HOUSE OF LORDS

Library Briefing

Financial Services and Markets Bill
HL Bill 80 of 2022–23

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On 10 January 2023, the second reading of the Financial Services and Markets Bill is scheduled to take place in the House of Lords.

The Financial Services and Markets Bill seeks to make wide-ranging changes to the regulation of financial services in the UK. It would implement the outcomes of the Future Regulatory Framework review, a several-stage process conducted between 2019 and 2022 that sought views on the regulation of financial services after the UK's exit from the EU.

The bill would make provision for the revocation of retained EU law relating to financial services. It would transfer responsibility for these areas of regulation to the financial services regulators.

The bill also provides for establishment of a regime to regulate stablecoins, a type of cryptoasset. These and other provisions could be used to regulate cryptoassets more generally in the future.

The bill would, among other things, bring in measures to allow regulators to:

- reduce regulations in order to enable technological innovation in financial market infrastructure in a 'sandbox'
- regulate activities without requiring the firm carrying them out to become an authorised person
- make rules for entities deemed to pose systemic risks to the UK's financial markets
- create a financial promotions 'gateway'

The bill also contains measures to:

- add a new, secondary objective for the Financial Conduct Authority and the Prudential Regulatory Authority to promote the growth and competitiveness of the UK economy
- safeguard access to cash
- protect victims of authorised push payment scams
- make changes to insolvency arrangements for insurers
- create a senior managers and certification regime for some types of systemically important firms
- enable credit unions to offer more products

The Labour Party has stated that it "broadly supports" the measures in the bill.

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1. Purpose of the bill

The government has stated that the aims of the bill are to:

- implement the outcomes of the Future Regulatory Framework review, which involves reshaping the UK's regulatory and legislative regime as an independent state outside the EU
- bolster the competitiveness of UK markets and promote the effective use of capital
- promote the UK's leadership in the trading of global financial services
- harness the opportunities of innovative technologies in financial services
- promote financial inclusion and consumer protection[1]

The bill contains measures relating to:

- revoking and replacing financial services retained EU law
- adding objectives for the financial services regulators
- implementing mutual recognition agreements (MRAs)
- recognising equivalent simple, transparent and standardised (STS) securitisations
- bringing stablecoins, a type of cryptoasset, into the scope of regulation when used as a form of payment
- enabling technological innovation in financial services
- reforming the UK's wholesale capital markets regime
- enhancing the UK's insolvency arrangements for insurers to help authorities to better manage insurers in financial distress
- creating a senior managers and certification regime for a number of types of systemically important firms
- ensuring people across the UK can continue to access cash
- enabling credit unions to offer more products
- introducing a regulatory gateway designed to improve the quality of financial promotions
- enhancing protection for victims of authorised push payment scams

Alongside the bill the government has published the following documents:

- Delegated powers memorandum, 8 December 2022
- Impact assessment, 8 December 2022

[1] HC Hansard, 7 September 2022, col 280.

2. Background

2.1 Financial regulation

2.1.1 Brexit

During the UK's membership of the EU, and particularly following the 2007–08 global financial crisis, a significant amount of new financial services regulation was developed and legislated for at an EU level through EU regulations, directives, and other technical standards and guidance.[2] Financial services were regulated by a mixture of EU laws, domestic laws and rules set by UK regulators.

The European Union (Withdrawal) Act 2018 retained all applicable EU financial regulation laws onto the UK statute book. This was termed 'onshoring' by the Treasury. Because of this process, financial regulation has continued to function largely in the same way as before Brexit.

The onshoring process effectively created two types of financial regulation: that made by and largely under the control of UK regulators, and that retained from EU law, which can only be amended or revoked by Parliament.[3] The government has said this will be replaced by rules set by UK regulators.

The bill would repeal financial regulation retained EU law. It would also amend certain parts of the Financial Services and Markets Act (FSMA) 2000.[4] On the bill's introduction in July 2022 the then chancellor, Nadhim Zahawi, said:

> We are repealing hundreds of pieces of burdensome EU regulations and seizing on the benefits of Brexit to ensure the financial sector works in the interests of British people and businesses. The bill implements the outcomes of the Future Regulatory Framework review, giving the financial regulators greater responsibility for setting the requirements for UK financial services, and for the first time, a new secondary objective to promote the growth and competitiveness of the UK economy including the financial services sector.[5]

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[2] HM Treasury, 'Building a smarter financial services framework for the UK', 9 December 2022.
[3] HM Treasury, 'Future Regulatory Framework (FRF) review: Consultation', 30 November 2020, p 4.
[4] Explanatory notes, p 14.
[5] HM Treasury, 'Financial Services Bill to unlock growth and investment across the UK', 20 July 2022.

Mr Zahawi also said that the government intended to maintain "high regulatory standards".

The bill sets out the laws to be revoked in schedule 1. However, those laws will remain in force until the government commences the relevant provisions. The government has said that in many instances it would "expect the regulators to initially replace the repealed provisions with rules that are similar to those which are currently in place".[6] The explanatory notes to the bill state that if the government wants to make changes to the regulations it does not expect to commence the revocation of the relevant retained EU laws unless the regulators have drafted and consulted on rules that are ready to be enforced.

2.1.2 Future Regulatory Framework review

From 2019 to 2022 the Treasury ran two consultations as part of its Future Regulatory Framework review. This review considered how the regulatory framework for financial services should adapt to be "fit for the future", particularly in light of the UK's departure from the EU.[7] The government has said the bill would implement the outcomes of the review.[8]

In a consultation launched in October 2020, the government sought views on how responsibility for financial services regulation should be divided between Parliament, government and the financial services regulators. The government said it believed that repealing retained financial services EU law and bringing all rules under the power of regulators, as for those already delegated under FSMA 2000, was "the most effective way of delivering a stable, fair and prosperous financial services sector".[9]

Who are the financial regulators?

The **Financial Conduct Authority** (FCA) regulates the conduct of all firms carrying out certain financial activities. These include activities in the areas of consumer credit and investments. Its strategic objective is to make sure relevant markets function well. It aims to do this by protecting consumers from bad conduct, protecting the integrity of the UK financial system and promoting effective competition in the interests of consumers.[10]

[6] HM Treasury, 'Financial services Future Regulatory Framework review: Proposals for reform', November 2021, CP 548, p 7.
[7] HM Treasury, 'Future Regulatory Framework (FRF) review: Consultation', 30 November 2020, p 4.
[8] HM Treasury, 'Financial Services Bill to unlock growth and investment across the UK', 20 July 2022.
[9] HM Treasury, 'Future Regulatory Framework (FRF) review: Consultation', 30 November 2020, p 4.
[10] Financial Conduct Authority, 'About the FCA', 15 December 2022.

The **Prudential Regulatory Authority** regulates banks, building societies, credit unions, insurers and major investment firms from a prudential perspective.[11] Its rules require financial firms to maintain sufficient capital and have adequate risk controls in place. It is a subsidiary of the Bank of England.

The **Bank of England** supervises some financial market infrastructures such as payment systems, central counterparties (CCPs) and central securities depositaries (CSDs).

The **Payment Systems Regulator** aims to promote competition and innovations among designated payment services.[12] These include card providers such as Mastercard and Visa Europe as well as the Bankers' Automated Clearing System (BACS) and the Faster Payments System. It does this to ensure payments systems are operated and developed in the interests of the people and businesses that use them.

In November 2021 the Treasury published '[Financial Services Future Regulatory Framework review: Proposals for reform]'. In this consultation it asked for feedback on its more detailed proposals. The Treasury said it wanted to ensure the UK maintained "a coherent, agile and internationally respected approach to financial services regulation that delivers appropriate protections and promotes financial stability".[13]

In this paper, the government said that responses to its first consultation had agreed that bringing all regulation under the control of the regulators, based on the FSMA 2000 model, was the best approach to financial services reform. It emphasised the regulators' expertise and the agility this approach would bring:

> This model […] ensures that the regulators' real-world, day-to-day experience of supervising financial services firms is central to the regulatory policymaking process. It also provides flexibility for the regulators to update standards efficiently in response to changing market conditions and emerging risks.[14]

[11] Bank of England, 'Prudential regulation', 13 December 2022.
[12] Payment Systems Regulator, 'Who we regulate', accessed 15 December 2022.
[13] HM Treasury, 'Financial services Future Regulatory Framework review: Proposals for reform', November 2021, CP 548, p 4.
[14] HM Treasury, 'Financial services Future Regulatory Framework review: Proposals for reform', November 2021, CP 548, p 4.

The government set out its proposals for changes to regulation under this framework. As well as repealing retain EU financial services legislation, it proposed to:[15]

- introduce new, statutory objectives for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) "to reflect the importance of the financial services sector as an engine of growth for the wider economy and the need to support the future strength and viability of the UK as a global financial centre"
- amend existing regulatory principles to ensure that sustainable growth should occur in a way that is consistent with the government's commitment to achieve a net zero economy by 2050
- give the regulators more powers so they can make rules covering all areas of financial services regulation currently in retained EU law
- put mechanisms through which the regulators provide information to Parliament on a statutory footing
- put in place a new requirement for the PRA and the FCA to respond to recommendations letters issued by the Treasury and give the Treasury a new power to require the regulators to review their existing rules where the government considers it in the public interest
- require regulators to consider the potential impacts on deference arrangements and assess compliance with relevant trade agreements as a matter of course when making rules and when setting general policy on supervision, where relevant and proportionate

The Retained EU Law (Revocation and Reform) Bill would, if enacted in its current form, provide for the revocation of direct EU legislation and EU-derived subordinate legislation. However, retained EU law relating to financial services would not be affected by these provisions.[16]

On 9 December 2022 the government announced a set of non-legislative measures to implement its vision for the financial services sector, termed the Edinburgh reforms. The chancellor, Jeremy Hunt, said these would include measures to implement parts of the Financial Services and Markets Bill, such as issuing new remit letters to the PRA and FCA with recommendations on growth and international competitiveness and publishing the plan for repealing and reforming retained EU law.

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[15] HM Treasury, 'Financial services Future Regulatory Framework review: Proposals for reform', November 2021, CP 548, p 7.
[16] Practical Law, 'Retained EU Law (Revocation and Reform) Bill: All change, really?', 27 October 2022.

2.2 Cryptoassets

2.2.1 Technology and markets

Cryptoassets are a digital representation of value, the ownership of which is cryptographically proven (using computer code).[17] The most well-known cryptoasset is bitcoin, a digital currency. Bitcoin is based on a type of distributed ledger technology called a blockchain. Distributed ledger technology removes the need for a central authority, such as a bank, to check for invalid transactions. Instead, individuals participating in the network solve computational puzzles to validate the transactions.

Cryptoassets are typically more volatile than government-issued currencies. For example, the price of one bitcoin fluctuated from $67,567 per coin on 8 November 2021 to $17,744 on 18 June 2022[18].

Stablecoins are a type of cryptoasset that are designed to be less volatile than other cryptoassets.[19] Stablecoins are only created, or "minted", once an individual deposits the equivalent amount in a national currency.[20]

Global cryptoassets were worth an estimated $929.51bn as at June 2022.[21]

2.2.2 Policy and regulation

In April 2022 the government said it intended to make the UK a global hub for cryptoasset technology.[22]

Developments in cryptoasset markets have drawn attention to the role of cryptoassets in the UK and how they are regulated. In January 2021 the government launched a consultation on the UK regulatory approach to cryptoassets and stablecoins.[23] It sought views on how to ensure the regulatory framework is equipped to take advantage of the benefits of new technologies to support innovation and competition, but how also to mitigate risks to consumers and stability. In addition, the House of

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[17] Department for Business, Energy and Industrial Strategy, 'Factsheet: Cryptoassets technical', 8 November 2022.
[18] Department for Business, Energy and Industrial Strategy, 'Factsheet: Cryptoassets technical', 8 November 2022.
[19] Explanatory notes, p 38.
[20] Department for Business, Energy and Industrial Strategy, 'Factsheet: Cryptoassets technical', 8 November 2022.
[21] Department for Business, Energy and Industrial Strategy, 'Factsheet: Cryptoassets technical', 8 November 2022.
[22] HM Treasury, 'Keynote speech by John Glen, economic secretary to the Treasury, at the Innovate Finance Global Summit', 4 April 2022.
[23] HM Treasury, 'UK regulatory approach to cryptoassets and stablecoins: Consultation and call for evidence', 5 July 2022.

Commons Treasury Committee is currently conducting an inquiry into the role of cryptoassets in the UK.[24] As part of its inquiry it is examining how cryptoasset regulation should be balanced to provide protection for consumers without stifling innovation.

At present, the FCA has oversight to check that cryptoasset firms have effective anti-money laundering and terrorist financing procedures in place.[25] However, generally, cryptoassets and activities relating to cryptoassets are not regulated. The UK Advertising Standards Agency has also become involved in cryptoasset oversight, regulating the promotion of cryptoassets to consumers by increasing its scrutiny of social media, web pages and ads.

In its January 2021 consultation paper, the government said it proposed to take a "staged and proportionate approach" to the regulation of cryptoassets.[26] It said the "near-term priority" was to ensure the regulatory framework supported the safe use of stablecoins.

The international Financial Stability Board has made high-level recommendations for the regulation, supervision and oversight of "global stablecoin" arrangements. It said that while stablecoins have potential to bring efficiencies to payments and promote financial inclusion, a widely adopted stablecoin used in multiple countries could become systemically important.[27]

In its April 2022 consultation response, the government said that it intended to introduce legislation to enable the regulation of activities facilitating the use of certain stablecoins when used as a means of payment.[28] This regulation would apply to stablecoin issuers and service providers such as custodians and exchanges.

The government has also consulted on plans to give the FCA more powers to regulate cryptoasset promotions.[29] Unregulated cryptoassets (such as bitcoin) are not currently subject to regulation which restricts financial promotions. In its consultation paper the government said it intended to act to ensure the appropriate regulation of cryptoasset promotions through secondary legislation. The bill would clarify that the Treasury can make these regulations concerning cryptoassets.

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[24] House of Commons Treasury Committee, 'Treasury Committee launches inquiry into cryptoassets', 13 July 2022.
[25] Department for Business, Energy and Industrial Strategy, 'Factsheet: Cryptoassets technical', 8 November 2022.
[26] HM Treasury, 'UK regulatory approach to cryptoassets and stablecoins: Consultation and call for evidence', January 2021, p 4.
[27] Financial Stability Board, 'Regulation, supervision and oversight of "global stablecoin" arrangements', 13 October 2020.
[28] HM Treasury, 'UK regulatory approach to cryptoassets and stablecoins: Response to the consultation and call for evidence', April 2022.
[29] HM Treasury, 'Cryptoasset promotions: Consultation response', January 2022.

Separately, the government has said it intends to launch a consultation on its regulatory approach to a wider range of cryptoassets.[30] The explanatory notes to the bill as introduced in the House of Lords, dated 8 December 2022, state that "the government intends to launch a consultation on its regulatory approach to wider cryptoassets beyond stablecoins used for payments, including those primarily used as a means of investment (such as bitcoin) later in 2022".

2.3 Access to cash

Since 2017 cash use has declined by approximately 15% per year.[31] This decline accelerated in 2020 because of the Covid-19 pandemic. This was because many parts of the economy with traditionally high levels of cash usage were closed or heavily restricted during lockdown, and in those parts of the economy that remained open many retailers encouraged the use of contactless payment options because of fears about cash transmitting Covid-19. While decreased restrictions and concerns about Covid-19 reduced the rate of decline from 2020 to 2021, cash use still fell by 1.7%.

In 2019 the 'independent access to cash review', established by the cash machine network LINK and chaired by Natalie Ceeney, investigated whether the decline in the use of cash risked disadvantaging people who rely on it.[32] The review found that many people would "struggle to cope" in a cashless society and that while there are technological developments which could address many of the needs of those who depend on cash, "the vulnerable are rarely early adopters, and technology is often designed for the mass market rather than for the poor, rural or vulnerable".[33]

The review argued that while debates about access to cash have largely focused on ensuring continued provision of ATMs, a deeper problem was fewer retailers accepting cash. It concluded that the largest factor driving retailers to stop accepting cash was "the rising costs of handling and banking cash".[34] It argued that the country needed to start considering cash as "a core part of Britain's national infrastructure" and encourage innovative ways to maintain access to cash and cash acceptance.

The March 2020 budget contained a commitment to bring forward legislation to protect access to cash and ensure that the UK's cash infrastructure is sustainable in the long term.[35] In October 2020 the government launched a call for evidence seeking views on the key

[30] Explanatory notes, p 39.
[31] UK Finance, 'UK payments markets summary 2022'. August 2022.
[32] Access to Cash Review, 'Final report', March 2019, p 2.
[33] Access to Cash Review, 'Final report', March 2019, p 6.
[34] Access to Cash Review, 'Final report', March 2019, p 7.
[35] HM Treasury, 'Budget 2020', 12 March 2020.

considerations associated with cash access.[36] Before the government's response to this call for evidence, it accepted an amendment to the Financial Services Act 2021 that removed barriers to receiving cashback without a purchase. This facility has been in place at selected stores since 2021.

Following the call for evidence, the government published a consultation paper on access to cash in July 2021 and a response in May 2022.[37] In its response, it said it intended to designate firms for the purpose of ensuring continued access to cash across the UK. It said the government would establish the FCA as the lead regulator for retail cash access and it would be given appropriate powers for ensuring that designated firms continued to provide deposit and withdrawal facilities across the UK. It also highlighted its policy, set out in the April 2022 policy paper 'Protecting UK wholesale cash infrastructure' that it would "provide the Bank of England with the powers necessary to ensure the UK's wholesale cash infrastructure remains effective, resilient, and sustainable".

3. Bill provisions

3.1 Part 1: Regulatory framework

3.1.1 Retained EU law

Clause 1 would repeal financial services retained EU law set out in schedule 1, subject to the clause being commenced. Schedule 1 covers all types of financial services retained EU law, including:

- all direct principal EU legislation, such as regulations
- secondary legislation made under primary legislation, such as instruments made to implement EU obligations under the European Communities Act 1972 and instruments made under the European Union (Withdrawal) Act 2018 which addressed deficiencies in EU law
- all EU tertiary legislation, such as delegated regulations, commission decisions, and implementing acts
- some parts of primary legislation[38]

Clause 1(3) would disapply directly effective rights saved by the European Union (Withdrawal) Act 2018 in the instruments listed in schedule 1. The government could save these rights through powers in clause 76(2)(c).

[36] HM Treasury, 'Access to cash: Call for evidence', October 2020.
[37] HM Treasury, 'Access to cash: Consultation—Summary of responses', May 2022, p 1.
[38] Explanatory notes, p 14.

Clause 1(4) states that legislation amended by retained EU law would not be changed by the revocation of any of the instruments in schedule 1.

Clauses 2 and 3 concern transitional arrangements. Clause 2 would establish the concept of a transition period. Under 2(2), each piece of legislation in schedule 1 would have its own transitional period lasting from the commencement of this clause to the point at which the revocation of that instrument was commenced.

Clause 2 would insert schedule 2, which would make changes to some of the instruments listed in schedule 1 during the transition period, before they were revoked. This includes changes to the UK capital markets framework inherited from the EU (the MiFID II framework) and the EU Securitisation Regulation 2017. The proposed changes to the EU Securitisation Regulation would allow the UK to recognise equivalent simple, transparent and standardised (STS) securitisations issued by entities outside the UK.[39]

Clause 3 would create a delegated power, allowing the government to modify some legislation for specified purposes during the transition period if it was for the purposes listed in clause 3(2):

> (a) protecting and enhancing the integrity or stability of the financial system operating in the United Kingdom;
> (b) promoting the safety and soundness of persons providing financial services;
> (c) promoting effectiveness in the functioning of financial markets;
> (d) promoting effective competition in the interests of consumers in financial services and markets or persons who use, or are likely to use, services provided by payment systems in the course of business carried on by those persons;
> (e) facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term;
> (f) protecting consumers and those who are, or may become, insurance policyholders;
> (g) providing for efficient and effective arrangements in relation to the exercise of functions under the Banking Act 2009 or part 4 of this act;
> (h) protecting public funds;
> (i) implementing, or making changes to reflect, developments in international standards and practices relating to, or applied for the purposes of, the provision of financial services or the operation of financial markets;
> (j) providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements in relation to the provision of financial services or the operation of financial markets;

[39] Explanatory notes, p 12.

> (k) removing provisions that are yet to be commenced or changing the timing of their commencement.

Clause 3(4) would enable the Treasury to create new powers for regulators or itself for any of the purposes listed in clause 3(2). Clause 3(6) and 3(7) would provide that the Treasury would have to consult the PRA and FCA when exercising this power, and the PSR and Bank of England (BoE) if it considered it appropriate to do so. The government has set out its justification for taking this power:

> Without such a power, amendments to retained EU law during the transitional period, where a piece of law has been repealed but that repeal has not yet been commenced, would generally require primary legislation. The government does not consider that it is appropriate to continue to ask Parliament to pass primary legislation in order to update legislation which Parliament has agreed to repeal by passing this bill.[40]

Clause 4(1) would allow the government to restate legislation by amending primary legislation or subordinate legislation or by making new subordinate legislation. Clause 4(2) states that regulations made under 4(1) could change the legislation being restated to make the law clearer or more accessible for any of the purposes in clause 3(2).

The delegated powers memorandum states that the purpose of this power is to allow the government to "restate into domestic law those elements of retained EU law which should not be moved to the regulators' rulebooks".[41]

The scrutiny of these regulations would depend on where the legislation came from: regulations under this clause could be made through the negative procedure if they amended either EU tertiary legislation or subordinate legislation which was originally made under negative procedure, or where legislation was restated without modification for a purpose in clause 3(2). Otherwise, the affirmative procedure would have to be used. The affirmative procedure would have to be used in all instances where restatement regulations amended primary legislation.

Clause 5 would give the government powers to modify legislation to remove references to EU directives. If this power was exercised to amend primary legislation, the affirmative procedure would have to be used. Otherwise, the negative procedure could be used.

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[40] HM Treasury, 'Financial Services and Markets Bill: Delegated powers memorandum', 8 December 2022, p 31.
[41] HM Treasury, 'Financial Services and Markets Bill: Delegated powers memorandum', 8 December 2022, p 32.

Clause 6 would mean the Treasury could exempt regulators from consulting requirements under FSMA 2000 in certain circumstances when restating legislation.

Clause 7 contains definitions. It states that for the purposes of chapter 1, the regulators are the FCA, PRA, BoE and PSR.

3.1.2 New regulatory powers

Designated activities regime

Clause 8 would provide for the regulation of certain financial activities without regulating the entity performing them. Currently, under FSMA 2000, firms wishing to carry out regulated financial activities, such as accepting deposits or offering investment services, must apply to the regulator.[42] If the application is approved that entity becomes an "authorised person" (unless exempt).

Many businesses carry out activities in financial markets not requiring the FCA's authorisation. This can include listing shares on an exchange or entering into a derivative contract. For example, a car manufacturer may enter into metal derivative contracts as a way of protecting itself against a rise in the price of the metals that it needs to purchase at a later date.[43] Many of these activities have been regulated by EU law rather than the authorised persons regime provided for in FSMA 2000.

At present, primary legislation would be needed to regulate a financial activity without requiring the business to become an authorised person, as this is not provided for in FSMA 2000. Clause 8 would provide for a 'designated activities regime' (DAR) to allow the FCA to make rules about these activities. It would insert new part 5A into FSMA 2000 allowing the Treasury to specify an activity as a 'designated activity' and restrict it by regulations. The clause would allow the FCA to set rules concerning designated activities.

New section 71R would allow the government to amend legislation relating to designated activities.

New section 71K, added to the bill during its committee stage in the House of Commons, specifies that instruments, products and investments relating to cryptoassets could be included in the DAR. Economic Secretary to the Treasury Andrew Griffith stated that this, along with clause 65 also added at this stage, was necessary to allow the government to regulate cryptoassets

[42] Explanatory notes, p 27.
[43] Explanatory notes, p 27.

beyond the regulation of stablecoins provided for in clauses 21 and 22.

Financial market infrastructure

Clauses 9 to 12 make provisions about financial market infrastructure, including central counterparties (CCPs), central securities depositories (CSDs), data reporting service providers (DRSPs) and recognised investment exchanges (RIEs).

Central counterparties (CCPs) are part of the financial market infrastructure supervised by the Bank of England. CCPs place themselves between the buyers and sellers.[44] They effectively guarantee the obligations under the contract agreed between the two counterparties, both of which would be participants of the CCP. If one counterparty fails, the other is protected by the procedures and resources of the CCP.

A **central securities depository** (CSD) is an institution that holds financial instruments including equities, bonds, money market instruments and mutual funds.[45] It allows ownership of those instruments to be transferred in electronic form through updating electronic records, which are often known as 'book-entry records'. The UK CSD is Euroclear UK and Ireland.

Data reporting service providers (DRSPs) report trading data. They aim to enhance transparency and effective supervision of financial markets by investors and national competent authorities by providing accurate and comprehensive trading data.

A **recognised investment exchange** (RIE) undertakes regulated activities as part of its business as an investment exchange or as part of providing clearing services in the UK. This includes the London Stock Exchange.

Clauses 9 and 10 would amend FSMA 2000 to allow the Bank of England to make rules regulating CCPs and CSDs, which have been governed by EU law. This would include non-UK institutions if deemed systemic to the UK's financial sustainability or if permitted by regulations.

Clause 11 would give the FCA powers to make rules about RIEs and DRSPs.

Clause 12 would disapply the requirement in the Bank of England Act 1946 for directions given by the Treasury to the Bank of England to be in the public's interest insofar as those directions relate to CCPs and CSDs.

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[44] Bank of England, 'Central counterparties: What are they, why do they matter and how does the Bank supervise them?', 13 June 2013.
[45] Financial Conduct Authority, 'Central securities depositories', 14 December 2022.

Financial market infrastructure sandboxes

Clauses 13 to 17 concern innovation and pilots in financial market infrastructure. Currently, the UK legislative system does not allow for innovations such as distributed ledger technology (an example of which is the blockchain technology behind cryptocurrencies) in financial markets infrastructure. The bill would enable the government to use regulations to set up a 'sandbox' to test this type of innovation by disapplying and modifying legislation. The government has said this would "allow FMI [financial market infrastructure] to innovate with certain technology and new practices in the activities they perform in a controlled environment".[46]

These measures were announced by the then chancellor, Rishi Sunak, in April 2021.[47] As part of its announcement of a wide range of financial services measures on 8 December 2022 the government said it would implement a financial market infrastructure sandbox in 2023.[48]

Clause 13 would establish the power for the government to use regulations to set up sandboxes. It sets out that regulations would have to state what activities were to be allowed, who would participate and how long the arrangements would apply. Clause 14 concerns reporting and clause 15 would allow the government to permanently implement arrangements tested under sandboxes. Clause 16 would allow the Treasury to give powers to a regulator to do "anything under or for the purposes of the regulations made under clauses 13 to 15".[49]

Clause 17 contains definitions relevant to clauses 13 to 16.

Critical third parties

Clauses 18 and 19 would enable regulators to oversee services provided by critical third parties. The government has noted that bodies such as the House of Commons Treasury Committee, the International Monetary Fund and the Financial Stability Board have recognised that the failure or disruption of an entity providing services to multiple firms could pose a systemic risk.[50] In June 2022 it published a policy statement stating that it intended to introduce measures to mitigate these risks.

Clause 18 would allow the Treasury to designate as a critical third party an entity providing services to a regulated firm if failure or disruption of those

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[46] Explanatory notes, pp 134–5.
[47] HM Treasury, 'Government sets out plan to make UK a global cryptoasset technology hub', 4 April 2022.
[48] HM Treasury, 'Financial services: The Edinburgh reforms', 9 December 2022.
[49] Explanatory notes, p 137.
[50] HM Treasury, 'Critical third parties to the finance sector: Policy statement', 8 June 2022.

services would pose a financial stability or confidence risk to the UK. It would give the regulators powers to make rules over the services that critical third parties provide to regulated firms.

Clause 19 sets out amendments that would have to be made to FSMA 2000 to accommodate this new regime.

Financial promotions

At present, any authorised firm can approve the content of a financial promotion made by an unauthorised firm.

Clause 20 would require an authorised person (a firm regulated by the FCA) to have permission from the FCA to approve a financial promotion by an unauthorised firm. This is termed the financial promotion 'gateway'.

The government said it would introduce this measure in its response to a consultation on a regulatory framework for approval of financial promotions in June 2021.[51]

Digital settlement assets

Clauses 21 and 22 allow for the creation of a regulatory regime for the use of digital settlement assets (DSAs) as a form of payment. Clause 22(2) defines a digital settlement asset as:

> a digital representation of value or rights, whether or not cryptographically secured, that—
> (a) can be used for the settlement of payment obligations,
> (b) can be transferred, stored or traded electronically, and
> (c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

The explanatory notes to the bill state that this definition would include "stablecoins and other cryptoassets which meet the definition".[52] The government defines stablecoins as a type of DSA that aims to maintain a stable value in relation to another asset. This is opposed to other, potentially more volatile cryptoassets.[53]

Under clause 22(6) the Treasury would have the power to amend this definition.

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[51] HM Treasury, 'Regulatory framework for approval of financial promotions', 22 June 2021.
[52] Explanatory notes, p 104.
[53] HM Treasury, 'Financial Services and Markets Bill: Delegated powers memorandum', 8 December 2022, p 67.

Clause 21 would introduce schedule 6, which would extend the definition of a payment system to include those that use DSAs. The delegated powers memorandum states that it would amend key provisions in relation to the management of risks potentially caused by payment systems so that these can cover DSAs.[54]

Clause 22 would give the Treasury power to make regulations, through the affirmative procedure, to regulate payments that include DSAs, DSA recognised payment systems and DSA service providers. This would include the power to modify primary legislation. The government has stated that "the extent of the regulatory power is required, including the power to amend the definition of DSAs, in order to ensure that regulation in this developing area is agile".[55]

Regulations made under these provisions would be subject to the affirmative procedure or, if urgent, the made affirmative procedure. The government has said the made affirmative procedure "could be relevant if HM Treasury needs to react urgently to developments within the cryptoasset market".[56]

The delegated powers memorandum states that "it is initially envisaged" that the power to make regulations would be used, among other things, "to make appropriate provision for stablecoins that are used for payment".

Mutual recognition agreements

Clause 23 would give the government the power to make regulations to implement mutual recognition agreements (MRAs). MRAs are agreements between two countries which facilitate market access by recognising regulation and standards to be the same degree in both countries.

3.1.3 Accountability of regulators

FCA and PRA objectives and regulatory principles

Clauses 24 and 25 concern a new regulatory objective and principles. Clause 24 would give the FCA and PRA a new secondary objective to act in a way which advances the international competitiveness of the economy and its growth "in the medium to long term".

For the FCA, this objective would be secondary to its strategic objective to make sure relevant markets function well and its operational objectives to

[54] HM Treasury, 'Financial Services and Markets Bill: Delegated powers memorandum', 8 December 2022, p 67.
[55] HM Treasury, 'Financial Services and Markets Bill: Delegated powers memorandum', 8 December 2022, p 67.
[56] Explanatory notes, p 144.

protect consumers from bad conduct, protect the integrity of the UK financial system and promote effective competition in the interests of consumers.[57]

The PRA has an existing general objective to promote the safety and soundness of the firms it regulates and an existing secondary objective to facilitate effective competition in the markets for services provided by PRA-authorised firms. It also has an objective specific to insurance firms: to contribute to ensuring that policyholders are appropriately protected.[58]

Clause 25 would amend FSMA 2000 to introduce a new environmental regulatory principle for the FCA and PRA. Under this provision, when discharging their general functions, the FCA and PRA would have to have regard to the need to contribute towards achieving compliance with section 1 of the Climate Change Act 2008, which enshrined in law the UK's net zero target.

Clause 26 would make amendments consequential to clauses 24 and 25 and require the FCA and PRA to report on how they had advanced the new growth and international competitiveness objective.

FCA and PRA powers to make rules etc

Clause 27 would require the FCA and PRA to generally keep their rules under review. It would also give the Treasury the power to direct the regulators to review certain rules under certain circumstances.

Clause 28 would allow the Treasury to require the FCA or PRA to use the rule-making powers they have in or under FSMA 2000 to make rules on a certain matter. This would not apply to any regulator powers outside FSMA 2000.

Clause 29 would insert a new section into FSMA 2000 giving the Treasury powers to specify in secondary legislation what the regulators would have to have regard to when making rules in an area.

Clauses 30 and 31 concern how rule changes would impact compatibility between the UK's regime and that of other countries.

Clause 30 is about deference decisions. Deference is a G20 mechanism that provides for preferential treatment for financial services firms conducting business across borders. For example, some provisions allow overseas firms to export financial services into the UK. Others remove duplicative

[57] Financial Conduct Authority, 'About the FCA', 19 July 2022.
[58] Bank of England, 'Prudential Regulation Authority Business Plan 2021/22', 24 May 2021.

requirements on cross-border business.[59] Equivalence is a form of deference decision.

Clause 30 provides that when making or changing rules, the FCA and PRA would have to consider the changes' effect on deference decisions and consult the Treasury if there was a risk of incompatibility. Clause 31 would have the same effect for the UK's obligations relating to financial services or markets under free trade agreements or the Marrakesh Agreement establishing the World Trade Organisation.

Clause 32 would concern powers to modify or disapply rules for certain firms. The regulators already have these powers in some circumstances; the bill would enable the Treasury to make new regimes as required by the revocation of retained EU law.

FCA and PRA engagement

Clause 33 concerns recommendation letters. These are annual letters, required under FSMA 2000, from the Treasury to the FCA and PRA which make recommendations about aspects of government policy which the regulator should have regard to when advancing its objectives and discharging its duties.[60] It would require the FCA and Prudential Regulation Committee to respond annually to recommendation letters. The response would have to include the action the regulator had taken or intended to take, or the reasons for not doing so. This response would be laid before Parliament by the Treasury.

Clauses 34 and 35 make provisions about engagement with statutory panels. These are groups of senior-level representatives of the affected areas.[61] The FCA's statutory panels are currently the Financial Services Consumer Panel, the Practitioner Panel, the Smaller Business Practitioner Panel and the Markets Practitioner Panel. The PRA's statutory panel is the Practitioner Panel.[62] They also have non-statutory panels.

Clauses 34 and 35 would require the FCA and PRA to report in public consultations if they had engaged with statutory stakeholder panels and provide information in annual reports about how they had engaged with them.

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[59] Explanatory notes, p 48.
[60] HM Treasury, 'Recommendations for the Financial Conduct Authority: March 2021', 24 March 2021.
[61] Financial Conduct Authority, 'Statutory Panels', 23 November 2022.
[62] Bank of England, 'Practitioner Panel and Insurance Sub-committee', accessed 13 December 2022.

Clause 36 aims to increase scrutiny of regulators by parliamentary committees, in particular the House of Commons Treasury Committee. It would provide that the FCA and PRA would have to notify the Treasury Committee when they published a consultation and respond to any committee responses to their consultations.

Clause 37 would give the Treasury a new power to require the FCA and the PRA to publish information at any time on any subject, with certain conditions. This would be in addition to the current requirement to provide an annual report to the Treasury (in the case of the FCA) or the chancellor (in the case of the PRA).

Cooperation of FCA, PRA and others

Clause 38 would require the FCA, Financial Ombudsman Service and the Financial Services Compensation Scheme to cooperate on issues affecting each other or the financial services market. They would have to publish a statement on how they intended to comply with this duty and an annual report on how they had complied with it.

FCA and PRA panels and policy statements

Clauses 39 and 40 would place the FCA's Listing Authority Advisory Panel and PRA's Insurance Sub-committee panel on a statutory footing.

Clauses 41 to 42 concern cost benefit analysis panels and statements. The FCA and PRA are required by FSMA 2000 to publish a cost benefit analysis as part of their consultation before every proposed rule change. Clause 41 would require the FCA and PRA to create cost-benefit analysis panels to support the development of the regulators' cost benefit analyses. Clause 42 would create a new requirement for the FCA and PRA to publish a policy statement on their approach to cost-benefit analysis.

Clause 43 would require the FCA and PRA to publish statements on processes for appointing members to statutory panels, and to consult the Treasury before publishing these statements.

Clause 44 would disqualify those who were paid by a regulator, the Bank of England or the Treasury from being appointed to a statutory advisory panel, subject to any exemptions the Treasury sets out in regulations.

Bank of England regulatory powers

Clause 45 would set out the statutory objectives the Bank of England (BoE) would have to follow when carrying out its functions relating to financial markets infrastructure. This would include implementing a new senior

manager and certification regime for CCPs and CSDs as well as powers over critical third parties providing services to CCPs and CSDs.[63]

Clause 45 would also give the BoE a new secondary objective relating to financial market infrastructure: to facilitate innovation in the services provided by CCPs and CSDs, with a view to improving the quality, efficiency and economy of those services. It would also establish a new financial market infrastructure committee.

Clause 46 would introduce a requirement for the BoE to keep its rules made under FSMA 2000 generally under review. This relates to rules made by the bank about CCPs and CSDs. It would allow the Treasury to direct the bank to review rules if this would be in the public interest.

Clause 47 would make consequential amendments to FSMA 2000 to align provisions for the BoE with those being introduced for the PRA and FCA and to ensure the new arrangements under clauses 45 and 46 "function in a way which is appropriate for the Bank's new regulatory framework and its new general rule-making power".[64]

Payment Systems Regulator's powers

Clause 48 would introduce schedule 7 amending the Financial Services (Banking Reform) Act (FSBRA) 2013 to create provisions for the Payment Systems Regulator (PSR) in many areas analogous to those for the other regulators.

Clause 49 specifies that the chair of the PSR board would become an ex-officio member of the FCA board if they were not otherwise a member.

Consultation on rules

Clause 50 concerns consultations on rules. At present, FSMA 2000 requires the FCA and PRA to consult each other and the public on any proposed rules. Clause 50 would create a new requirement for the FCA and PRA to publish the names of respondents to a consultation as part of their response. This requirement would only apply where a respondent had explicitly provided their consent to the FCA that their response could be published. It would also apply the same provisions to the BoE in respect of its functions concerning CCPs and CSDs. It would also insert a new section into FSBRA 2013 to create the same obligation for the PSR.

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[63] The senior managers and certification regime currently in place for regulated financial institutions "aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence" (FCA, 'Senior managers and certification regime', 22 September 2022).

[64] Explanatory notes, p 155.

3.2 Part 2: Access to cash

Cash access services

Clause 51 would introduce schedule 8, which concerns cash access services. Schedule 8 would insert a new part into FSMA 2000 requiring the Treasury to publish a cash access strategy, permitting the Treasury to designate legal persons involved in providing cash deposit and withdrawal services and providing the FCA with powers over those persons.

It would require the FCA to seek to ensure reasonable provision of cash access services. It would give the FCA powers to make rules that apply to designated persons to achieve this. The FCA would be able to give a direction to a person designated under this section requiring a person to take an action, refrain from taking an action, or to review or take remedial action in respect of past conduct. It also sets out other requirements for the FCA in exercising its powers under this section.

The government has stated that these measures would give the FCA the necessary powers to address cash access at both a national and local level.[65] The FCA could, for example, require firms not to close a cash access service if there was no suitable alternative.

Wholesale cash distribution

Clause 52 introduces schedule 9, which would make changes to the Banking Act 2009 and FSBRA 2013 concerning wholesale cash distribution.

The wholesale cash industry purchases banknotes from the BoE and coins from the Mint at face value.[66] Wholesale cash in transit providers then move cash from where it has been printed or minted to cash centres for distribution. Cash centres then receive, store and prepare cash for circulation to the public.

The government has stated that the decline in the transactional use of cash has put pressure on the business models of the wholesale cash network. While at present it does not consider any of the operators in the network to be systemic, it is possible that consolidation in the industry, following mergers, would lead them to be so.

Schedule 9 would give the BoE powers to oversee the wholesale cash industry. It would establish a market oversight regime in which the BoE could regulate the market activities of the industry. It would also create a

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[65] Explanatory notes, p 60.
[66] Explanatory notes, p 61.

prudential regime, under which the BoE would have the ability to prudentially regulate a systemic entity in the market should one form in the future.

3.3 Part 3: Performance of functions relating to financial market infrastructure

Clause 53 concerns entities determined to provide critically important functions or which are systemically important. These are CCPs and CSDs (regulated by the BoE) and CRAs and RIEs (regulated by the FCA).

In July 2021 the Treasury launched a consultation on a senior managers and certification regime (SM&CR) for financial market infrastructures (FMIs).[67] In its response to this consultation it said it believed "the existing regulatory regimes do not make sufficient provision for the oversight of individual conduct within these entities".[68]

Clause 53 introduces schedule 10, which would insert a new section into FSMA 2000 to provide more oversight of individual conduct within these firms. It would create a senior managers and certification regime which could be applied to CCPs and CSDs. The Treasury would also be able to apply the regime to CRAs and RIEs. The relevant regulator would make rules under the regime.

The regime provided for in the bill would be similar to the existing senior managers and conduct regime for banks, insurers and other authorised persons set out in FSMA 2000.[69]

3.4 Part 4: Central counterparties in financial difficulties

Clause 54 introduces schedule 11, which would make provision for a special resolution regime for CCPs where all or part of their business is in, or is likely to be in, financial difficulties. The government considers that the failure of a CCP could undermine the stability of the entire financial system and therefore normal insolvency proceedings are not appropriate.[70] The aim of this part of the bill is to bring the UK's regime for managing the failure of a CCP into line with guidance published by the international Financial Stability Board.[71]

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[67] HM Treasury, 'Senior managers and certification regime for financial market infrastructures: Consultation response', June 2022.
[68] HM Treasury, 'Senior managers and certification regime for financial market infrastructures: Consultation response', June 2022, p 7.
[69] Explanatory notes, p 61.
[70] Explanatory notes, p 65.
[71] Explanatory notes, p 65.

In 2021 the government consulted on new powers for the resolution of CCPs. In its response, the government said that, overall, respondents welcomed the proposed expansion of the UK resolution regime for CCPs and were broadly in agreement with the proposed framework.[72]

Schedule 11 would give the BoE powers to stabilise a CCP. It is intended that these provisions would mean the CCP and its members bore the losses resulting from its failure.[73]

3.5 Part 5: Insurers in financial difficulties

Clause 55 introduces schedules 12 and 13 concerning insurers in financial difficulties. Insurers are subject to a modified insolvency regime because of the significant impact an insurer's failure can have on individuals relying on life insurance payments as a primary income and businesses unable to operate without insurance.[74] The measures in schedules 12 and 13 clarify and expand the existing protections available to an insurer and its policyholders when an insurer is undergoing insolvency or write-down procedures.

The measures provided for by clause 55 would, broadly:[75]

- clarify and widen the scope of write-down powers, under which the courts can reduce the value of an insolvent insurer's contracts instead of making an order to close the insurer down
- introduce a moratorium on suppliers and some financial counterparties using ipso facto clauses to terminate contracts if an insurer is undergoing certain insolvency procedures
- introduce a moratorium on life insurance policyholder surrender rights (under which a life insurance policy holder surrenders a contract in favour of cash if an insurer is in financial difficulties)

The government consulted on its proposed measures in this area in May 2021 and made some modifications as a result of the feedback it received.[76]

3.6 Part 6: Miscellaneous

Clause 56 would provide that any responsibilities given to the FCA or PRA

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[72] HM Treasury, 'Expanded resolution regime: Central counterparties—Government response to consultation', March 2022, p 2.
[73] Explanatory notes, p 67.
[74] Explanatory notes, p 69.
[75] House of Commons Library, 'Financial Services and Markets Bill 2022–23', 30 November 2022, pp 56–7.
[76] HM Treasury, 'Amendments to the insolvency arrangements for insurers: Response to consultation', 7 April 2022.

as a result of the bill would be treated as functions of that regulator.

Clause 57 would give the regulators powers to take action against firms that were authorised but are no longer authorised. The government has stated that this would allow the FCA and the PRA to take action against firms that were no longer authorised (provided they become unauthorised on or after the introduction of this bill) for misconduct while they were authorised.[77]

Clause 58 concerns change in control of a UK authorised firm. When a person decides to acquire a stake of 10% or more in a UK authorised firm it must request permission from the relevant regulator.[78] At present the regulator can approve or deny the request, or it can approve it with conditions. It can only approve it with conditions, however, if it would otherwise reject the application. Clause 58 would broaden the criteria allowing the PRA or FCA to apply conditions.

Clause 59 concerns the Financial Services Compensation Scheme, which compensates consumers and others when authorised financial services firms cannot satisfy claims. In 2020 the Office for National Statistics classified the Financial Services Compensation Scheme manager as a supervisory authority, meaning its accounts are no longer consolidated within Treasury accounts.[79] Clause 59 would make changes to FSMA 2000 to reflect this change in status.

Clause 60 would enable the Treasury to make provision about the rights and liabilities of participants in unauthorised co-ownership alternative investment funds (AIFs). This type of scheme is not currently available in the UK, but the bill would give the government powers to apply relevant rights and liabilities should it become available in the future.[80]

Clauses 61 to 64 would introduce technical changes.

Clause 65 concerns cryptoassets. Most cryptoasset activities are not currently regulated. The government considers that this presents risks to consumers, market integrity, and possibly to financial stability and could mean the UK missing out on the possible benefits of cryptoasset technologies.[81] Clause 65 would add cryptoassets to the list of investments which could be regulated and insert a definition of cryptoassets and cryptoasset activities into FSMA 2000. The Treasury would have the power to amend this definition by secondary legislation. The government has stated that this would enable it "to respond quickly to developments in the

[77] Explanatory notes, p 73.
[78] Explanatory notes, p 76.
[79] Explanatory notes, p 74.
[80] Explanatory notes, p 75.
[81] Explanatory notes, p 77.

technology that underlies these cryptoassets”.[82]

Clause 66 would replace the current cash ratio deposit scheme with a Bank of England levy. The cash ratio deposit scheme is a mechanism whereby deposit-taking institutions place deposits with the BoE, without interest.[83] Interest the BoE earns on these deposits is then used to fund the BoE’s monetary policy and financial stability operations. Cash ratio deposit scheme contributions are linked to changes in gilt yields, which has resulted in unpredictability for contributors. The scheme has also not met the costs of the BoE’s policy functions.

The Bank of England levy would require eligible institutions to contribute a fixed amount to the BoE. The Treasury would be able to set out how the BoE calculates the levy and allocates the charge to eligible institutions in secondary legislation, subject to the affirmative procedure. The government intends for the amount payable from each institution to be proportional to its liability base above a threshold.[84]

Clause 67 would make amendments consequential to clause 66.

Clause 68 concerns ‘authorised push payment’ (APP) scams. This is when someone is tricked into making a payment to a fraudster under false pretences, for example, where someone is deceived into authorising a payment to a person for something they believe at the time is a legitimate purchase. Between January and June 2022, £249.1mn was lost to APP scams.[85]

At present there is a voluntary code, the contingent reimbursement model code, which aims to reduce both the occurrence and impact of APP scams, and to give people the confidence that if they fall victim to an APP scam and have acted appropriately they will be reimbursed.[86] The government has stated that the varying approaches to reimbursement by payment services providers have led to inconsistent levels of protection for scam victims.[87]

In November 2021 the PSR launched a consultation on tackling APP scams which proposed introducing mandatory reimbursement for APP scams which occur over the faster payments scheme.[88]

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[82] Explanatory notes, p 78.
[83] Explanatory notes, p 79.
[84] Explanatory notes, p 80.
[85] Payment Systems Regulator, ‘App scams’, December 2022.
[86] Payment Systems Regulator, ‘App scams’, December 2022.
[87] Explanatory notes, p 76.
[88] Payment Systems Regulator, ‘CP21/10 authorised push payment (APP) scams consultation paper’, 18 November 2021.

Clause 68 would clarify that the PSR is not prohibited under regulation 90 of the Payment Services Regulations 2017 from implementing mandatory reimbursement in cases of authorised push payment scams. It would also require the PSR to implement a requirement for reimbursement in cases of authorised push payment scams where the transfer took place over the faster payments scheme. In May 2022 the government said it intended to enable the PSR to take regulatory action by clarifying that it could use its existing regulatory powers to require reimbursement in cases of APP scams in designated payment systems.[89]

Clause 69 would insert schedule 14 concerning credit unions. In the 2020 budget the government said it would bring forward legislation to allow credit unions to offer a wider range of products and services to their members to support "their vital role in financial inclusion".[90]

Clause 69 would add hire purchase agreements, conditional sale agreements and insurance distribution services to the list of services credit unions could offer under the Credit Unions Act 1979. It would allow the Treasury to add further services by secondary legislation, subject to the affirmative procedure.

Clause 69 would also require credit unions to submit annual returns to the FCA and adopt year of account provisions in the Co-operative and Community Benefit Societies Act 2014. It would clarify that credit unions can lend to and borrow from each other even when there is no membership link.

Clause 70 concerns insurance and reinsurance for terrorism. In some instances, the Treasury intervenes in the (re)insurance market when the risks would not otherwise be covered by the market because commercial (re)insurers consider the potential financial losses are too great. In cases of terrorism, the Treasury has agreements under the Reinsurance (Acts of Terrorism) Act 1993 with reinsurers under which it offers an unlimited guarantee (in the form of an unlimited loan) should they exhaust their funds in the event of pay-outs pursuant to a terrorist attack.[91]

Under clause 70 any public sector bodies that benefited from an arrangement under the 1993 act could be obliged to comply with any requirements associated with their public sector classification and/or to appoint an accounting officer. The requirements could include matters relating to auditing, accounting, budgeting, arm's length bodies or public sector bodies.

[89] HM Treasury, 'Government approach to authorised push payment scam reimbursement', 10 May 2022.
[90] HM Treasury, 'Budget 2020', 12 March 2020.
[91] Explanatory notes, p 80.

Clause 71 would make several "minor technical amendments" to the Banking Act 2009.[92]

3.7 Part 7: General provisions

Clause 72 provides explanations of terms used in the bill.

Clause 73 states that the regulators' duties to consult arising from the bill could be fulfilled by actions taken before the commencement of the bill.

Clause 74 concerns financial provision.

Clause 75 would give the government the power to make regulations making provisions consequential on provisions of the bill. These would be subject to the negative procedure except if they were amending primary legislation. If amending primary legislation, the draft affirmative procedure would be used.

Clause 76 states that regulations made under the bill would be exercisable by statutory instrument.

Clause 77 states that the territorial extent of the bill would be to the whole of the UK, except clauses 69 and 70 which would not extend to Northern Ireland.

Clause 78 concerns commencement.

4. House of Commons stages

4.1 Second reading

Introducing the bill at second reading, then Economic Secretary to the Treasury Richard Fuller said that the government would use the provisions in the bill to repeal EU financial services legislation to "implement a more agile and more internationally competitive set of rules that will harness the potential of UK financial services to stimulate growth across the United Kingdom".[93]

Mr Fuller told the House that the bill would enable the government to modify and restate retained EU law through secondary legislation and that in most cases this secondary legislation would be subject to the affirmative procedure.[94]

[92] Explanatory notes, p 84.
[93] HC Hansard, 7 September 2022, col 278.
[94] HC Hansard, 7 September 2022, col 280.

He said that the FCA and PRA's new secondary objectives to facilitate growth and international competitiveness would be "within an unambiguous hierarchy that does not detract from their existing objectives".[95]

Speaking about the accountability mechanisms in the bill, Mr Fuller said that "the regulators are ultimately accountable to Parliament for how they further their statutory objectives".[96] He highlighted that the bill included "new requirements for the regulators to notify the relevant parliamentary committee of a consultation and to respond in writing to formal responses to statutory consultations from parliamentary committees".

Speaking for the opposition, Shadow Financial Secretary Tulip Siddiq said the opposition broadly welcomed the bill as it was.[97] She also said that, following Brexit, it was important that the UK was "able to take advantage of this opportunity to create a more competitive financial services sector and to strengthen our regulatory standards for financial stability and consumer protection outside the UK".[98] She argued that allowing the City to "thrive" would be important for generating tax receipts needed to fund public services.

Ms Siddiq emphasised the importance of the UK's trade with the EU in financial services to the UK's economy. She said while the industry agreed it would not be possible at this stage to seek regulatory equivalence decisions from the EU, the government should aim to finalise a memorandum of understanding on regulatory co-operation and negotiate with the EU for the mutual recognition of professional qualifications for service sectors.[99]

Ms Siddiq also argued that the EU could be "overly restrictive" in some areas of financial regulation and welcomed the fact that the bill would enable regulators to take a "more outcomes-based approach" to areas such as financial technology (fintech).[100]

4.2 Committee stage

4.2.1 Government amendments

Power to replace references to EU directives

The committee passed without division a government amendment to clause 5 concerning the power to replace references to EU directives in

[95] HC Hansard, 7 September 2022, col 281.
[96] HC Hansard, 7 September 2022, col 281.
[97] HC Hansard, 7 September 2022, col 285.
[98] HC Hansard, 7 September 2022, col 285.
[99] HC Hansard, 7 September 2022, col 286.
[100] HC Hansard, 7 September 2022, col 286.

legislation.[101] Previously, clause 5(1) stated that the government could amend legislation to replace references to EU directives. The amendment added the words "if any" to the clause. As a result, the government would be able to remove these references without replacing them.

Regulation of cryptoassets

Government amendment 22 and new clause 14, which concerned cryptoassets, were debated together. Economic Secretary to the Treasury Andrew Griffith stated that the purpose of amendment 22 was to specify that cryptoassets would be within the scope of the 'designated activities regime' (DAR) provided for in clause 8.[102] New clause 14, which became clause 65 in the bill as introduced in the House of Lords, would specify that cryptoassets were included in the list of activities the performance of which requires an application to the FCA for authorisation, under FSMA 2000. Both of these amendments were agreed without division.

Shadow Financial Secretary to the Treasury Tulip Siddiq said the opposition welcomed both the amendments. She said it was a "welcome and important move that will help to prevent high-risk cryptoassets from being falsely advertised to the public".[103] Ms Siddiq asked Mr Griffith whether the definition of cryptoassets was broad enough to capture financial promotions of "as yet non-existent cryptoassets" and "how the broad-ranging definition of 'crypto' used in clause 8 takes account of the fact that the bill only brings stablecoins into payment regulation". Mr Griffith replied he believed the definition was broad enough and that "the intention is clearly to allow sufficient flexibility to broaden the perimeter".

Engagement with parliamentary committees

Government amendments 3 and 4 concerned clause 36 covering the regulators' engagement with parliamentary committees. These amendments corrected a "drafting error" so that the FCA and PRA would need to show they had had regard to the regulatory principles rather than how the proposed rules were compatible with them.[104] They were agreed without division.

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[101] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 25 October 2022, session 2022–23, 3rd sitting, col 94.

[102] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 25 October 2022, session 2022–23, 4th sitting, col 109.

[103] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 25 October 2022, session 2022–23, 4th sitting, col 111.

[104] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 27 October 2022, session 2022–23, 6th sitting, col 186.

Ms Siddiq said the opposition was "pleased to see a strengthened role for the Treasury Committee in scrutinising financial services regulation".[105] She noted, however, that industry group TheCityUK had argued 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". She asked the minister for his views on TheCityUK's proposals for an amendment to give the Treasury powers to require regulators to report specified operational performance metrics in consultation with the committee. Mr Griffith referenced remarks made in an earlier sitting of the committee that day that the government was familiar with the proposal and was prepared to look at that area.[106]

Payment Systems Regulator

The government moved new clause 13 (clause 49 in the bill as introduced in the House of Lords). This would make the chair of the PSR a member of the board of the FCA. Speaking to the new clause, Mr Griffith said that "since the PSR was established in 2014, the roles of the PSR chair and the FCA chair were performed by the same person" and that because of this the PSR chair had always been on the FCA board.[107] However, the roles are now held by different people. Mr Griffith said the new clause would "help continued effective co-operation between the FCA and the PSR". Amendment 23, moved with new clause 13, would provide for this change to come into effect two months after royal assent.

Tulip Siddiq said the opposition supported the new clause but asked how the Treasury could guarantee the chair of the PSR did not influence FCA decisions if it was not appropriate.[108] Mr Griffith replied he did not anticipate many conflicts, but that these would be for the chair to resolve.

Central counterparties

Fifteen technical government amendments to schedule 11, which concerns CCPs, were agreed without division.[109]

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[105] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 27 October 2022, session 2022–23, 6th sitting, col 186.
[106] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 27 October 2022, session 2022–23, 5th sitting, col 157.
[107] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 8th sitting, col 242.
[108] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 8th sitting, col 244.
[109] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, cols 224–5.

Write-down orders

Two government amendments to schedule 12, which concerns write-down orders, were agreed without division.[110] Mr Griffith explained the rationale for the amendments:

> Amendments 32 and 33 ensure that the drafting meets full policy intent. Amendment 32 ensures that the moratorium on legal proceedings does not interfere with certain collateral and security arrangements among participants in the financial markets. It also provides the Treasury with the power to amend the list of exclusions, which is given legal force by amendment 33. Both amendments mirror exclusions and a similar power to amend the exclusions contained in schedule 13.

Regulation-making powers

The government moved an amendment to clause 70 (clause 75 in the bill as introduced in the House of Lords). Mr Griffith stated that this amendment "made a technical change to clause 70 to ensure that the power to restate and modify saved legislation can rely on the power to make ambulatory references provided for by the clause".[111] The amendment was agreed without division.

Pre-commencement consultation

Three government amendments to clause 67 (clause 73 in the bill as introduced in the House of Lords) on pre-commencement consultation were agreed without division. The amendments broadened the scope of this clause so as to include any obligation to consult introduced by the bill.[112]

4.2.2 Cross-party and opposition amendments defeated on division

A cross-party amendment tabled in the names of Emma Hardy (Labour MP for Kingston upon Hull West and Hessle), Siobhain McDonagh (Labour MP for Mitcham and Morden) and Kevin Hollinrake (Conservative MP for Thirsk and Malton, who was appointed a minister in the Department for Business, Energy and Industrial Strategy on the day the amendment was debated) concerned financial inclusion. The amendment would have required the regulators to have regard to financial inclusion when making rules.

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[110] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, col 227.
[111] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 8th sitting, col 243.
[112] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 8th sitting, col 243.

Mr Griffith responded that he "would like to take this matter away" to "consider the matter further".[113] However, Ms Hardy said she would push the amendment to a vote because:

> 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.

The amendment was defeated by nine votes to five.

Labour tabled several amendments and new clauses seeking to ensure access to cash free of charge.[114] The SNP also tabled an amendment seeking to achieve the same outcome. Ms McDonagh spoke to Labour's proposed amendments, saying "without government intervention, we are losing free access to cash in our society"[115]. In response, Mr Griffith said the government was concerned that "taking a blanket approach" might have unintended consequences that might "stifle innovation by industry to support cash access".[116]

The SNP amendment was withdrawn. The committee divided on the first Labour amendment in the group. It was defeated by nine votes to six.[117]

The Labour Party also tabled a new clause that would have required the government to regulate buy now, pay later schemes within 28 days of the passage of the bill. Speaking to the amendment, Ms Hardy argued that these schemes risked pushing people to spend money that they did not have, without adequate protection against mis-selling.[118] She said that evidence from providers showed that buy now, pay later products drove people to spend more money.

Mr Griffith replied that the amendment would require the government to take action too quickly and without time to "do it in a thoughtful way and by consulting with the sector".[119] He argued that regulating this area could lead

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[113] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 27 October 2022, session 2022–23, 6th sitting, col 178.
[114] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, col 203.
[115] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, col 207.
[116] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, col 213.
[117] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 1 November 2022, session 2022–23, 7th sitting, col 213.
[118] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 9th sitting, cols 252–3.
[119] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 9th sitting, col 257.

to more demand for illegal credit, and that credit can be "a valued lifeline".

The amendment was defeated by eight votes to six.

Ms Siddiq moved an amendment that would have required the government to produce a national strategy on detecting, preventing and investigating fraud and associated financial crime.[120] She argued that while Labour supported the measures on APP scams in the bill it considered it a missed opportunity not to include measures on other types of fraud such as theft and online scams. In response, Mr Griffith said a strategy to tackle fraud was forthcoming.[121] The new clause was defeated on division by nine votes to six.

The Labour Party moved two new clauses that would have required the FCA and PRA to report annually on how they had considered the specific needs of mutual and cooperative financial services.[122] Moving the amendments, Ms Siddiq said that many of these societies had been "threatened with demutualisation in recent years" because "credit unions, building societies and co-operative banks work in an outdated regulatory regime, leaving them unable to compete on a level playing field with standard providers".[123] Mr Griffith replied that a requirement to produce an annual report would not be the best way of protecting these institutions. The amendment was defeated by eight votes to five.

The Labour Party tabled a new clause that would have required the Treasury to publish an updated green finance strategy within three months of the passage of the act.[124] It would have required the strategy to include a green taxonomy and sustainability disclosure requirements. This updated strategy would have followed the original green finance strategy, published in July 2019. Speaking to the amendment, Ms Siddiq said that regulatory certainty was required to bring investment to the sector. Mr Griffith highlighted that the UK was ranked number one in the global green finance index.[125] He said that the government had recently undertaken a call for evidence on the topic and would update the strategy within the timeframe required by the amendment.[126]

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[120] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 9th sitting, col 267.
[121] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 9th sitting, col 272.
[122] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 10th sitting, col 277.
[123] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 10th sitting, col 278.
[124] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 10th sitting, col 281.
[125] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 10th sitting, col 282.
[126] House of Commons Public Bill Committee, 'Financial Services and Markets Bill', 3 November 2022, session 2022–23, 10th sitting, col 277.

The amendment was defeated by eight votes to six.

4.3 Report stage

At report stage in the House of Commons four new clauses were added and eleven amendments were agreed to. These were all proposed by the government. In addition, one new clause with cross-party support was defeated on division and two new clauses proposed by the opposition were also defeated on division.

4.3.1 New clause 17 and amendments 16 and 18: Power to require regulators to publish information

The government's new clause 17 (clause 37 in the bill as introduced in the House of Lords) would give the Treasury a new power to require the FCA and the PRA to publish information at any time on any subject. This would be in addition to the current requirement to provide an annual report to the Treasury (in the case of the FCA) or the chancellor (in the case of the PRA). The government's amendment 16 changed clause 45 (now clause 47) so that it would give the Treasury the same power in respect of the Bank of England, and amendment 18 amended schedule 7 to the same end in respect of the PSR.

Speaking to new clause 17, Mr Griffith said that the government was introducing it in response to comments in committee stage from both sides of the House about the importance of holding the regulators to account for their performance.[127] He said that members had argued that to support scrutiny there should be regular reporting on the regulators' performance beyond the annual report to the Treasury.

New clause 17 and related amendments were added without division.

4.3.2 New clause 18: Membership of statutory panels

New clause 18 (clause 44 in the bill as introduced in the House of Lords) would disqualify those who were paid by a regulator, the Bank of England or the Treasury from being appointed to a statutory advisory panel, subject to any exemptions the Treasury set out in regulations. Mr Griffith said this would codify the current approach taken by regulators and ensure all statutory panels were external and independent.[128]

The clause was added without division.

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[127] HC Hansard, 7 December 2022, col 387.
[128] HC Hansard, 7 December 2022, col 388.

4.3.3 New clause 19: Consultation on rules

New clause 19 (now clause 50), would introduce a new requirement for the FCA, PRA and PSR to publish the names of respondents to their consultations on proposed new rules if respondents have consented. Mr Griffith said this would address points raised in committee by former Economic Secretary to the Treasury Richard Fuller, and Liberal Democrat Spokesperson for the Treasury Sarah Olney.[129]

The clause was added without division.

4.3.4 New clause 20: Unauthorised co-ownership alternative investment funds

Government new clause 20 (now clause 60) would enable the Treasury to make provision about the rights and liabilities of participants in unauthorised co-ownership alternative investment funds. The government said in its explanatory statement to the clause that this would be "similar to that made in relation to authorised co-ownership schemes in chapter 3A of part 17 of the Financial Services and Markets Act 2000".

Speaking to this new clause, Mr Griffith said it would ensure that unauthorised contractual schemes, a new type of fund, would be commercially viable if introduced. He said this type of fund could bring benefits to the UK economy:

> The proposed fund has the potential to improve the competitiveness of the UK by filling a gap in the UK's existing fund offering and supporting the domestic growth agenda by facilitating greater investment in UK real estate by UK funds.[130]

The new clause was added without division.

4.3.5 Amendments 8 to 11: Requirement to consult when removing EU-derived rules or amending or replacing EU-derived rules to reduce regulatory burdens

Government amendments 8 to 11 amended clause 6 concerning the regulators' requirements to consult on rules when replacing EU law. In the clause before it was amended the regulators were exempt from consulting on rules replacing retained EU law only if they were not making material changes.[131] Mr Griffith explained that the amendments would create a

[129] HC Hansard, 7 December 2022, col 388.
[130] HC Hansard, 7 December 2022, col 390.
[131] HC Hansard, 7 December 2022, col 390.

blanket exemption from consulting if the regulators were removing EU-derived rules without replacements. They would also allow the Treasury to exempt regulators from consultation requirements when amending EU-derived rules or replacing EU law if the only material effect of the change was to reduce regulatory burdens. Mr Griffith said this would mean regulators could take a "proportionate approach to consultation, accelerate the repeal of retained EU law, and not let the requirement to consult be an obstacle or delaying factor".[132]

The amendments were agreed without division.

4.3.6 Other government amendments

Other government amendments were agreed without debate or division. Amendments 12, 13, 14 and 15 added panels to the list of those new clause 19 (clause 44) would apply to. Amendment 17 corrected a drafting error concerning the definition of digital settlement asset exchange provider.

4.3.7 New clause 7: Access to cash

New clause 7 was tabled by Siobhain McDonagh (Labour MP for Mitcham and Morden) and supported by 89 other MPs including those from the Conservative Party, Liberal Democrat Party, SNP and DUP. It sought to protect access to cash by requiring the Treasury to make regulations to guarantee a minimum level of access to free cash access services in the UK.

Ms McDonagh argued that "it cannot be right that in 2022 almost a quarter of our cash machines charge people to access their own money".[133] She said that the increasing cost of living meant that reliance on cash was increasing. She said protecting access to cash in this way would protect the elderly, the disabled and the most vulnerable.[134]

Speaking about the amendment, Mr Griffith said that "there remains extensive access to cash across the UK as a whole" and that "over 95 percent of people live within 2,000 metres of a free cash point".[135] He said that the industry-led initiative LINK was delivering new free-to-use cash points. He said the bill would put an access to cash obligation on the regulators for the first time and that there would be consequences if the regulators and the industry voluntary sector did not solve the issue.[136] He said the bill gave the government "flexibility in future, by means of a

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[132] HC Hansard, 7 December 2022, col 390.
[133] HC Hansard, 7 December 2022, col 416.
[134] HC Hansard, 7 December 2022, col 417.
[135] HC Hansard, 7 December 2022, col 390.
[136] HC Hansard, 7 December 2022, col 445.

direction statement to the industry, to mandate free cash machines”.[137]

Mr Griffith also said new clause 7 could lead to unintended consequences. He said he did not want initiatives in this area to be “prejudiced by artificially rushing to statute”.[138]

The new clause was defeated on division by 271 votes to 206.[139]

4.3.8 New clause 1: National strategy on financial fraud

The opposition moved new clause 1, which would have required the Treasury to publish a national strategy for the detection, prevention and investigation of fraud and associated financial crime. The strategy would have had to include arrangements for a data-sharing agreement between law enforcement agencies, regulators and others to track stolen money.

Speaking to the new clause, Ms Siddiq said the National Audit Office had said the government did “not understand the full scale of the fraud epidemic”.[140] She argued that families and business had lost large amounts of money to fraud and scams. Ms Siddiq said that she would not withdraw the clause because Mr Griffith had said the government would publish a fraud strategy before Christmas, and that it was currently promising this early in the new year.

On data sharing, Ms Siddiq said leaders from the financial services sector thought “the government’s approach of placing data-sharing responsibilities on the banks alone” allowed “tech-savvy criminals to get rich at the public’s expense”.[141] She said the Labour Party’s proposal would put in place a data-sharing arrangement that extended beyond banks to include social media companies, cryptoasset firms, payment system operators and other platforms that were exploited by criminals.

Responding, Mr Griffith said the government was “dedicated to protecting the public from that devastating and sadly growing crime”.[142] He said it would put resources into frontline policing to help tackle fraud. On the report Ms Siddiq said the government had committed to producing, Mr Griffith said the government wanted it to be “right rather than quick”.[143]

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[137] HC Hansard, 7 December 2022, col 391.
[138] HC Hansard, 7 December 2022, col 445.
[139] HC Hansard, 7 December 2022, col 460.
[140] HC Hansard, 7 December 2022, col 402. The report cited is National Audit Office, ‘Progress combatting fraud’, 15 November 2022.
[141] HC Hansard, 7 December 2022, col 402.
[142] HC Hansard, 7 December 2022, col 446.
[143] HC Hansard, 7 December 2022, col 447.

On data sharing, Mr Griffith said the government was addressing legal challenges to data sharing in the Economic Crime and Corporate Transparency Bill, which would protect firms from civil liability. He said that the government was also regulating "the online world" through the Online Safety Bill.[144]

The new clause was defeated on division by 282 votes to 205.[145]

4.3.9 New clause 2: Local community access to essential in-person banking services

New clause 2, tabled by the opposition, would have required the Treasury and FCA to conduct and publish a review of community need for, and access to, "essential in-person banking services". It would have given the FCA the power to give directions to ensure essential in-person banking services met a minimum level of access.

Ms Siddiq said the bill would not protect face-to-face banking or access to cash.[146] She stated that since 2015 nearly half the UK's bank branches had closed, and that while banking systems would continue to innovate "the failure to protect these services risks leaving millions of people behind". She emphasised that the new clause would not prevent banks from closing under-used branches and said that services could be delivered through other models such as banking hubs.

Ms Siddiq said she would not withdraw the clause because the government had "failed to engage on this important issue".[147]

The new clause was defeated on division by 278 votes to 204.[148]

4.4 Third reading

The bill passed its third reading without division.

[144] HC Hansard, 7 December 2022, col 446.
[145] HC Hansard, 7 December 2022, col 452. At the time of writing the Online Safety Bill was awaiting report stage in the House of Commons.
[146] HC Hansard, 7 December 2022, col 403.
[147] HC Hansard, 7 December 2022, col 403.
[148] HC Hansard, 7 December 2022, col 456.

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