the independence of two vital public bodies that, unsurprisingly, approach this issue from very different vantage points.[38]

Lord Bridges said that where the C&AG was unable to pursue a VFM study because the court believed it covered policy, and this

[35] HL Deb 9 November 2015 c1870
[36] HL Deb 9 November 2015 c1901
[37] HL Deb 9 November 2015 c1903
[38] HL Deb 9 November 2015 c1904

disagreement could not be resolved, the reasons for the disagreement would have to be published.

4.2 Clauses 12-20: prudential regulation and financial conduct

Clause 12: Prudential Regulation Authority (PRA)

The clause ends the PRA as a subsidiary of the Bank and makes the Bank responsible for its functions through a newly constituted Prudential Regulation Committee. Debate began on the issue of the presence of an independent majority on the PRA board. A Liberal Democrat amendment would ensure that the FCA CEO was debarred from appointment on the grounds that the circumstances of the departure of the previous CEO, Martin Wheatley, suggested that the post was not sufficiently independent.

The theme of independence was returned to on the stand part debate on the clause. The value of the change on the "if the PRA was not 'broke'—if it wasn't broke, why change it?" basis was raised by several peers.[39] They also criticised the 'One Bank' culture encouraged by the Governor. They doubted the benefits, saw few existing problems and highlighted the dangers of 'group think':

> The position on Clause 12 is that the Government have simply not put forward any compelling reasons for the changes that it produces. We have seen no strong, or even fairly strong, or evidenced argument that either the current situation is unsatisfactory or that the proposed changes would be better. Absorbing the PRA into the Bank is an important and radical step. It should not be taken without strongly evidenced arguments. In the absence of such arguments, we are left with only weakening of the independence of a vital organisation, with no assurance of any real benefit. Like my noble friend Lady Kramer and my former noble friend Lord Flight, I would prefer to see the PRA more independent rather than less. However, if we cannot have a more independent prudential regulator, we can at least try to stop it becoming a less independent prudential regulator.[40]

Lord Carrington reminded peers that independence alone was no panacea and quoted the separate, and failed, Financial Services Authority as an example.

Responding for the Government, Lord Bridges of Headley accepted the need for a balance between inclusion and independence for the new PRC. He stressed, however, that the reforms were part of the Governor's internal reforms of the Bank (of which this Bill is part):

> The Bank has told us that closer integration has increased the feeling among PRA staff that they are an integral part of the Bank's mission and have broader opportunities for progression across the whole Bank. This can only assist recruitment of the best people to the supervisor, which I am sure is something that all your Lordships will support.

[39] HL Deb 11 November 2015 c2001
[40] HL Deb 11 November 2015 c2002

> A second benefit from ending the PRA's subsidiary status is enabling the members of the new committee to devote more time to microprudential policy and operations—the noble Lord, Lord Tunnicliffe, spoke about the need for focus.
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> The governor explained to the Treasury Select Committee that the change will,
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> > "liberate … a portion of the time of the members of the PRA Board that is spent duly exercising their responsibilities as directors of a company",
>
> while noting the important responsibility that PRC members will continue to have for ensuring that the prudential regulation functions are adequately resourced —a point I will come on to shortly. The governor concluded that,
>
> > "time is freed up to do their core job—what they are there for—which is to provide guidance on judgment-led supervision".
>
> For example, the PRC will no longer have to spend so much time discussing IT provision, as this will be a concern for the Bank at large and ultimately its governing body, the court. Equally, whereas the PRA board had to be involved in discussions on staff terms and conditions and recruitment, the new committee will be able to leave these important concerns to the wider organisation and focus on its role in supervision.[41]

He then turned to the central criticism of lack of independence and he quoted comments by its chief executive:

> The current chief executive, Andrew Bailey, gave his view of the protections for the PRA's continued operational independence at the Treasury Select Committee in the other place on 20 October. He said:
>
> "I think the Bill has in it sufficient protection of the independence of the PRA. It is very clear in the Bill that the PRA continues to exist as the prudential supervisory authority for banks and insurers … The independence protections are maintained, and that, I can assure you, has been and will continue to be a very strong focus of mine. Desubsidiarisation simplifies the Bank of England's governance".

The Clause was agreed to.

Clauses 13, 14, 15, 16 and 17 and Schedules 1 – 3 were agreed to without debate.

Clause 18: Extension of relevant authorised persons regime

The issue that dominated the debate on this clause was the reversal of proof regime for relevant authorised persons (banks, building societies, credit unions and PRA-regulated investment firms). At the same time as the Bill extends aspects of personal responsibility to all financial service providers, it also requires the regulator to prove misconduct rather than the individual prove they did nothing wrong.

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41 HL Deb 11 November 2015 cc2006-7

The main argument for the change is that it would be unfair to require small financial service firms, e.g. credit unions, to have to prove they had done nothing wrong. To make the system fair between all institutions the standard of proof was reduced to the lowest common denominator. The argument against was that it makes the prosecution of individuals at the top of organisations highly unlikely. Actual personal culpability was one of the central recommendations of the Banking Commission.

Lord Sharkey began the debate with an amendment that would keep the original burden of proof for the current authorised persons, but have a lesser test for the newly included. Introducing his two-tier approach, his amendment:

> seeks to preserve the reverse burden of proof regime for banks, building societies and PRA-regulated investment firms. This would create a two-tier regulatory system. It would allow the regulatory regimes to be proportionate to the risks involved. Those institutions that did, and still can, threaten our financial system would be subject to a tougher regime, but those who cannot or are on the balance of probability unlikely to would be subject to the new lighter regime proposed in the Bill.[42]

He pointed out that some of the reasons given for the changes were as a result of lobbying by the big banks on the current regime – directors were spending too much on compliance and too long worrying about it rather than running their company. He wanted to know whether Andrew Bailey – head of the PRA – had tested these assertions.

Lastly, he tried to rebut the argument that rules should adhere to the principle of 'innocent until proven guilty':

> There is ample precedent for this in law. The reverse burden of proof has been used in the Road Traffic Act 1988, the Health and Safety at Work etc. Act 1974, the Terrorism Act, the Misuse of Drugs Act 1971, the Trade Marks Act 1994, the Criminal Justice Act 1988 and the Official Secrets Act. The House of Lords, sitting as the Law Lords, dealt with the issue in Sheldrake 2004, UKHL43. It made plain that each statutory provision must be considered on a statute-by-statute basis. The decisive factor before the courts is whether the reverse burden is necessary to ensure that the offences remain workable. Without it, these offences were not workable. That is precisely why we need, and is the justification for, the reverse burden of proof.[43]

His argument for a two-tier system was not supported by the Bishop of Southwark, who said it "would risk confusion or a loss of focus both within the banks and other financial institutions, and on the part of the regulators."[44] Baroness Kramer, however, argued that there was already a two-tier approach in many regulatory areas:

> The regulator is already managing the banks and the financial services industry as a two-tier system. There are different rules for systemically important institutions and for the much smaller institutions whose behaviour cannot disturb the financial stability

42 HL Deb 11 November 2015 c2016
43 HL Deb 11 November 2015 c2017
44 HL Deb 11 November 2015 c2019

> of the country. If the principle is that the banking industry and the financial services industry should be regulated only under a single tier, the Government are, in a sense, demanding that a great deal of regulation be rolled back, which, they are currently arguing, makes us more secure. We have a two-tier system; we are arguing that that two-tier system should encompass this kind of liability.[45]

Lord McFall agreed. He said that the reversal "abandons a key element of the recommendation of the Parliamentary Commission on Banking Standards—a decision that was unanimous among its members".[46]

Responding, the Minister, Lord Bridges, first outlined the many actions taken by the Government to date to enhance personal accountability. There was, he said, no "going back to an old regime".[47] He then outlined the broad impact of the new responsibilities being placed on individuals:

> Under the duty of responsibility proposed by the Government, senior managers will be required to take reasonable steps to prevent regulatory breaches in their areas of responsibility. This means that the regulators will be able to hold senior managers in any authorised financial services firm to account for failings occurring on their watch. Senior managers will not be able to avoid this either by claiming ignorance of the circumstances leading up to the failings or by denying that they were accountable for the relevant area of the firm's business in the first place. This is a serious obligation, with serious consequences if it is not met.[48]

He went on to note that the extension of the regime to all activities meant that most of those newly affected would be small firms and these would be least able to cope:

> the vast majority of firms that will now fall within the SM&CR will be small ones. These firms are less likely to have legal resources to devote to protecting their senior executives. There is, therefore, a significant risk that smaller firms could struggle to fill their senior management posts—an issue that has been raised by representatives of some of these small firms. For example, Robin Fieth, chief executive of the Building Societies Association, said last December:
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> > "A continued supply of high quality people is what financial services needs, but I can foresee recruitment issues resulting from the Senior Managers and Certification regimes. It's a real risk that the pool of high quality individuals willing to take on a Senior Management Function role (SMF) in particular will drop. This will be particularly acute for smaller firms where the penalties are the same but the rewards substantially less".
>
> This could in turn undermine the Government's aim to deliver a level playing field wherever possible and adversely affect competition in the industry. The ability of small firms to enter the market is key to driving innovation and putting downward pressure on costs.[49]

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[45] HL Deb 11 November 2015 c2024
[46] HL Deb 11 November 2015 c2020
[47] HL Deb 11 November 2015 c2033
[48] HL Deb 11 November 2015 c2033
[49] HL Deb 11 November 2015 c2034

He then tackled the principle of the 'fairness' of a two-tier system:

> Perversely, individuals in those firms, where regulatory breaches can cause the least damage, could end up being most exposed to personal liability. The noble Lord accepts this and his amendment would not apply the reverse burden of proof beyond the current population of firms covered by the SM&CR, but it would seek to keep it in place for deposit takers and PRA-regulated investment firms. This also raises issues of fairness. The reverse burden of proof the noble Lord wishes to preserve applies to all deposit-taking institutions, including credit unions and small building societies. If it remained in place for small deposit-taking firms, it would be hard to justify applying the reverse burden on these small firms but not on small firms in other sectors.
>
> Furthermore, the arguments put forward by noble Lords who support a two-tier system are focused on financial stability and the risk that deposit takers and the large investment firms pose to it. However, the reverse burden of proof cannot discriminate between regulatory breaches that threaten financial stability and others. Therefore, its application to deposit takers and not to other firms is arbitrary and would pose serious risks to fair competition within the industry. The risks again would fall mainly on small firms. How easy would it be for a small deposit taker to attract high-quality senior staff in competition with a large insurer or FCA-regulated investment firm where, as well as being able to offer a higher salary, the reverse burden of proof would not apply?
>
> The question the noble Lord's amendment begs is: where should the line be drawn between those firms to which the reverse burden of proof would apply and those to which it would not apply? This is an extremely difficult question to answer in any way that would deliver a consistent and proportionate regime.[50]

The amendment was withdrawn with the option to return to the matter on Report.

Clauses 18 and 19 were agreed to.

Clause 20: Administration of Senior Managers Regime

Clause 20 makes a number of technical amendments to the provisions governing the administration of the senior managers' regime, including those relating to the provision of updated statements of responsibilities. Government amendments were agreed to.

Clause 21, which makes changes to the rules of conduct, was agreed to after a brief debate about why financial institutions would no longer have to report breaches of the conduct rules by a 'relevant person' to the regulator. Lord Sharkey thought that the requirement was a "perfectly straightforward, reasonable and clear duty" and the impact assessment justification for it unconvincing:

> "the removal of the SM & CR obligation to report breaches of rules of conduct should result in savings (mainly for larger banks and building societies) … This cost reduction should mainly

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50 HL Deb 11 November 2015 c2034

> benefit larger firms because of the large numbers of staff they employ".[51]

Other peers supported his view. Baroness Kramer declared herself to be "outraged" by the measure. She noted:

> The obligations that exist for so many people in the public sector to report misconduct—on teachers, police officers and members of the NHS—are taken as absolute requirements. There is no question of whether they are costly; it is understood that the importance of propriety and integrity in all those activities is crucial. I suggest that, after the years that we have been through following the financial crisis, no one should doubt that integrity in this sector is absolutely vital.
>
> When we sat on the Parliamentary Commission on Banking Standards, we discussed whistleblowing extensively. Every single institution that we talked to and everyone we could identify had in place mechanisms for whistleblowing; the problem is that none of them was effective.[52]

Responding, Lord Bridges said:

> this requirement was introduced by the coalition Government through the Financial Services (Banking Reform) Act 2013. It is through that planned implementation of this provision that we have learnt that it is simply disproportionate.
>
> Before I go into more detail, I reassure noble Lords that this does not mean that firms will be under no obligation to report wrongdoing to the regulators. First, a separate proviso in the 2013 Act will still apply: the requirement for firms to notify regulators that they have taken disciplinary action against an individual subject to the conduct rules, be it through dismissal, a reduction in pay or a written warning. Secondly, this requirement builds on the regulators' existing principle for business that firms must tell them of anything that may be of interest to them. If a significant issue arose with the conduct of a member of staff that for some reason did not lead to disciplinary action, the firm would still need to consider whether it would be appropriate to alert the regulators.
>
> In this context, the Government believe that a blanket requirement to report all known or suspected breaches of the conduct rules is disproportionate. In particular, an obligation to report suspected breaches is potentially open-ended and wide ranging for it forces firms to work out the point at which possible indications of breaches of rules of conduct would amount to a genuine suspicion.[53]

The amendment was withdrawn.

Lord Sharkey moved an amendment to introduce a new clause which would ban cold calling by debt management services. He quoted FCA work around debt advice which found that consumers did not understand several aspects of debt advice and the difference, or even existence of, free as opposed to fee-based advice services.[54]

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[51] HL Deb 11 November 2015 c2053
[52] HL Deb 11 November 2015 c2054
[53] HL Deb 11 November 2015 c2055
[54] HL Deb 11 November 2015 c2057

Responding, Lord Ashton said that the new FCA regime was "more robust" than that which had preceded it. The FCA had "introduced tough new rules to protect consumers in the debt management sector," and "is able to impose tough sanctions where wrongdoing is found". This would apply to all advertisements and promotions.[55] Since the FCA had taken over it had introduced a new authorisation process and most firms were mid-way through that. He argued that it would be wrong to introduce new rules at this time, which could then slow down the authorisation process.

The amendment was withdrawn. The Clause was agreed to.

Two Government new clauses that made various amendments to the consumer credit regime - in particular, they clarified who might undertake consumer credit or related activities - were agreed to. A third Government new clause was on 'transformer vehicles'. These were described thus:

> Transformer vehicles are used for risk-mitigation purposes, particularly in the insurance and reinsurance industry. The Government plan to use this power to implement a new framework for insurance-linked securities business.[56]

The amendment was agreed to. Clauses 24 and 25 were agreed to.

Lord Naseby proposed a new clause which would give greater statutory support to the mutual movement. He said that the movement, comprised largely of smaller bodies, was particularly badly affected by one-size-fits-all regulation.[57]

Baroness Kramer supported the amendment and spoke largely in favour of the "missing a layer of banking" in the UK as compared to the regional banking system in Germany.[58] The amendment was withdrawn.

4.3 Clause 24: Pensions guidance

Pension Wise was set up under the *Pension Schemes Act 2015* to provide guidance to people with defined contribution pensions approaching retirement. The intention was to help them make informed decisions about their options following the introduction of 'pension freedoms' under the *Taxation of Pensions Act 2014*.

Clause 24 would extend the remit of the Government's pensions guidance service, Pension Wise, so that it can "offer guidance to annuity holders considering selling the income from their annuities to a third party."[59]

For the Opposition, Lord McKenzie moved an amendment proposing that the Secretary of State should review the effectiveness of Pension Wise and establish a research programme for tracking consumer outcomes. Furthermore, he should identify the specific risks which

55 HL Deb 11 November 2015 c2058
56 HL Deb 11 November 2015 c2069
57 HL Deb 11 November 2015 c2087
58 HL Deb 11 November 2015 c2088
59 HL Bill 65-EN

consumers might fact in the secondary annuity market and any additional safeguards and resourcing that might be required in this context.[60]

Labour Peer Baroness Drake raised a number of specific concerns about how individuals would assess value for money, the interaction with means-tested benefits and how the interests of dependants would be protected. [61] She also thought it would be important for Parliament to understand the nature of the guidance that would be provided:

> This is not going to be a proposition without problems. Some people have suggested introducing a requirement to take independent advice but even that is not a simple proposition, not least if a requirement to take advice significantly reduces the value of the transaction to the seller. Lastly, the complexity of a secondary annuity market means it is essential that the pension guidance that is provided is of a high quality, delivered by people with the necessary skills and expertise.[62]

In response Lord McKenzie's request for a review, the Minister explained that the Government had already set up a working group to review the impact of the reforms, had started to publish data about Pension Wise and was procuring research.[63] As regards the additional safeguards that would be required for consumers in the secondary market for annuities, the Government would set out their intentions for supporting consumers in their response to consultation. It also expected the FCA to "consult in 2016 on the consumer protection measures it plans to place on regulated entities participating in the market."[64]

Clauses 26 to 28 were agreed to without debate.

[60] HL Deb 11 November 2015 c2078-20
[61] HL Deb 11 November 2015 c2081
[62] HL Deb 11 November 2015 c2081
[63] HL Deb 11 November 2015 c2083
[64] HL Deb 11 November 2015 c2084-5; HM Treasury and DWP, Creating a secondary annuity market: response to the call for evidence, December 2015

5. Lords Report stage

Report stage in the House of Lords took place on 15 December 2015.[65]

5.1 Clauses 1-11: Governance and Financial arrangements

Government amendments to Clauses 3-5 and 11 were agreed at Report stage. These aim to address concerns about the role of the non-executives of the court and the NAO's scrutiny role in relation to the Bank.

Clause 3 (Abolition of Oversight Committee) was amended so that a performance review could be initiated by a majority of non-executives of the court. In other words, a majority of the whole court, including the executives, would not be needed. This was in response to concerns that the non-executives might be blocked from initiating such a review by the executive members of the court.

Lord Eatwell tabled an amendment to the Government's amendment to Clause 3 which would allow the Treasury Committee to request that the Bank's non-executive directors arrange for a review. The non-executives would not be required to agree to such a request. Lord Turnbull said that the Treasury Committee already had this power and used it, for example, in the case of reports into the banking crisis. There was little support for Lord Eatwell's amendment, which was withdrawn.

Clause 4 (Functions of non-executive directors) was amended so that the court would no longer be able to delegate its oversight functions. This was in response to concerns that the Bill allowed the court to delegate these functions to two or more non-executives. Clause 4 was also amended to increase the minimum number of members of the remuneration committee from two to three.

The Bill was amended to replace the old Clause 5 (Financial stability strategy) with an entirely new clause. This change was to make it clearer rather than to make any substantive policy change. The Minister, Lord Bridges of Headley, said that the amendment did not change the substance of the clause, which was to allow the court to delegate production of the financial stability strategy to others within the Bank, while maintaining the court's ultimate responsibility for it. The amendment restores responsibility for the financial stability strategy to the court (the original clause 5 had moved this responsibility to the Bank from the court), but provides a power of delegation to allow flexibility over how it is produced within the Bank.

There were no amendments to clauses 6 – 10, which relate to the Financial Policy Committee, the Monetary Policy Committee, Audit, and Activities indemnified by the Treasury.

Clause 11 (Examinations and reviews) had been extensively debated during the earlier stages of the Bill. In particular, there had been

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[65] HL Deb 15 December 2015 cc 1988-2054

concerns that the Bill, as originally drafted, gave the court a veto over the areas that could be examined by the NAO. The Minister, Lord Bridges of Headley, reported that since the Committee stage, officials from the NAO, the Bank and the Treasury had been working to address the concerns that had been raised.

The Minister said that the amendments to Clause 11 removed the Bank's veto over VFM studies carried out by the NAO. Lord Bridges said:

> The NAO's main concern with the Bill as originally presented to Parliament was that in the event of a disagreement over what constitutes policy, the Bill gave the Bank's court the final say. To address these concerns, the existing new Section 7E will be removed from the Bill and the court will no longer have a veto over the scope of the NAO value-for-money reviews.[66]

The amendments also provide more detail on what the NAO would be allowed to examine. In particular, the merits of policy decisions of certain parts of the Bank will not be investigated by the NAO. These include:

- the MPC, FPC and PRC
- the body within the Bank responsible for supervision of financial market infrastructures
- the body within the Bank responsible for the exercise of its resolution functions.

The Minister said:

> However, where the Bank has used its statutory resolution powers in relation to a financial institution in difficulty, the NAO would be able to consider any resolution policy decisions relating to the institution concerned. This is particularly important given that the Bank is now the resolution authority for the United Kingdom and has primary operational responsibility for financial crisis management. In future, therefore, the NAO will be able to examine the role of the Bank in interventions such as Northern Rock.[67]

However, even where the NAO is not permitted to examine the merits of policy, it will still be able to examine VFM. The minister said:

> Alongside that, the amendment provides more detail on how the policy carve-out will operate. It sets out a number of areas where the NAO will not be able to question the merits of the Bank's policy decisions but, crucially, it has been agreed that even in these areas the NAO will, for example, be able to examine the economy, efficiency or effectiveness of the implementation of policy decisions and of the resources underpinning those decisions. This will mean that the NAO will, under these new arrangements, still be able to carry out reviews of the PRA, like the one it did of the new financial services regulators, the PRA and the FCA, last year, which was entitled Regulating Financial Services.[68]

[66] HL Deb 15 December 2015 cc1997-98
[67] HL Deb 15 December 2015 c1998
[68] HL Deb 15 December 2015 c1998

The amendment also required a Memorandum of Understanding (MoU) to be drawn up by the NAO and the Bank. This would cover a range of issues including the establishment of a procedure for resolving disputes between the NAO and the Bank over the areas the NAO is allowed to examine. Where such a dispute cannot be settled, the MoU requires the views of the Bank and NAO to be published. Baroness Noakes questioned whether these arrangements for cases where the Bank and NAO disagreed amounted to a "backdoor power of veto" for the Bank.[69]

The question of when the MoU would be published was also raised. In response the Minister said that "the Government will provide an update on progress as the document develops, before the Bill has passed" and the MoU would be placed in the Library when it was complete.[70] No indication was given as to when this might happen.

5.2 Prudential Regulation

Two new clauses were agreed to.

A Government new clause was agreed to. It permits that:

> The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of Her Majesty's Government to which the FCA should have regard when considering—
>
> (a) how to act in a way which is compatible with its strategic objective,
>
> (b) how to advance one or more of its operational objectives,
>
> (c) how to discharge the duty in section 1B(4) (duty to promote effective competition in the interests of consumers),
>
> (d) the application of the regulatory principles in section 3B, and
>
> (e) the matter mentioned in section 1B(5)(b) (importance of taking action to minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime).

As constituted by the *Financial Services Act 2000* the regulator is independent of government. The role of government since then has included extensions to the regulator's remit (widening of mortgage regulation and consumer credit, for example), or to give the regulator new powers – against financial crime, for example, or to alter its objectives – to include competition, for example.

Whilst the Treasury currently has consultations with and (presumably) expresses opinions to the FCA on issues, this measure would appear to formalise such interactions.

Outlining the purpose of the remit letter, the Minister said:

> As to the remit letter's content, the productivity plan outlined that remit letters will provide information on the Government's economic policy and will make recommendations about aspects of that policy to which the FCA should have regard. The

[69] HL Deb 15 December 2015 cc2001-02
[70] HL Deb 15 December 2015 c2002

> recommendations in the letters will not be binding and will not compromise, modify, or override the FCA statutory objectives in any way; neither will they relate to individual firms or cases.
>
> As to the timing and frequency of the publication of the letters, we are aiming to publish the first FCA remit letters following Royal Assent for the Bank of England and Financial Services Bill, after which they will be published at least once per Parliament. The letters will be used to provide a steer on the Government's economic strategy over that period, but letters could be sent more frequently if particular issues arise.[71]

A Liberal Democrat amendment to alter the FCA's competition objective to include 'diversity of ownership' was discussed. Baroness Kramer spoke in favour of the more localised banking systems of the United States and Germany. The amendment was withdrawn.

The second new clause, tabled by Lord Naseby (Con), was on a similar theme of diversity. It was accepted by the Government and agreed to. It promotes recognition within the legislation of the mutual sector. Describing it, Lord Naseby said:

> There is still a problem in the world outside in understanding this. Half the population is being served by mutuals, yet very few people in authority really understand the driving force behind the mutual movement and why it is growing today. There is a need for all of us in society, particularly the regulators, to have a better understanding. I question whether the new regulator has anybody senior who has ever worked in a mutual. If not, then I hope there will be some appointments made hurriedly.
>
> As far as the mutual movement is concerned—the building societies, the mutual insurers, the friendly societies and credit unions, and of course the Co-Op—tonight will be a special night if this new clause is accepted. It will recognise that their future needs will have to be considered and be better understood, so I say a huge thank you on their behalf to your Lordships' House if this new clause is accepted.[72]

Technical amendments were made to Clauses 18 and 19.

Burden of proof

Lord Tunnicliffe (Lab) moved an amendment to delete clause 22 – the clause on misconduct to "ensure that the so-called reverse burden of proof on senior managers comes into force as planned from March 2016".[73] A long debate followed, on similar lines to the several in Committee, about the appropriate due process of a misconduct regime. Lord Sharkey's speech covers most of the points raised in support of the amendment.[74] He was supported by Lord McFall.

Lord Hunt mentioned that the interests of the credit union movement would not be served by the amendment as they "already face significant challenges in attracting and retaining skilled and experienced individuals willing to sit on their boards on a voluntary basis".[75]

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71 HL Deb 15 December 2015 c2005
72 HL Deb 15 December 2015 c2008
73 HL Deb 15 December 2015 c2016
74 HL Deb 15 December 2015 c2024
75 HL Deb 15 December 2015 c2029

Replying, the Minister highlighted why the new proposals were superior to what had gone before:

> First, the clarity of responsibility which has been so desperately lacking under the approved persons regime will be embedded in the system. This will be achieved in a number of ways.
>
> An application by the firm for approval of a senior manager must be accompanied by a statement of responsibilities setting out what the senior manager will be responsible for managing in the firm. This must be updated if the responsibilities of a senior manager change. That ensures that both regulators and the firm will have the necessary clarity about who is responsible for what, and senior managers will take full ownership of their respective areas of responsibility.
>
> This requirement is bolstered by the regulators' rules, which require each firm to have, and to submit to the regulators, a "responsibilities map" setting out how responsibility for the business of the firm as a whole is allocated amongst its senior managers. This minimises the risk of any responsibilities falling through the cracks between different senior managers. On top of that, under rules of conduct made by the regulators, it is made clear that a senior manager must take all reasonable steps to ensure that any delegation of their responsibility is to an appropriate person, and they must oversee the discharge of any delegated responsibilities effectively.
>
> Secondly, tough rules will apply to the senior managers. A senior manager can now be found guilty of misconduct if a breach of regulations occurs in the area of the firm's business for which they are responsible and if they did not take such steps as a person in their position could reasonably be expected to take to prevent it. Crucially, it does not matter whether or not the senior manager is aware of the regulatory breach. Ignorance is no defence. What matters is whether they have taken reasonable steps to prevent the breach. If they have not, they are guilty of misconduct. They will not be able to avoid liability simply because the email trail has gone cold. The regulator will not—I repeat, not—be completely stymied if all conversations and exchanges take place in an environment where there are no minutes, no emails, no memos and no existing trail.[76]

The amendment was put to a vote and defeated by only two votes (198-200).

A Government amendment on clause 26 (transformer vehicles affecting Lloyds) was agreed to without debate.

Other measures

A technical Government new clause to correct a mistaken revocation of an earlier statutory instrument was agreed to.

A further Government amendment in relation to the wider publication of details of authorisation for the issuance of banknotes in Scotland or Northern Ireland – a recommendation of the Delegated Powers Committee - was agreed to.[77]

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76 HL Deb 15 December 2015 c2034
77 HL Deb 15 December 2015 c2053

5.3 Pensions guidance and advice

The Government Government amended the clause on pensions guidance (now clause 27)[78] to give access to Pension Wise to members of pension schemes that had entered the Pension Protection Fund but who also had money purchase benefits. Certain powers would be given to the Secretary of State rather than the Treasury, reflecting the transfer of responsibility for Pension Wise to the Department for Work and Pensions.[79]

In its response to the consultation on creating a secondary annuity market in December 2015, the Government said it would legislate to require some individuals seeking to assign their annuity to a third party to take advice before proceeding with a sale.[80] Provision for this was included in a new clause, added to the Bill by by means of a Government amendment. Lord Bridges explained that consultation responses show there was "broad support from both industry and consumer groups for requiring advice above a threshold." The new clause would therefore:

> […] place an obligation on the Financial Conduct Authority to make rules requiring certain authorised firms to check that advice has been received before annuity holders may sell their annuity income stream. The FCA will determine which businesses will be required to make these checks, what the checks will entail and when they will be carried out. We expect that the FCA will be consulting on its proposed rules during 2016. [81]

The threshold for advice would be set in regulations. A further power would allow the Treasury to exempt from this advice requirement those individuals whose financial circumstances met certain criteria. The Delegated Powers and Regulatory Reform Committee recommended that regulations exempting individuals with annuities below a certain value from the advice requirement, should be subject to the affirmative procedure in Parliament.[82] The Government would respond to the House on this recommendation at the earliest opportunity and consult on regulations to be made under the clause in 2016.[83]

A further Government amended added another new clause to allow appointed representatives to advise on the conversion and transfer of 'safeguarded benefits'. Lord Bridges explained that this intended to put beyond doubt the eligibility of appointed representatives to advise on these transactions:

> This amendment is technical in nature and allows appointed representatives of authorised financial advisers to advise on the conversion and transfer of safeguarded benefits, which are the special valuable features of certain pensions, such as defined benefit pensions and pensions with guaranteed annuity rates, for

[78] HL Bill 75

[79] HL Deb 15 December 2015 c2042

[80] DWP, Creating a secondary annuity market: response to the call for evidence, December 2015, para 4.6-7

[81] HL Deb 15 December 2015 c2045-6

[82] Delegated Powers and Regulatory Reform Committee, Sixteenth Report, 11 December 2015

[83] HL Deb 15 December 2015 c2045-6

the purposes of the advice safeguard established in Sections 48 and 51 of the *Pension Schemes Act 2015*.

These amendments to Sections 48 and 51 of the *Pension Schemes Act 2015* will amend the definition of "authorised independent adviser" to include appointed representatives. As a result, they will be able to give appropriate independent advice to satisfy the advice safeguard. They will also amend the *Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001* to the same end. Around two-thirds of financial advisers are appointed representatives who have a special contract to provide services on behalf of their principal, who will be an authorised financial adviser regulated by the FCA. This measure puts the eligibility of appointed representatives to advise on these transactions beyond doubt.

The amendment extends eligibility to advise on these transactions only to the appointed representatives of financial advisers. What this will not do is reduce consumer protections or weaken the accountability of financial advisers, or their appointed representatives. Where an appointed representative advises on these transactions, the directly authorised firm, as the principal, takes full responsibility for the quality of the advice and compliance with FCA rules.[84]

[84] HL Deb 15 December 2015 c2043

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