



HOUSE OF LORDS

House of Lords

Financial Services Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 4th March 2010, as follows—

Clauses 1 to 6
Schedule 1
Clauses 7 to 36

Schedule 2
Clauses 37 to 39

*[Amendments marked * are new or have been altered]*

**Amendment
No.**

Clause 1

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 1** Page 1, line 12, at end insert ", and
() where appropriate, direct the relevant authorities to act in accordance with the powers available to them under the relevant legislation"
LORD HAMILTON OF EPSOM
- 2** Page 1, line 12, at end insert—
"() Within 6 months of this section coming into force, the Council must prepare the report referred to in section (*Report on structure of UK financial system*) and the Treasury must lay it before Parliament."
LORD MYNERS
- 3** Page 2, line 1, leave out "may" and insert "must"
BARONESS NOAKES
LORD HUNT OF WIRRAL
- 4** Page 2, line 1, leave out "may" and insert "shall"
- 5** Page 2, line 8, after "Council," insert—
"() specify the responsibilities of each relevant authority in protecting or

enhancing the stability of the UK financial system,"

6 Page 2, line 8, after "Council," insert—

"() specify the powers each relevant authority is able to exercise in protecting or enhancing the stability of the system,"

7 Page 2, line 10, at end insert—

"() The FSA must issue a statement of policy about—

() its understanding of the objective, and

() in what circumstances and how it intends to use its powers to achieve the objective.

() Before issuing the statement of policy, the FSA must consult—

() the Treasury,

() the Bank of England, and

() such other persons as it considers will or may be affected by the statement."

8 Page 2, line 11, at end insert "and if the statement has not been revised for a period of two years or longer, the Treasury shall consult on whether or not it should be revised"

9 Page 2, line 14, at end insert ", and

() such other persons who the Treasury consider to have an interest in the statement"

10 Page 2, line 14, at end insert—

"() The Treasury shall ensure that any responses to its consultation under subsection (8) are published."

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

After Clause 1

LORD HAMILTON OF EPSOM

11 Insert the following new Clause—

"Report on structure of UK financial system

The report referred to in section 1 shall—

(a) analyse the current structure of the UK financial system with particular reference to the risks that the system carries for the United Kingdom,

(b) identify whether any changes would be desirable and, if so, what the practical implications of those changes would be,

(c) identify whether there are any issues arising from the financial systems operating in different countries and territories, including any proposals for changes to those systems."

Clause 2

BARONESS NOAKES

LORD HUNT OF WIRRAL

12 Page 2, line 19, at end insert—

"() The Council must publish its meeting dates at least 12 months in advance."

13 Page 2, line 22, at end insert "and publish its response to those risks, whether in its minutes or otherwise"

14 Page 2, line 25, at end insert "within 14 days of the date of the meeting"

15 Page 2, line 25, at end insert—

"() The minutes shall record the views of each of the members of the Council and the extent to which they are in agreement."

16 Page 2, line 28, at end insert "or market sensitive"

17 Page 2, line 33, at end insert—

"for as long as the conditions in these paragraphs are met"

18 Page 2, line 33, at end insert—

"() The Council must publish its understanding of commercial confidentiality for the purposes of subsection (5)(a)."

19 Page 2, line 34, at end insert "and must publish minutes of these meetings"

20 Page 2, line 39, at end insert—

"() Where the Council is unable to reach agreement on the exercise of its functions, the Chancellor of the Exchequer shall determine how it should exercise its functions."

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

After Clause 2

BARONESS NOAKES

LORD HUNT OF WIRRAL

21 Insert the following new Clause—

"Decisions of the Council

(1) The Council shall notify the relevant authorities of any decisions which require the relevant authorities to act or refrain from acting.

(2) The relevant authorities shall act or refrain from acting in accordance with decisions notified to them under subsection (1) provided that to do so is in accordance with the powers available to them under the relevant legislation."

Clause 3

BARONESS NOAKES

LORD HUNT OF WIRRAL

22 Page 2, line 41, leave out "Treasury" and insert "Council"

23 Page 3, line 3, leave out "Treasury" and insert "Council"

24 Page 3, line 9, at end insert "or market sensitive"

25 Page 3, line 14, at end insert—

"() Where a matter has been omitted from either the annual report or the minutes published under section 2(4) and the action involves financial assistance as defined in section 257 of the Banking Act 2009, a report should be laid before Parliament when the conditions under subsection (3) no longer apply."

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

Clause 4

BARONESS NOAKES

LORD HUNT OF WIRRAL

26 Page 3, line 29, after "England" insert—

"the relevant legislation" means, for the Financial Services Authority, the Financial Services and Markets Act 2000, and for the Bank of England, the Banking Act 2009,"

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

After Clause 4

BARONESS NOAKES

LORD HUNT OF WIRRAL

27 Insert the following new Clause—

"Identification of additional powers needed to fulfil responsibilities for financial stability"

- (1) The Treasury must prepare a report setting out the powers that are needed by the Treasury, the Financial Services Authority and the Bank of England to fulfil their responsibilities for financial stability.
- (2) If the existing powers of the Treasury, the Financial Services Authority or the Bank of England are not sufficient to allow them to fulfil their responsibilities, the report shall identify the extent to which they are not sufficient and make recommendations for remedying them.
- (3) The report must be laid before Parliament within one year of the commencement of this Act."

28 Insert the following new Clause—

"Disclosure of financial assistance to the Bank of England"

- (1) Where the Treasury provides financial assistance to the Bank of England in order to facilitate actions by the Bank of England in pursuit of its financial stability objective under section 2A of the Bank of England Act 1998, the Treasury shall lay a report setting out details of the financial assistance before Parliament.
- (2) A report under subsection (1) shall be laid as soon as possible after the provision of the financial assistance but may be delayed for as long as the Treasury considers that there would be a threat to the stability of the UK financial system if such a report were laid.
- (3) Where the laying of a report is delayed, the Chancellor of the Exchequer shall ensure that information is given on a confidential basis to those Members of Parliament whom he considers should be informed.
- (4) "Financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent)."

29 Insert the following new Clause—

"Bank of England's financial stability objective

After subsection (1) of section 2A of the Bank of England Act 1998, insert—

- "(1A) In considering that objective, the Bank must have regard to—
- (a) the economic and fiscal consequences for the United Kingdom of instability of the UK financial system;
 - (b) the effects (if any) on the growth of the economy of the United Kingdom of anything done for the purpose of meeting that objective; and
 - (c) the impact (if any) on the stability of the UK financial system of events or circumstances outside the United Kingdom (as well as in the United Kingdom)."

30 Insert the following new Clause—

"Banking Liaison Panel minutes

In section 10 of the Banking Act 2009, after subsection (4) insert—

- "(5) The Treasury must publish minutes of the meetings of the Banking Liaison Panel.
- (6) Subsection (5) does not apply to minutes or any proceedings relating to matters which are commercially confidential."

31 Insert the following new Clause—

"Financial Stability Committee minutes

In section 2C of the Bank of England Act 1998, after subsection (3) insert—

- "(4) The Bank must publish minutes of the meetings of the Financial Stability Committee.
- (5) Subsection (4) does not apply to—
- (a) minutes of any proceedings relating to matters which are commercially confidential,
 - (b) minutes of any proceedings relating to any action to be taken by the Bank, the Treasury or the Financial Services Authority the purpose of which may be impeded or frustrated by publication, or
 - (c) anything which, if published, might pose a threat to the stability of the financial systems of the United Kingdom."

32 Insert the following new Clause—

"Conformity with Banking Act 2009

For the avoidance of doubt, "the UK financial system" as used in this Act has the same meaning as "the financial systems of the United Kingdom" as used in the Banking Act 2009."

Clause 5

BARONESS NOAKES

LORD HUNT OF WIRRAL

33 Page 4, line 8, at end insert—

- "() proceedings of the Council for Financial Stability as set out in section 2 of the Financial Services Act 2010"

34 Page 4, line 9, after "Treasury" insert "and the Bank of England"

35 Page 4, line 10, at end insert—

"() In pursuing that objective, the Authority shall aim to work with other relevant bodies (including the Treasury and the Bank of England)."

The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.

After Clause 5

BARONESS NOAKES

LORD HUNT OF WIRRAL

36 Insert the following new Clause—

"Competition objective

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 2(2) (the FSA's regulatory objective), after paragraph (d) insert—
"e) competition".
- (3) In section 2(3) omit paragraphs (f) and (g).
- (4) After section 6, insert—

"6A Competition

- (1) The competition objective is: regulating in a way which facilitates competition in financial services and markets in the United Kingdom between those who are subject to any form of regulation by the Authority, or those in any category of authorised participants, and in a way which minimises the adverse effect on competition that may arise from anything done in the discharge of the Authority's general functions.
- (2) This competition objective is without prejudice to the statutory powers of the Office of Fair Trading and the Competition Commission."

Clause 6

BARONESS NOAKES

LORD HUNT OF WIRRAL

37 Page 4, line 13, leave out subsections (2) and (3)

LORD MYNERS

38 Page 4, line 13, leave out "2(2)" and insert "2 (the FSA's general duties)—

(a) in subsection (2)"

39 Page 4, line 14, at end insert ", and

(b) in subsection (3) (matters to which FSA must have regard in discharging its general functions), after paragraph (g) insert—

"(h) the desirability of enhancing the understanding and knowledge of members of the public of financial matters (including the UK financial system)""

40 Page 4, line 15, at end insert—

"() In section 5(2) (the protection of consumers), after paragraph (b) insert—

"(ba) any information which the consumer financial education body has

provided to the Authority in the exercise of the consumer financial education function;".

BARONESS NOAKES

LORD HUNT OF WIRRAL

41 Page 4, line 19, leave out "Authority" and insert "Treasury"

LORD HODGSON OF ASTLEY ABBOTTS

42 Page 4, line 19, leave out "consumer" and insert "customer"

43 Page 4, line 26, leave out "consumer" and insert "customer"

LORD HODGSON OF ASTLEY ABBOTTS

BARONESS NOAKES

44 Page 4, leave out lines 27 to 30 and insert—

"() promoting an understanding of the basic principles of personal financial management, including management of debt, control of spending, living within an income and protection against disaster;

() promoting an understanding of the basic principles of planning for the future, including the process of saving to meet financial objectives;"

BARONESS NOAKES

LORD HUNT OF WIRRAL

45 Page 4, line 27, at end insert "and saving"

46 Page 4, line 29, leave out "supply" and insert "purchase"

47 Page 4, line 32, leave out from "dealing" to end of line 33

48 Page 4, line 36, after "and" insert "generic"

LORD HODGSON OF ASTLEY ABBOTTS

49 Page 4, line 38, leave out "consumer" and insert "customer"

BARONESS NOAKES

LORD HUNT OF WIRRAL

50 Page 5, line 3, at end insert—

""financial planning" means the basic principles of personal financial management including management of debt, control of spending, living within income levels, protection against unplanned financial problems and planning for the future (including the process of saving to meet financial objectives)"

VISCOUNT ECCLES

Viscount Eccles gives notice of his intention to oppose the Question that Clause 6 stand part of the Bill.

Schedule 1

LORD HODGSON OF ASTLEY ABBOTTS

51 Page 52, line 24, at end insert ", and which at any time shall comprise at least 8 members but not more than 12"

BARONESS NOAKES

LORD HUNT OF WIRRAL

52 Page 52, line 24, at end insert—

"() The board must include at least two members who represent the interests of consumers."

53 Page 52, line 24, at end insert—

"() Members of the board may be persons who are employed by the body except that such persons must not comprise a majority of the board."

54 Page 52, line 24, at end insert—

"() The board must include persons who have knowledge and experience of training, education and consumer affairs."

55 Page 52, line 24, at end insert—

"() The board must include persons who have knowledge of financial knowledge and education in different parts of the United Kingdom."

56 Page 52, line 24, at end insert—

"() The board must include at least two members who are or who represent authorised persons."

57 Page 52, leave out lines 25 to 31 and insert—

"Appointment of members

- (1) A member of the board is to be appointed—
 - (a) for at least one and no more than four years, and
 - (b) on such other terms and conditions as the Authority thinks fit.
- (2) A member is to hold and vacate office in accordance with the terms and conditions of his appointment, subject as follows.
- (3) A member may resign at any time by notice in writing to the Authority.
- (4) The Authority may dismiss him by notice in writing on the grounds that—
 - (a) the member has been absent from meetings of the board without permission of the board for a period of more than three months;
 - (b) the member is the subject of a bankruptcy restrictions order (or interim order);
 - (c) the member has had his estate sequestrated in Scotland or, under Scottish law, has made a composition or arrangement with, or granted a trust deed for, his creditors;
 - (d) the member is unfit for office by reason of misconduct;
 - (e) the member has failed to comply with the terms of his appointment; or
 - (f) the member is otherwise unable, unfit or unwilling to perform his functions.
- (5) The Treasury must approve the appointment, removal and terms and conditions of the chair and the chief executive.
- (6) Where a member ceases to be a member otherwise than on the expiry of his term of office he may not receive any compensation in respect of loss of office.
- (7) A person who has ceased to be a member is eligible for re-appointment—
 - (a) if he is an employee of the board on any number of occasions while he

remains an employee; and

(b) in any case no more than twice."

LORD HODGSON OF ASTLEY ABBOTTS

58 Page 52, leave out lines 25 to 27 and insert—

"() The members of the board may be appointed by the Authority, or such other body as the Minister may designate, and the Authority or designated body must ensure that at least one quarter of the members represent the interests of members of the public and at least one quarter represent educational bodies."

LORD MYNERS

59 Page 52, line 31, at end insert—

"() The Authority may appoint a person to be a member of the board only if it is satisfied that the person has knowledge or experience which is likely to be relevant to the exercise by the body of the consumer financial education function."

BARONESS NOAKES

LORD HUNT OF WIRRAL

60 Page 52, line 31, at end insert—

"Remuneration controls

- (1) The constitution of the consumer financial education body must provide for the remuneration arrangements for members of the board and for other members specified by the Authority to be approved by the Authority.
- (2) If the remuneration arrangements provide that a member of the board or any employee of the board could receive remuneration in any period of 12 months of a sum in excess of £150,000 or such higher sum as is notified to the board by the Treasury, they must also be approved by the Treasury."

LORD HODGSON OF ASTLEY ABBOTTS

61 Page 53, line 11, at end insert—

"() setting out how it has used its resources in the most efficient, effective and economic way;"

BARONESS NOAKES

LORD HUNT OF WIRRAL

62 Page 53, line 22, leave out lines 22 to 28

63 Page 53, line 30, leave out lines 30 to 34

64 Page 53, line 34, at end insert—

"Interests of consumers

In discharging the consumer financial education function, the consumer financial education body must—

- (a) act in the best interests of the persons intended to benefit from its activities, and
- (b) act on the basis of the identified needs of those persons."

LORD HODGSON OF ASTLEY ABBOTTS

65 Page 54, line 8, leave out line 8

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 66** Page 54, line 8, leave out "and" and insert—
"() persons who might be required to contribute to its funding under paragraphs 12 and 13 of this Schedule; and"

- 67** Page 54, line 10, at end insert—
"() It shall be sufficient for the purposes of paragraph (e) of subsection (4) for the consumer financial education body to consult persons or bodies which in its opinion represent the views of the persons mentioned in that paragraph."

LORD HODGSON OF ASTLEY ABBOTTS

- 68** Page 54, line 13, at end insert "and shall include with the published budget a statement saying whether the budget, as approved by the Authority, is in the opinion of the board adequate to carry out the functions required of it in the financial year"

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 69** Page 54, line 32, at end insert—
"() An annual plan shall also set out the longer term objectives of the consumer financial education body and how achievement of those objectives is to be measured."

- 70** Page 54, line 36, at end insert—
"() the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department;"

LORD HODGSON OF ASTLEY ABBOTTS

- 71** Page 54, leave out line 37

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 72** Page 54, line 44, at end insert—
"Annual accounts and audit
- (1) The consumer financial education body must—
 - (a) keep proper accounting records, and
 - (b) prepare a statement of accounts in respect of each financial year.
 - (2) A statement under sub-paragraph (1)(b) must be prepared by the consumer financial education body in such form as the Treasury may direct.
 - (3) The consumer financial education body must send a copy of a statement under sub-paragraph (1)(b) to—
 - (a) the Authority,
 - (b) the Treasury, and
 - (c) the Comptroller and Auditor General.
 - (4) A copy of a statement must be sent under sub-paragraph (3) within such period, beginning with the end of the financial year to which the

statement relates, as the Secretary of State may direct.

- (5) The Comptroller and Auditor General must—
- (a) examine, certify and report on a statement received under this paragraph, and
 - (b) send a copy of the certified statement and of the report on it to the Treasury as soon as possible.
- (6) The Treasury must lay before Parliament a copy of the statement and report sent under sub-paragraph (5)(b)."

73 Page 55, line 10, at end insert—

"() The consumer financial education body must send a copy of the report to the Treasury which must lay it before Parliament."

74 Page 55, leave out lines 38 and 39

LORD MYNERS

75 Page 56, line 1, at end insert "*or payment service providers*"

76 Page 56, line 4, after "persons" insert "or payment service providers"

77 Page 56, line 5, after "person" insert "or payment service provider"

BARONESS NOAKES

LORD HUNT OF WIRRAL

78 Page 56, line 7, at end insert—

"() The Authority must ensure that the proportion of the relevant costs which authorised persons will be required to contribute towards, by virtue of the rules, does not exceed a reasonable estimate of the costs associated with the activities of those authorised persons."

79 Page 56, line 7, at end insert—

"() Before making the rules, the Authority must consult the persons who may be required to make payments under the rules."

LORD MYNERS

80 Page 56, line 15, at end insert—

"() "Payment service provider" means a person who is a payment service provider for the purposes of the Payment Services Regulations 2009 as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1)."

BARONESS NOAKES

LORD HUNT OF WIRRAL

81 Page 57, line 23, after "The" insert "Authority, the"

82 Page 57, leave out lines 24 and 25 and insert "make loans"

83 Page 57, line 29, leave out "grant or"

84 Page 57, line 29, leave out "or other form of financial assistance"

85 Page 57, line 38, leave out "may" and insert "shall"

86 Page 57, leave out lines 42 and 43

VISCOUNT ECCLES

Viscount Eccles gives notice of his intention to oppose the Question that Schedule 1 be the First Schedule to the Bill.

Clause 7

BARONESS NOAKES

LORD HUNT OF WIRRAL

87 Page 5, line 18, leave out paragraph (b)

88 Page 5, line 23, leave out subsection (4)

LORD HOWARD OF RISING

89 Page 5, line 24, at end insert—

"() After section 138 insert—

"138A Reduction in regulatory burden

- (1) Before making general rules, the Authority must consider whether the regulatory burden on authorised persons as a result of the rules would increase.
- (2) If the Authority considers that the regulatory burden on the authorised persons would increase as a result of the rules, the Authority must not make the rules unless and until it has removed other general rules so that there is no overall increase in regulatory burden.
- (3) The Authority shall review at least once in every year the regulatory burden imposed by general rules and shall seek to reduce that burden by at least 5 per cent over the subsequent 12 months.
- (4) If the Authority considers that it is not able to reduce the regulatory burden in accordance with subsection (3), or if it fails to achieve a 5 per cent reduction in any year, it shall make a report to the Treasury which shall lay that report before Parliament.
- (5) In this section "regulatory burden" means the costs imposed on authorised persons and any other persons as a result of general rules."

BARONESS NOAKES

LORD HUNT OF WIRRAL

90 Page 5, line 30, leave out paragraph (b)

91 Page 5, line 34, at end insert ", and

(c) after subsection (4) insert—

"(5) If the Authority uses the powers created by this section it must send a report to the Treasury which may lay the report before Parliament as soon as is practicable."

92 Page 5, line 34, at end insert—

"() In Schedule 2, after paragraph 7 insert—

"Treasury management advice

7A Giving or offering or agreeing to give advice to persons on treasury management."

Clause 8

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 93 Page 6, line 5, after "promote" insert—
 "(a)"
- 94 Page 6, line 6, after "supervision" insert ", and
 (b) international financial stability"
- 95 Page 6, line 7, leave out "financial stability objective" and insert "objectives"
- 96 Page 6, line 7, at end insert "whilst maintaining the competitive position of the
United Kingdom in respect of financial services and markets"
- 97 Page 6, line 10, at end insert "and the protection and enhancement of the
international financial system"
- 98 Page 6, leave out lines 16 and 17
- 99 Page 6, line 17, at end insert—
 "() the desirability of European Union rules regarding regulation and
 supervision conforming with other international regulation and
 supervision"
- 100 Page 6, line 17, at end insert—
 "() In discharging the duty under subsection (1), the Authority must produce an
 annual report setting out progress made, and the report should include
 information about—
 (a) compliance in the UK with the principles set out in subsection (3)(a);
 (b) comparable progress made in other countries; and
 (c) the impact of any significant divergence between the information
 required by paragraphs (a) and (b).
 () The Authority must send a copy of the report to the Treasury which must lay a
 copy before Parliament."
- 101 Page 6, line 17, at end insert—
 "() The Authority must, consulting the Treasury, determine and review its strategy
 in relation to its duties under this section."
- 102 Page 6, line 30, at end insert—
 "() "The United Kingdom" means the whole of the United Kingdom and each of its
 constituent parts."

After Clause 8

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 103 Insert the following new Clause—
 "Bank of England
 (1) The Bank of England Act 1998 is amended as follows.
 (2) In section 2A(2), after "Treasury" insert ", the Council for Financial Stability"."
- 104 Insert the following new Clause—
 "Investment schemes constituted by contract
 (1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 237—

(a) for subsection (1) substitute—

"(1) In this Part—

(a) "unit trust scheme" means a collective investment scheme under which the property is held on trust for the participants;

"contractual scheme" means a collective investment scheme which is constituted by a contract.";

(b) for subsection (2) substitute—

"(2) "operator", in relation to—

(a) a unit trust scheme with a separate trustee, means the manager,

(b) a contractual scheme, means the manager,

(c) an open-ended investment company, means that company, and

(d) an investment partnership, means that partnership.";

(b) in subsection (3), in the list of definitions insert—

"an authorised contractual scheme" means a contractual scheme in respect of which an authorisation order is in force under any provision made in regulations under section 262 by virtue of subsection (2)(1) of that section;

"an authorised investment partnership" means an investment partnership in respect of which an authorisation order is in force under any provision made in regulations under section 262 by virtue of subsection (2)(1) of that section;"

(c) in subsection (4) after paragraph (a) insert—

"(aa) an authorised contractual scheme;

(ab) an authorised investment partnership;"

(3) After section 236 (open-ended investment companies) insert—

"236A Investment partnership

(1) In this Part "an investment partnership" means a collective investment scheme which is incorporated under the Limited Liability Partnership Act 2000 and which satisfies the purpose condition and the realisation condition.

(2) The purpose condition is that the property belongs beneficially to, and is managed by or on behalf of, a limited liability partnership ("LLP") having as its purpose the investment of its funds with the aim of—

(a) spreading investment risk; and

(b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The realisation condition is that, in relation to LLP, a reasonable investor would, if he were to participate in the scheme—

(a) expect that he would be able to realise, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of interest or shares in, or securities of, LLP held by him as a participant in the scheme); and

(b) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

- (4) In determining whether the realisation condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—
- (a) Chapter 3 of Part 18 of the Companies Act 2006;
 - (b) Chapter VII of Part VI of the Companies (Northern Ireland) Order 1986;
 - (c) corresponding provision in force in another EEA State; or
 - (d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.
- (5) Section 262 shall apply to an investment partnership as if references in that provision to an "open-ended investment company", "company" or "body" shall be to an "investment partnership".
- (6) The Treasury may by order amend the definition of "an investment partnership" for the purposes of this Part."
- (4) After section 262 (open-ended investment companies) insert—

"CHAPTER IV A

SCHEMES CONSTITUTED BY CONTRACT

262A Schemes constituted by contract

- (1) The Treasury may by regulations make provision for—
- (a) facilitating the carrying on of collective investment by a scheme constituted by contract;
 - (b) regulating such contractual schemes.
- (2) The regulations may, in particular, make provision—
- (a) for the registration in Great Britain of such a contractual scheme;
 - (b) as to the purposes for such a contractual scheme, the investments which it may issue and otherwise as to its constitution;
 - (c) as to the management and operation of such a contractual scheme and the management of its property;
 - (d) as to the powers, duties, rights and liabilities of such a contractual scheme and of other persons, including—
 - (i) the persons who direct or control its affairs;
 - (ii) its depositary (if any);
 - (iii) its auditor; and
 - (iv) any persons who act or purport to act on its behalf;
 - (e) as to the merger of one or more such contractual schemes and the division of such;
 - (f) for the appointment and removal of an auditor for such a contractual scheme;
 - (g) as to the winding up and dissolution of such a contractual scheme;
 - (h) for such a contractual scheme, or any person who directs or controls its affairs or any depositary of such a contractual scheme, to be required to comply with directions given by the Authority;

- (i) enabling the Authority to apply to a court for an order removing and replacing any person who directs or controls its affairs or any depositary of such a contractual scheme;
 - (j) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;
 - (k) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.
- (3) Regulations under this section may—
- (a) impose criminal liability;
 - (b) confer functions on the Authority;
 - (c) in the case of provision made by virtue of subsection (2)(l) authorise the making of rules by the Authority;
 - (d) confer jurisdiction on any court or on the Tribunal;
 - (e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);
 - (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
 - (g) make consequential amendments, repeals and revocations of any such legislation;
 - (h) modify or exclude any rule of law.
- (4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation."

105 Insert the following new Clause—

"Bank of England

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 2A(3), after "Treasury" insert "and the Financial Services Authority".

Clause 9

BARONESS NOAKES
LORD HUNT OF WIRRAL

106 Page 7, line 5, leave out paragraph (a)

107 Page 7, line 10, at end insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"

BARONESS NOAKES
LORD HUNT OF WIRRAL
LORD MYNERS

108 Page 7, line 11, leave out "The first"

109 Page 7, line 13, leave out subsections (7) and (8)

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 110** Page 7, line 15, after "report," insert—
"() require additional descriptions of authorised persons to be subject to the regulations,"
- 111** Page 7, line 15, after "report," insert—
"() require matters to be disclosed in an executives' remuneration report which are not required under any relevant international standards regarding the content of such reports,"

Clause 10

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 112** Page 7, line 45, at end insert—
"() When making regulations under section 9, the Treasury must have regard to international standards regarding the content of such reports.
() If there is any significant change in the international standards regarding the content of executives' remuneration reports, the Treasury must review such changes and consider whether it would be desirable to revise any regulations made under section 9."
- 113** Page 8, line 1, leave out subsection (6)
- 114** Page 8, leave out lines 11 to 14

Clause 11

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 115** Page 8, line 20, leave out "must" and insert "may"
- 116** Page 8, line 21, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 117** Page 8, leave out line 28
- 118** Page 8, leave out line 33
- 119** Page 8, line 33, at end insert—
"() When making rules about remuneration policies, the Authority must have regard to the desirability of expressing those rules as principles which should be followed, except where departure therefrom can be explained."
- 120** Page 8, line 35, after "to" insert "the Implementation Standards and"
- 121** Page 8, line 37, at end insert—
"() The general rules do not include provisions made by the Authority's remuneration code."
- 122** Page 8, line 37, at end insert—
"() If there is any significant change in the implementation standards or any other international standards about the remuneration of individuals working in the financial sector, the Authority must review such changes and consider whether it would be desirable to revise any rules made under this section."
- 123** Page 8, line 37, at end insert—

"(4A) Rules made under this section shall not have effect unless the Authority has sent a draft of the rules to the Treasury and the Treasury has made an order approving the rules.

(4B) An order under subsection (4A) is subject to the affirmative procedure."

124 Page 8, leave out lines 38 to 41

125 Page 8, line 38, leave out "The Treasury may direct the authority to" and insert "The Authority must"

126 Page 8, line 38, leave out "direct" and insert "by order require"

127 Page 8, line 41, leave out "as to the contents of the policies"

128 Page 8, leave out lines 42 and 43

129 Page 8, line 43, at end insert ", any authorised persons intended to be covered by the direction and any other persons who appear to the Treasury to have an interest in the direction"

130 Page 8, line 43, at end insert—

"() The Treasury must lay a copy of any direction issued under subsection (5) before each House of Parliament as soon as possible after it has been made."

131 Page 8, line 43, at end insert—

"() An order under subsection (5) is subject to the affirmative resolution procedure."

132 Page 9, line 5, after "may" insert "exceptionally"

133 Page 9, line 10, after "for" insert "(but not require)"

134 Page 9, line 12, at end insert—

"() If general rules contain the matters referred to in subsection (9), the general rules shall also provide for a right of referral to the Tribunal."

135 Page 9, line 16, leave out from "risks" to end of line 17

136 Page 9, line 25, at end insert—

""officer" has the same meaning as in section 10(7) of the Financial Services Act 2010;"

137 Page 9, line 27, at end insert "; and

"the Authority's remuneration code" means the code published by the Authority on 12 August 2009"

After Clause 11

BARONESS NOAKES

LORD HUNT OF WIRRAL

138 Insert the following new Clause—

"Review of sections 9 to 11

- (1) Not later than three years after the commencement of sections 9 to 11, the Treasury shall prepare a report setting out the Treasury's assessment of—
 - (a) the impact of those sections on the remuneration practices of authorised persons, and
 - (b) the desirability of those sections continuing in force with or without amendment.

- (2) Before preparing the report, the Treasury shall consult authorised persons.
- (3) The Treasury shall lay the report before both Houses of Parliament.
- (4) If the Treasury consider that the sections should not continue in force, they may by order repeal them.
- (5) If the Treasury consider that amendments are desirable to the sections, they may by order make those amendments.
- (6) An order under this section is to be subject to the affirmative procedure."

Clause 12

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 139** Page 9, line 36, leave out "must" and insert "may"
- 140** Page 9, line 37, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 141** Page 10, line 1, after "any" insert "material"
- 142** Page 10, line 4, after "specified" insert "material"
- 143** Page 10, line 15, at end insert—
"() If subsection (6) applies, the rules must allow an authorised person to make a referral to the Tribunal."
- 144** Page 10, line 20, at end insert ", except that the Authority may exclude authorised persons from the requirements of the general rules where the Authority considers that the costs imposed on those authorised persons would exceed the benefits in terms of the stability of the UK financial system"
- 145** Page 10, line 24, at end insert—
"() the authorised persons who are intended to be required to produce recovery plans; and
() any other persons who appear to the Authority to have an interest in recovery plans"
- 146** Page 10, line 26, leave out "must" and insert "may"
- 147** Page 10, line 27, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 148** Page 10, line 35, after "any" insert "material"
- 149** Page 10, line 36, after "any" insert "material"
- 150** Page 11, line 6, at end insert—
"() If subsection (7) applies, the rules must allow an authorised person to make a referral to the Tribunal."
- 151** Page 11, line 15, at end insert—
"() the authorised persons who are intended to be required to produce resolution plans; and
() any other persons who appear to the Authority to have an interest in resolution plans"
- 152** Page 11, line 22, after "(1)(b)" insert "or subsection (4)(a)"
- 153** Page 12, line 10, at end insert—

"() If subsection (2) applies, the rules must allow an authorised person to make a referral to the Tribunal."

154 Page 12, line 17, at end insert—

"() Where the person required to provide assistance under subsection (4) is not the authorised person or a director or employee of the authorised person, the skilled person shall arrange for that person to be reimbursed for any expenses incurred in complying with the requirement and to receive reasonable remuneration for such compliance."

LORD MYNERS

155 Page 12, line 30, at end insert—

"() An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section."

BARONESS NOAKES
LORD HUNT OF WIRRAL

156 Page 12, line 30, at end insert—

"() Nothing in subsection (6) overrides section 413."

157 Page 12, line 34, after "standards" insert "for the time being in force"

158 Page 12, line 36, at end insert—

"() If there is any significant change in the international standards regarding the content of recovery plans, the Authority must review such changes and consider whether it would be desirable to revise any rules made under this section."

159 Page 12, line 36, at end insert—

"(9) General rules about recovery or resolution plans made under sections 139B or 139C shall not have effect unless the Authority has sent a draft of the rules to the Treasury and the Treasury has made an order approving the rules.

(10) An order under subsection (9) is subject to the affirmative procedure."

160 Page 13, line 22, at end insert "and the Bank of England"

161 Page 13, line 23, leave out "negative" and insert "affirmative"

162 Page 13, line 38, leave out "The Authority" and insert "If the Authority considers that it is necessary in order to—

(a) maintain confidence in the UK financial system, or

(b) protect the stability of the UK financial system,

it"

Clause 13

BARONESS NOAKES
LORD HUNT OF WIRRAL

163 Page 13, line 38, leave out from "prohibiting" to end of line 41 and insert "or limiting short selling in relation to financial instruments of a specified description"

- 164** Page 13, line 41, at end insert—
"() Before making rules under this section, the Authority must consult—
(a) the Treasury, and
(b) the Bank of England."
- 165** Page 14, line 8, at end insert—
"() When making short selling rules, the Authority must have regard to any other international standards and measures taken or proposed about short selling."
- 166*** Page 14, line 8, at end insert—
"() The authority may make short selling rules under this section only if it considers that it is necessary to do so in order to—
(a) maintain confidence in the UK financial system; or
(b) protect the stability of the UK financial system."
- 167** Page 14, leave out lines 13 to 17
- 168** Page 14, line 28, leave out "The cases in which"
- 169** Page 14, line 29, leave out "include any case where" and insert "if"
- 170** Page 14, line 33, leave out "effect (or one of the effects)" and insert "intention (or one of the intentions)"
- 171** Page 14, line 35, at end insert—
"() Subsection (2) shall not apply if and to the extent that S already holds more of the relevant financial instruments than are covered by the transaction referred to in paragraph (a)."
- 172** Page 14, line 36, leave out from "by" to end of line 37 and insert "articles 76 and 80 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001"
- 173** Page 14, leave out lines 41 and 42
- 174** Page 15, line 22, after "may" insert ", after consulting the Treasury and the Bank of England,"
- 175** Page 15, line 31, at end insert—
"() The Authority shall keep emergency rules under review and shall consult those who it believes are or may be affected by the rules as to their practical impact."
- 176** Page 16, line 7, at end insert—
"() A notice issued under subsection (1) shall state the amount of the penalty which may be imposed in the event of failure to provide the required information."
- 177** Page 16, line 7, at end insert—
"() A notice issued under subsection (1) shall include a statement that the recipient should seek advice in relation to their rights in relation to the notice."
- 178** Page 16, line 16, at end insert—
"() This section does not apply to information or documents which are subject to legal professional privilege."
- 179** Page 16, line 32, at end insert—
"() Section 175 applies to information and documents required to be provided or produced under this section."

180 Page 16, line 35, after "satisfied" insert "beyond reasonable doubt"

LORD MYNERS

181 Page 17, line 6, leave out "four" and insert "three"

BARONESS NOAKES

LORD HUNT OF WIRRAL

182 Page 17, line 10, at end insert—

"() The imposition of a penalty under this section does not make any transaction void or unenforceable."

Clause 14

BARONESS NOAKES

LORD HUNT OF WIRRAL

183 Page 19, line 35, at end insert—

"(9) This section shall not come into force until the report required by subsection (10) has been approved by Parliament.

(10) The Treasury shall prepare a report setting out—

(a) the evidence that it believes demonstrates that the powers created by this section are necessary, and

(b) proposals by the Authority for their use of the powers."

184 Page 19, line 35, at end insert—

"() The Authority shall publish a statement of policy setting out how it intends to use the power under this section and in particular—

(a) how it will determine the length of a suspension or restriction under subsection (3);

(b) the circumstances in which it expects to limit a suspension under subsection (4);

(c) the circumstances in which when it expects to restrict a restriction under subsection (5);

(d) the circumstances in which it would withdraw or vary a suspension or restriction under subsection (6);

(e) the circumstances in which it will use the power to apply to all of the regulated activities of the person concerned under subsection (7); and

(f) the circumstances in which it expects to use the powers in this section in addition to those in sections 205 and 206."

Clause 16

BARONESS NOAKES

LORD HUNT OF WIRRAL

185 Page 20, line 7, leave out "P" and insert "the authorised person"

BARONESS VALENTINE

186* Page 20, line 7, at end insert—

"() No penalty may be imposed on P under this section after the end of 31st

December 2012."

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 187** Page 20, line 8, leave out "not impose a penalty" and insert "impose a penalty only"
- 188** Page 20, line 8, leave out "P" and insert "the authorised person"
- 189** Page 20, line 10, leave out from "that" to end of line 14 and insert "the authorised person—
- (a) either—
 - (i) did not know, and
 - (ii) could not reasonably be expected to have known,that P was at that time performing a controlled function without approval, or
 - (b) was instructed to undertake these activities by an authorised person or, where the authorised person was a company director or officer, who was an approved person."
- 190** Page 20, leave out lines 11 and 12 and insert—
- "(a) did not know or,
 - (b) was reckless as to whether,"
- 191** Page 20, leave out lines 11 and 12 and insert—
- "(a) knew, or
 - (b) could reasonably be expected to have known,"
- 192** Page 20, line 13, leave out "that"
- 193** Page 20, line 24, after "the" insert "authorised"

LORD MYNERS

- 194** Page 20, line 25, leave out "four" and insert "three"

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 195** Page 20, line 25, leave out "four" and insert "two"
- 196** Page 20, line 32, at end insert—
- "(8) This section shall not come into force until the report required by subsection (9) has been approved by Parliament.
 - (9) The Treasury shall prepare a report setting out—
 - (a) the evidence that it believes demonstrates that the powers created by this section are necessary, and
 - (b) proposals by the Authority for their use of the powers."
- 197** Page 20, line 34, leave out second "a" and insert "an authorised"
- 198** Page 20, line 37, leave out second "a" and insert "an authorised"
- 199** Page 20, line 40, leave out second "a" and insert "an authorised"

LORD MYNERS

- 200** Page 21, line 6, after "determining" insert "whether a penalty should be imposed"

and"

201 Page 21, line 9, at end insert—

"(ab) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;"

202 Page 21, line 13, at end insert—

"(2A) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.

(2B) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval."

Clause 17

BARONESS NOAKES

LORD HUNT OF WIRRAL

203 Page 22, line 31, leave out subsection (4)

LORD MYNERS

204 Page 22, line 31, leave out "'four" and insert "'three"

After Clause 17

LORD MYNERS

205 Insert the following new Clause—

"Publication of decision notices

(1) Section 391 of the Financial Services and Markets Act 2000 (publication) is amended as follows.

(2) In subsection (1) (which prevents the FSA and the person to whom a warning or decision notice is given or copied from publishing the notice or any details concerning it), omit "or decision notice".

(3) After that subsection insert—

"(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details."

(4) In subsection (4) (duty of FSA to publish information about a final notice), before "final notice" insert "decision notice or".

BARONESS NOAKES

LORD HUNT OF WIRRAL

206 Insert the following new Clause—

"Publication

For section 391(1) of the Financial Services and Markets Act 2000 substitute—

"(1) The Authority may publish such information about the matter to which a warning notice or decision notice relates as it considers appropriate."

Clause 18

LORD HUNT OF WIRRAL

BARONESS NOAKES

207 Page 23, line 2, leave out "the same, similar or related" and insert "common"

208 Page 23, line 3, at end insert—

"() In deciding whether an order for collective proceedings is appropriate, the court should consider—

- (a) whether other methods of redress would be more appropriate,
- (b) the representative's financial interest in seeking a collective redress order,
- (c) whether the representative has demonstrated sound substantiated grounds for asserting the cause or causes of action,
- (d) the representative's ability to manage the proceedings which may involve multiple parties,
- (e) the source of funding, and
- (f) the proportionality of costs of such proceedings to the amounts in dispute."

209 Page 23, line 6, at end insert—

"() A person may not be authorised if they have a direct financial interest in the proceedings, other than as a claimant."

210 Page 23, line 7, leave out subsection (6) and insert—

"() Proceedings may be authorised under subsection (1) as long as each represented person has a valid claim of the specified kind against the defendant to the proceedings, with each proceeding limited to one defendant."

211 Page 23, line 9, at end insert—

"(7) Proceedings may be authorised under subsection (1) only if the representative—

- (a) is authorised to act as representative on an ad hoc basis under the civil procedure rules, or
 - (b) is authorised to act as representative and on such terms as specified by order of the Lord Chancellor, in accordance with criteria to be published by the Lord Chancellor for the purposes of this section.
- (8) An application by a body to be authorised under subsection (7) is to be made in a form approved by the Lord Chancellor for the purpose.
- (9) Before issuing criteria or authorising a body under subsection (7)(b), the Lord Chancellor shall consult the Lord Chief Justice.
- (10) The Lord Chief Justice may nominate a judicial office holder to carry out the functions under subsection (8).
- (11) In this section—
- "judicial office holder" has the same meaning as in section 109(4) of the Constitutional Reform Act 2005;
- "court" means in England and Wales, the High Court, or, in Scotland, the Court of Session."

Clause 19

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 212 Page 23, line 13, at end insert ", but the court shall not direct that proceedings are to be brought on an "opt-out" basis unless it is satisfied that it would not be practicable to obtain redress by means of proceedings brought on an "opt-in" basis"

LORD HODGSON OF ASTLEY ABBOTTS

- 213 Page 23, line 13, at end insert—
"() The court may only direct that the proceedings are to be brought on an "opt-out" basis if the class representative is a government-sponsored body."

Clause 20

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 214 Page 24, line 3, at end insert—
"() With regard to cases taken with any element of opt-in, the court must direct that all persons who opt-in to a proceeding at any stage are bound by the court's decision, even if they subsequently opt-out."

Clause 21

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 215 Page 24, line 14, at end insert ", and
(c) is brought by or on behalf of (and is limited to) persons who are consumers;"
- 216 Page 24, leave out lines 27 and 28
- 217 Page 24, leave out lines 37 to 39
- 218 Page 25, line 4, leave out "and "relevant ancillary service" have" and insert "has"
- 219 Page 25, line 9, at end insert "but nothing in sections 18 to 24 gives rise to any additional causes of action"
- 220 Page 25, line 12, leave out from "service," to end of line 13 and insert "after the date of such order"
- 221 Page 25, line 14, leave out "negative" and insert "the affirmative"
- 222 Page 25, line 15, at end insert—
"() Any orders made under this section cannot be made until the Treasury has held a full public consultation."
- 223 Page 25, line 15, at end insert—
"() In this section "consumer" means any natural person, who in the matters to which the claim relates, is acting for purposes which are outside his trade, business or profession."

Clause 22

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 224 Page 25, line 17, at end insert—

"() Regulations will apply to Scotland only if the Treasury has obtained the consent of the Scottish Ministers."

LORD HUNT OF WIRRAL

BARONESS NOAKES

225 Page 25, line 19, leave out "the Office of Fair Trading" and insert "any defendant named in a claim"

226 Page 25, line 25, at end insert—

"() provide that the court may not make such an order in respect of matters which are, or which are proposed to be, the subject of a consumer redress scheme,"

227 Page 25, line 35, leave out subsection (3) and insert—

"() With respect to individual claims for redress that fall within the scope of a class that has been approved by the court, regulations may provide that the statute of limitations applicable to such claims, where the limitation period has not expired when the class is approved by the court, can be suspended.

() The period of suspension is to be limited to the date from which the class is approved until any time limit has expired on collection of any redress awarded by the court to any such individuals.

() For those individuals who have had the limitation period for their individual claim suspended, but subsequently opt out of a class, the suspension of the limitation period should be lifted immediately, such that the limitation period continues to run from the point at which it was suspended.

() This provision can not be applied to limitation periods that have expired before a class is approved by the court."

LORD MYNERS

228 Page 26, line 10, leave out "are subject to negative resolution procedure" and insert "that contain provision by virtue of subsection (2)(e) or (f) are subject to affirmative resolution procedure.

(7) Any other regulations under subsection (1) are subject to negative resolution procedure."

LORD HUNT OF WIRRAL

BARONESS NOAKES

229 Page 26, line 10, leave out "negative" and insert "the affirmative"

Clause 23

LORD HUNT OF WIRRAL

BARONESS NOAKES

230 Page 26, line 14, leave out subsection (2)

231 Page 26, line 17, leave out "in particular"

232 Page 26, line 36, leave out from "calculated" to end of line 39

233 Page 26, line 41, at end insert—

"() Any money not paid to represented persons is to be returned to the defendant."

Clause 24
LORD HUNT OF WIRRAL
BARONESS NOAKES

234 Page 26, line 43, leave out subsection (1) and insert—

- "() Provision about collective proceedings shall be incorporated into the rules of the court.
- () The rules shall provide that a collective proceeding shall not be authorised unless—
- (a) the specified kind of claims raises common issues of law or fact;
 - (b) the claims or defences of the representative are typical of the claims or defences of the members of the collective proceedings;
 - (c) the representative will fairly and adequately protect the interests of the members of the collective proceedings;
 - (d) prosecuting separate actions by or against individual members of the collective proceedings would create a risk of—
 - (i) inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct for the party opposing the class; or
 - (ii) adjudications with respect to individual members of the collective proceedings that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
 - (e) the Authority has refused to act or failed to act reasonably expeditiously pursuant to its powers under section 404 of FSMA;
 - (f) the court is of the view that the questions of law or fact common to members of the collective proceedings predominate over any questions affecting only individual members, and that a collective proceeding is superior to other available methods for fairly and efficiently adjudicating the controversy having regard to such factors as it may consider appropriate including the likely difficulties in managing a class action and in determining damages pursuant to regulations made pursuant to section 22(2)(f);
 - (g) the court has considered, and is convinced of, the merits of authorising the class for collective proceedings."

235 Page 27, line 19, after "about" insert "disclosure"

236 Page 28, line 11, at end insert—

- "() The rules must provide that no disclosure of evidence is required until after a class has been authorised, and until the deadline for appealing the authorisation decision has expired, or a court decision has been made in response to such an appeal, except where such disclosure is made by a firm voluntarily in relation to the right to be heard in section 22(2)(a)."

237 Page 28, line 12, at end insert—

- "() Court rules must provide that only judges with specialist knowledge of class actions are able to authorise and decide on collective proceedings."

238 Page 28, line 12, at end insert—

"() The rules must provide for any defendant to a claim to have the right to appeal a court decision to authorise a class for collective proceedings within two weeks of class authorisation."

239 Page 28, line 12, at end insert—

"() Rules under subsection (2)(d) and (e) must require the court, when considering the suitability of any proposed representative, to be satisfied that such person

-
- (a) would fairly and adequately represent the interests of represented persons;
- (b) does not have an interest that is in conflict with the interests of represented persons;
- (c) has prepared a plan for the collective proceedings that sets out a method to the satisfaction of the court for bringing the proceedings on behalf of represented persons and for notifying represented persons of the fact and progress of the proceedings;
- (d) has in place adequate resources for the conduct of the collective proceedings, which shall include adequate resources for the conduct of the collective proceedings (including any adverse costs awards). "

240 Page 28, line 12, at end insert—

"() Rules under subsection (2)(h) must provide that a party to collective proceedings may obtain disclosure of documents in the possession of represented persons other than the representative with the permission of the court."

241 Page 28, line 12, at end insert—

"() Rules under subsection (2)(j) shall provide—

- (a) that the representative shall be liable for the claimants' costs, except—
 - (i) where the court authorises a sub-class representative in respect of a sub-group of represented persons, who shall be liable for the costs associated with the determination of the issues common to the sub-group;
 - (ii) the costs of the determination of represented persons' own individual claims, for which individual represented persons shall be liable;
- (b) that the general rule shall be that the unsuccessful party shall pay the costs of the successful party, although the court may make a different order;
- (c) that security for costs shall be available against a claimant who is acting as a representative if there is reason to believe that he will be unable to pay the defendant's costs if so ordered to do."

242 Page 28, line 12, at end insert—

"() Rules under subsection (2)(l) must provide that—

- (a) a settlement of collective proceedings shall not take effect unless the court conducts a hearing as to the fairness of the proposed settlement, upon notice to the parties prescribed under the rules, and approves the

contents of the settlement agreement on terms which it considers to be appropriate; and

- (b) when approved, a settlement—
 - (i) binds every represented person who has not opted out of or been excluded from the proceedings;
 - (ii) binds every represented person who has opted into the proceedings; and
 - (iii) does not bind a party to the proceedings in any subsequent proceeding between the party and a person who has opted out of, had been excluded from, or who has failed to opt into, the proceedings."

Clause 25

LORD HUNT OF WIRRAL
BARONESS NOAKES

243 Page 28, line 17, leave out "or county court"

LORD MYNERS

244 Page 28, line 18, at end insert—

"(or, as regards any appeal, any appellate court)."

Before Clause 26

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

245* Insert the following new Clause—

"Securing consumer protection

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 5 insert—

"5A Securing consumer protection

- (1) This section applies where the Authority becomes aware that any feature or combination of features of a financial services market, product, service, or provider in the United Kingdom is, or appears to be, significantly harming the interests of consumers.
- (2) The Authority must take such action, including but not limited to making rules under section 404, as it considers reasonable and practicable to remedy, mitigate or prevent any detrimental effects on consumers resulting from or relating to the feature or features of a financial services market, product or provider.
- (3) The Authority must ensure that action taken under subsection (2) shall have regard to the need to achieve as comprehensive solution as is reasonable and practicable.
- (4) Action under subsection (2) may include action by the Authority itself and recommendations on the taking of action by others where the Authority cannot by itself meet the requirements of subsection 3.
- (5) For the purposes of subsection (1) the Authority may become aware by any of the following—

- (a) its own research reviews, monitoring, supervision or enforcement work,
 - (b) on a referral by the scheme operator of the ombudsman scheme or the Office of Fair Trading, or
 - (c) following acceptance of a request from a designated consumer body made under subsection (6).
- (6) A designated consumer body may by presenting evidence of apparent or likely significant harm to the interests of consumers request that the Authority takes action under this section.
- (7) The Authority shall within 90 days of a request under subsection (6) publish a response stating—
- (a) whether it accepts or rejects the need for action, and
 - (b) the reasons for its decision.
- (8) For the purpose of section 5(c) "designated consumer body" includes—
- (a) a body designated by the Secretary of State by order under section 11 of the Enterprise Act 2002;
 - (b) the financial services consumer panel;
 - (c) the consumer financial education body.
- (9) The Authority shall prepare and publish a report within one year of any of the events set out in subsection (5) setting out the action it intends to take and the reasons for its decisions.
- (10) In this section reference to a financial services market, product or provider refers to regulated activities as defined by section 22."

Clause 26

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 246** Page 29, line 5, leave out "it appears to the Authority" and insert "the Authority has evidence"
- 247** Page 29, line 7, after "requirements" insert "of the Authority's rules"
- 248** Page 29, line 9, leave out "(or may suffer)"
- 249** Page 29, line 13, leave out "to make rules" and insert "for a scheme to be made"

LORD NEWBY
LORD OAKESHOTT OF SEAGROVE BAY

- 250*** Page 29, line 19, at end insert—
- "(c) a person carrying on a business of a kind mentioned in section 226A(3) of FSMA 2000 (consumer credit matters)"

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 251** Page 29, line 20, leave out "make rules" and insert "propose a scheme"
- 252** Page 29, line 30, leave out third "the" and insert "its"
- 253** Page 29, line 31, leave out "(or may cause)"
- 254** Page 29, line 32, leave out second "the" and insert "its"

255 Page 29, line 32, leave out "(or may cause)"

256 Page 29, line 36, at end insert—

"() If the firm identifies a case which may fall within the scope of the consumer redress scheme on which the limitation period is due to expire between the establishment and conclusion of the scheme, the limitation period for such cases will be determined as follows—

(a) for a case which is subsequently ruled out of the scheme, the limitation period is suspended between the establishment of the scheme and the date that the case is ruled out of the scope of the scheme; and

(b) for a case that is ruled as within the scope of the scheme, the limitation period will be treated as expiring on conclusion of the scheme."

257 Page 29, leave out lines 37 to 40

258 Page 29, line 38, leave out "rules are" and insert "scheme order is"

259 Page 29, line 41, leave out "making rules" and insert "proposing a scheme"

260 Page 29, line 42, at end insert "and the firms to be subject to the scheme, and must seek the approval of the Regulatory Decisions Committee of the governing body of the Authority"

261 Page 29, line 43, at end insert—

"(11) If the Authority proposes a scheme under this section, it shall apply to the court for a consumer redress scheme order.

(12) "Consumer redress scheme order" means an order imposing a consumer redress scheme on relevant firms.

(13) Any application by the Authority under this section shall—

(a) attach a draft order setting out the rules of the proposed consumer redress scheme in full; and

(b) be notified to relevant firms and be published as required by the Civil Procedure Rules or as otherwise directed by the court.

(14) Upon an application under subsection (11), the court may make a consumer redress scheme order if it is satisfied that—

(a) the making of such an order represents the most appropriate means for the fair and efficient resolution of the liability of relevant firms to pay redress to consumers;

(b) the consumer redress scheme is just and equitable; and

(c) the consumer redress scheme order complies with section 404A.

(15) At any time after the making of a consumer redress scheme order, any relevant firm, the Authority, the ombudsman scheme or any other party permitted by Court rules to do so, may apply to the court for—

(a) any amendment to be made to the consumer redress scheme order, or

(b) clarification or directions regarding the operation of the consumer redress scheme;

and upon any such application the court may make any order it considers appropriate (including making any amendment to the consumer redress scheme order)."

262 Page 29, line 43, at end insert—

"() A firm which is aggrieved by the rules made by the Authority under this section may refer the matter to the Tribunal."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

263* Page 29, line 43, at end insert—

"(11) For the purpose of sections 404 to 404F the Authority shall be taken to mean—

- (a) for relevant firms as defined by subsection (2)(a) (authorised persons) and 2(b) (payment service providers), the Financial Services Authority,
- (b) for relevant firms as defined by subsection (2)(c) (consumer credit matters) where the relevant firm is not also an authorised person, the Office of Fair Trading,
- (c) for relevant firms as defined by subsection (2)(c) where the relevant firm is an authorised person, either the Financial Services Authority, the Office of Fair Trading, or both."

BARONESS NOAKES

LORD HUNT OF WIRRAL

264 Page 30, line 2, leave out "Rules under section 404" and insert "A consumer redress scheme order"

265 Page 30, line 7, leave out "examples of"

266 Page 30, line 8, at end insert—

"() setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting compliance with a requirement;"

267 Page 30, line 14, leave out "(or may cause)"

268 Page 30, line 23, after "occurring" insert "before or"

269 Page 30, line 41, leave out "examples" and insert "things"

270 Page 30, line 41, leave out "rules" and insert "consumer redress scheme order"

271 Page 30, line 42, leave out "examples of"

272 Page 30, line 43, leave out ", or would be,"

273 Page 30, line 45, leave out "rules" and insert "consumer redress scheme order"

274 Page 30, line 46, leave out ", or would not be,"

275 Page 30, line 48, leave out from beginning to end of line 5 on page 31 and insert—

"(4) Matters may not be set out in the consumer redress scheme order as a result of subsection (1)(d) if a court would not grant such relief in the circumstances specified."

276 Page 31, line 1, leave out from "which" to end of line 2 and insert "have been determined by a court or tribunal to be applicable in any such case."

277 Page 31, line 5, at end insert "and the cost to relevant firms of providing such redress, including the calculation and administration of such redress"

278 Page 31, line 20, at end insert—

"() Rules may not require consumer redress schemes to cover things done or

omitted to be done before this section comes into force."

279 Page 31, leave out lines 21 and 22

280 Page 31, line 22, at end insert—

"404AA Rules of court about consumer redress schemes

- (1) Rules of court may make provision about consumer redress schemes.
- (2) Such rules shall be designed with the objectives of ensuring, inter alia, that—
 - (a) applications concerning consumer redress schemes are heard and determined expeditiously; and
 - (b) notice of such applications is published so as to bring the application to the attention of those who may be affected by the consumer redress scheme.
- (3) The rules may in particular—
 - (a) make provision about applications for or in connection with consumer redress scheme orders;
 - (b) make provision about the notice to be given to relevant firms regarding such applications;
 - (c) make provision about the publication of such applications, so as to bring the application to the attention of those persons who may be affected by a consumer redress scheme order;
 - (d) set out the criteria to be applied by the court when deciding whether to make a consumer redress order (or the terms of such an order including the rules of the consumer redress scheme);
 - (e) make provision for any other matter relating or incidental to the proper management and conduct of the consumer redress scheme;
 - (f) make provision for the court to consider whether other means may be more appropriate for the fair and efficient resolution of the liability of relevant firms to pay redress to consumers, and to give directions as it considers necessary."

281 Page 31, line 31, leave out "subsection (4)" and insert "this section"

282 Page 31, leave out lines 33 and 34

283 Page 31, line 37, leave out "make a complaint under the ombudsman scheme" and insert "notify the Authority which may then take enforcement action against relevant firms to ensure that redress is made to the consumer in accordance with the scheme"

284 Page 31, line 41, leave out from beginning to end of line 20 on page 32 and insert—

- "() A relevant complaint cannot be dealt with by the ombudsman whilst the consumer redress scheme is in operation unless it becomes clear that the complaint will not be within the scope of the scheme.
- () A relevant complaint which falls within the scope of a consumer redress scheme cannot be dealt with by the ombudsman at any time.
- () If a relevant complaint has been determined within a consumer redress scheme as not being eligible for redress, it cannot be dealt with by the ombudsman."

LORD MYNERS

"404CA Applications to Tribunal to quash rules or provision of rules

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
 - (a) dismiss the application; or
 - (b) make an order (a "quashing order") quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
 - (a) the application includes a claim for damages arising from any matter to which the application relates; and
 - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
 - (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
 - (b) such other person as may be agreed from time to time by—
 - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
 - (ii) the Senior President of Tribunals.

- (13) Section 133 does not apply in the case of an application under this section, but—
- (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
 - (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
- (a) the Tribunal refuses to grant permission to make an application under this section, and
 - (b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section."

BARONESS NOAKES

LORD HUNT OF WIRRAL

286 Page 32, line 45, leave out ", or may have contemplated using,"

287 Page 33, line 2, at end insert "; and

(c) are either—

- (i) a natural person who, in the matters to which the claim relates, are acting for purposes which are outside their trade, business or profession;
- (ii) a trade, business or profession with an annual turnover not exceeding £2 million;
- (iii) a charity with an annual income of less than £1 million; or
- (iv) a trustee of a trust with net asset value of less than £1 million;

(determined, in each case, at the time when the collective proceedings order is made)."

288 Page 33, leave out lines 10 and 11

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

289* Page 33, line 13, at end insert—

"() persons holding a standard consumer credit licence under section 22(1)(a) of the Consumer Credit Act 1974 and carrying on a business of a kind mentioned in section 226A(3) of the Financial Services and Markets Act 2000"

BARONESS NOAKES

LORD HUNT OF WIRRAL

290 Page 33, leave out lines 41 and 42

291 Page 33, line 46, after "interest" insert "at a specified rate prescribed by the Lord Chancellor and set by reference to the official bank rate set by the Bank of England"

292 Page 34, leave out lines 11 to 16 and insert "are confined to failures to comply with the Authority's rules and principles"

- 293 Page 34, line 11, leave out "include" and insert "are to"
- 294 Page 34, line 16, at end insert "and which arises as a result of any provision made by or under this or any other Act or a rule of law"
- 295 Page 34, leave out lines 17 to 21 and insert—
- "(4) A relevant firm shall not be regarded as having failed to comply with a requirement except to the extent that the relevant firm has breached a legal duty or other legal obligation, prohibition or restriction which is actionable against it having regard to, amongst other things, whether the relevant firm has effectively excluded or limited its liability to consumers."
- 296 Page 35, leave out lines 1 to 5

After Clause 26

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 297 Insert the following new Clause—

"Store cards and consumer credit agreements

- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) After section 60 insert—

"60A Form and content of retail credit-token agreements

- (1) The Secretary of State may make regulations as to the form and content of documents embodying retail credit-token agreements, and the regulations shall contain such provisions as appear to him appropriate including requirements to ensure that—
 - (a) the rate of interest on the credit to be provided under the agreement for credit (or all the rates on a per annum basis where there is more than one rate of interest) does not prejudice the interests of debtors; or
 - (b) the agreement for credit includes a seven day cooling off period during which credit would not be available to the debtor.
- (2) "Retail credit-token" means a credit-token (which has the meaning given by section 14(1)) which results in the provision of credit under a credit-token agreement provided by a retailer or group of retailers which can only be used for purchases from the retailers concerned.
- (3) A "retailer" means a person or business providing goods and services to an individual.
- (4) Accordingly, a "retail credit-token agreement" is a regulated agreement.
- (3) For section 67 substitute—

"67 Cancellable agreements

- (1) A regulated agreement that is not a retail credit-token agreement may be cancelled by the debtor or hirer in accordance with this Part if the antecedent negotiations included oral representations made when in the presence of the debtor or hirer by an individual acting as, or on behalf of, the negotiator, unless—
 - (a) the agreement is secured on land, or is a restricted-use credit agreement

to finance the purchase of land or is an agreement for a bridging loan in connection with the purchase of land, or

- (b) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business (whether on a permanent or temporary basis)—
 - (i) the creditor or owner;
 - (ii) any party to a linked transaction (other than the debtor or hirer or a relative of his);
 - (iii) the negotiator in any antecedent negotiations.

(2) A retail credit-token agreement may be cancelled by the debtor in accordance with this Part."

(4) For section 68 substitute—

"68 Cooling-off period

The debtor or hirer may serve notice of cancellation of a cancellable agreement between his signing of the unexecuted agreement, and—

- (a) the end of the fifth day following the day on which he received a copy under section 63(2) or a notice under section 64(1)(b), or
- (b) if (by virtue of regulations made under section 64(4)) section 64(1)(b) does not apply, the end of the fourteenth day following the day on which he signed the unexecuted agreement, or
- (c) if the cancellable agreement is a retail credit-token agreement, the end of the seventh day following the day on which he signed the unexecuted agreement."

298 Insert the following new Clause—

"Amendment of the Unfair Terms in Consumer Contract Regulations 1999

In the Unfair Terms in Consumer Contract Regulations 1999 after regulation 6(1), insert—

"(1A) Paragraph 2 shall not apply to contracts for the supply of financial services."

Clause 27

BARONESS NOAKES
LORD HUNT OF WIRRAL

299 Page 35, line 15, leave out "a person" and insert "an individual"

300 Page 35, line 20, at end insert—

- "() A request shall not be in compliance with this section unless it is—
- (a) on paper or on another durable medium;
 - (b) separate from any other document; and
 - (c) signed by the individual making the request."

After Clause 27

LORD WHITTY

301 Insert the following new Clause—

"Restrictions on appropriation of payments

- (1) The Consumer Credit Act 1974 ("the CCA 1974") is amended as follows.
- (2) After section 81(2) insert—
- "(3) Where a debtor or hirer is liable to make payments in respect of a regulated agreement where more than one interest rate applies, on making a payment in respect of the agreement which is not sufficient to discharge the total amount then due under the agreement, the sums so paid by him shall be appropriated towards the satisfaction of the amounts outstanding in the order of those which bear the highest rate of interest.
- (4) A consumer credit business who does not act in accord with section 81(3) commits an offence."
- (3) In Schedule 1 (prosecution and punishment of offences), after the entry relating to section 80(2) insert—
- "81(4) Breach of restrictions on provisions of credit limit increase.
 - (a) Summarily.
 - (b) On indictment.
 The statutory maximum. A fine."
- (4) An offence under section 81(4) of the CCA 1974 is to be treated for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) as contained in the CCA 1974 immediately before the day on which that Act of 2008 was passed."

LORD MARLESFORD

302* Insert the following new Clause—

"Central register of credit card holders

- (1) The Treasury shall by order establish a central register of credit card holders.
- (2) The register shall include the names and addresses of all holders of credit cards issued by UK financial institutions.
- (3) The register shall be such as to enable a UK financial institution considering issuing a credit card to an applicant (A) to determine—
 - (a) whether A holds a credit card already,
 - (b) the credit limit on any card already held by A, and
 - (c) whether A is aged under 21 at the time of the application.
- (4) The register shall also record details of any special circumstances which make it permissible under subsection (2) of section (*Credit cards: conditions of issue to applicants aged under 21*) for more than one credit card to be issued to a person aged under 21.
- (5) No details of individual financial transactions on any credit card shall be recorded in the register."

303* Insert the following new Clause—

"Credit cards: due diligence etc

- (1) Any person (P) issuing a credit card to an applicant (A) shall do so only having performed due diligence, and having complied with the requirements of sections (*Credit cards: conditions of issue*) and (*Credit cards: conditions of issue to applicants aged under 21*).

- (2) "Due diligence" means having taken the steps in subsections (3) and (4).
- (3) Step 1 is ascertaining whether A already holds any other credit cards, according to the central register established under section (*Central register of credit cards*).
- (4) Step 2 is ascertaining whether A is aged under 21 at the date of application."

304* Insert the following new Clause—

"Credit cards: conditions of issue

- (1) A person (P) issuing a credit card to an applicant (A) shall include in the conditions of use of the card—
 - (a) a requirement that the debt on the card shall be reduced to zero every 6 months,
 - (b) a condition that, in the event of failure to reduce the debt to zero in accordance with paragraph (a), no further credit shall be extended to A,
 - (c) a condition that, in the event of failure by A to make any contractual repayment to P, no further credit shall be extended to A.
- (2) No debt arising either from failure by A—
 - (a) to reduce a debt to zero, or
 - (b) to make any contractual repayment to Pshall be enforceable at law unless P can demonstrate compliance with section (*Credit cards: due diligence etc*)."

305* Insert the following new Clause—

"Credit cards: conditions of issue to applicants aged under 21

- (1) Any person (P) issuing a credit card to an applicant (A) where A is aged under 21 shall do so only having verified whether the register established under section (*Central register of credit cards*) indicates that A already holds a credit card.
- (2) Where A already holds a credit card P shall not issue a card to A unless P considers that there are special circumstances which make issuing a card appropriate.
- (3) Where P issues a card in accordance with subsection (2), the special circumstances shall be recorded in the register established under section (*Central register of credit cards*)."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

306* Insert the following new Clause—

"Other measures to protect consumers

- (1) A bank must set up arrangements to permit current account customers to draw funds from the account through a network of outlets to be determined by the Secretary of State.
- (2) In this section "bank" means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the means of section 22 of that Act, taken with Schedule 2 and any order under section 22)."

LORD NEWBY
LORD OAKESHOTT OF SEAGROVE BAY
BARONESS NOAKES

307* Insert the following new Clause—

"Action against unfair unauthorised bank charges

- (1) The Unfair Terms in Consumer Contract Regulations 1999 (SI 1999/2083) is amended as follows.
- (2) After regulation 6(1), insert—
 - "(1A) Paragraph (2) shall not apply to a Relevant Contract.
 - (1B) For the purposes of this section, a Relevant Contract means a contract for the supply of personal current account banking services, and includes all past contracts currently in effect."
- (3) After regulation 6(2) insert—
 - "(3) In so far as it is in plain and intelligible language, the assessment of fairness of a term in a Relevant Contract shall not relate—
 - (a) to the definition of the main subject matter of the contract, or
 - (b) to the adequacy of the main price or remuneration, as against the goods or services supplied in exchange.
 - (4) When assessing whether a charge falls within the main price or remuneration within the meaning of paragraph (3), account shall be taken of all the relevant circumstances at the time the contract was concluded, including whether the imposition of the charge is contingent on other uncertain events and whether the charge is likely to have been considered by the consumer prior to concluding the contract.
 - (5) Where a term of a contract provides for the charging of a consumer and the circumstances in which that charge can be imposed are not certain to arise during the term of the contract, then such price or remuneration shall not fall within the main price or remuneration for the purposes of paragraph (3).
 - (6) If, for the purposes of paragraph (3), there is doubt about what represents the main price or remuneration, the interpretation which is most favourable to the consumer shall prevail."

308* Insert the following new Clause—

"Restriction on increasing credit limits

- (1) The Consumer Credit Act 1974 ("the CCA 1974") is amended as follows.
- (2) After section 51B insert—

"51C Restriction on increasing credit limits

 - (1) A person who provides running account credit (the creditor) may not increase the credit limit on a running account credit agreement without the explicit consent of the debtor.
 - (2) A debtor may give consent either orally or in writing, either in a request to the creditor or in response to an offer from the creditor.
 - (3) The Secretary of State may make regulations as to the form and content of any offer to increase a credit limit.

- (4) A credit limit shall not be increased before the creditor has assessed the affordability and suitability for the debtor.
- (5) For the purposes of this section "credit limit" has the same meaning as section 10(2).
- (6) A person who increases a credit limit other than in accordance with this section commits an offence."
- (3) In Schedule 1 (prosecutions and punishment of offences), after the entry relating to section 51(1) insert—

"51B(5) Breach of restrictions on credit limits

a) Summarily The Statutory maximum b) On Indictment A fine"

- (4) An offence under section 51B of the CAA 1974 is to be treated for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) as contained in the CCA 1974 immediately before the day on which that Act of 2008 was passed."

Clause 28

BARONESS NOAKES
LORD HUNT OF WIRRAL

309 Page 36, line 38, at end insert—

- "() If subsection (2) applies, the Treasury must appoint an independent person to review whether the expenses referred to in subsection (2) have been incurred with due regard to the need to achieve economy, efficiency and effectiveness.
- () If the independent person concludes that the expenses were not incurred with regard to the need to achieve economy, efficiency and effectiveness, he may reduce the amount the scheme manager is required to pay to the extent that he considers is appropriate."

310 Page 39, line 3, leave out "may" and insert "shall"

Clause 29

LORD MYNERS

311 Page 40, line 29, at end insert—

- "(9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person."

BARONESS NOAKES
LORD HUNT OF WIRRAL

312 Page 42, line 38, after "may" insert "not"

313 Page 42, line 41, at end insert—

- "(3A) If subsection (3) applies, the rules must provide for a committee to oversee the exercise by the FSCS manager of functions under the rules.
- (3B) The committee referred to in subsection (3A) must include authorised persons on whom levies may be imposed."

314 Page 42, leave out lines 42 to 46

After Clause 29

BARONESS NOAKES

LORD HUNT OF WIRRAL

315 Insert the following new Clause—

"Compensation scheme oversight

In the Financial Services and Markets Act 2000, after subsection (4) of section 213, insert—

"(4A) If subsection (4) applies, the rules must provide for a committee to oversee the exercise by the FSCS manager of functions under the rules.

(4B) The committee referred to in subsection (4A) must include authorised persons on whom levies may be imposed."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

BARONESS NOAKES

316* Insert the following new Clause—

"Compensation limits

After section 213 of the Financial Services and Markets Act 2000 (compensation scheme) insert—

"213A Compensation payable to depositors

(1) Each depositor will be entitled to receive from the scheme manager in respect of each bank brand a sum which is the lower of—

(a) the deposit protection amount; and

(b) their gross balance held by the person.

(2) The Treasury may by order, either in general or specifically, determine what constitutes a bank brand.

(3) The Treasury must by order specify measures to allow for the protection of monies which temporarily exceed the deposit protection amount."

Clause 30

BARONESS NOAKES

LORD HUNT OF WIRRAL

317 Page 43, line 32, leave out "might" and insert "are likely to"

318 Page 43, line 33, at end insert—

"() This section does not apply to information or documents which are subject to legal professional privilege."

319 Page 43, line 33, at end insert—

"() A notice may only be given under paragraph (a) or (b) of subsection (2) if the Authority considers that the activities of the relevant investment fund pose or would be likely to pose a serious threat to the stability of the UK financial system."

320 Page 43, line 34, after "notice" insert ", in respect of information in connection with

the service provided to an authorised person,"

321 Page 43, line 35, after "only" insert "in respect of information in connection with the service provided to an authorised person and"

322 Page 43, line 41, at end insert—

"() The Authority must ensure that a service provider, or a person who is connected to a service provider, is reimbursed for reasonable costs in complying with a notice under this section."

After Clause 30

BARONESS NOAKES

LORD HUNT OF WIRRAL

323 Insert the following new Clause—

"Bank of England information powers

(1) The Banking Act 1998 is amended as follows.

(2) After section 2C insert—

"2D Financial stability: information

(1) The Bank of England may by notice in writing require a person to provide information—

(a) which the Bank thinks will help it pursue its financial stability objective set out in section 238 above, or

(b) which the Bank requires in relation to recovery and resolution plans, as set out in section 139 of the Financial Services and Markets Act 2000.

(2) In particular, a notice may require a person to notify the Bank if events of a specified kind occur.

(3) A notice may require information to be provided—

(a) in a specified form or manner;

(b) at a specified time;

(c) in respect of a specified period.

(4) The Bank may disclose information obtained by virtue of this section to—

(a) the Treasury;

(b) the FSA;

(c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to financial stability.

(5) Subsection (4)—

(a) overrides a contractual or other requirement to keep information in confidence, and

(b) is without prejudice to any other power to disclose information.

(6) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.

(7) The Bank may publish information obtained by virtue of this section.

(8) The Treasury may make regulations about the manner and extent of publication

under subsection (7).

(9) Regulations under this section—

- (a) shall be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(10) It is an offence—

- (a) to fail without reasonable excuse to comply with a requirement under this section;
- (b) knowingly or recklessly to give false information in pursuance of this section.

(11) A person guilty of an offence is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine."

Clause 31

BARONESS NOAKES
LORD HUNT OF WIRRAL

324 Page 46, line 39, at end insert—

"() The Treasury may not make the information provided in accordance with this section available to any other person."

325 Page 46, line 40, leave out subsection (7)

326 Page 47, line 4, leave out subsection (9)

Clause 36

BARONESS NOAKES
LORD HUNT OF WIRRAL

327 Page 50, line 10, leave out "negative" and insert "affirmative"

Schedule 2

BARONESS NOAKES
LORD HUNT OF WIRRAL

328 Page 61, line 35, leave out paragraph 11

329 Page 61, line 40, leave out paragraph 13

LORD MYNERS

330 Page 63, line 31, at end insert—

"25A In section 348(5)(d) (restrictions on disclosure of confidential information by Authority etc), after "a person appointed" insert "to collect or update information under section 139E or"."

BARONESS NOAKES
LORD HUNT OF WIRRAL

331 Page 65, line 41, at end insert—

"In section 236(1) after the words "investment condition" insert "but which is not an investment partnership within the meaning given by section 236A".

In Chapter V of Part XVII (recognised overseas schemes) in every case after the words "open-ended investment company" insert "or "investment partnership",

In section 270(4) (schemes authorised in designated countries or territories) for paragraph (c) substitute—

- "(c) an authorised contractual scheme;
- (d) an authorised investment partnership;
- (e) any combination of such schemes, companies and partnerships."

In section 272(6) (individually recognised overseas schemes), for paragraph (c) substitute—

- "(c) authorised contractual schemes;
- (d) authorised investment partnerships;
- (e) any combination of such schemes, companies and partnerships.""

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

332* Page 66, line 7, at end insert—

In section 33C of the Consumer Credit Act 1974, omit subsection (3)."

Clause 38

LORD MYNERS

333 Page 50, line 33, leave out second "to" and insert ", 26,"

334 Page 50, line 42, after "20," insert "25A,"

LORD HUNT OF WIRRAL

BARONESS NOAKES

335 Page 51, line 3, at end insert—

"() The provisions in sections 18 to 26 expire three years after they come into force."

After Clause 38

BARONESS VALENTINE

336* Insert the following new Clause—

"Expiration etc.

- (1) Sections 9, 10, 11, 12, 15 and 17 shall cease to have effect at the end of 31st December 2012.
- (2) Section 13 shall—
 - (a) cease to have effect at the end of 31st December 2012; and
 - (b) any rules or regulations made under sections 131B to 131J of the Financial Services and Markets Act 2000 shall not apply to any transaction undertaken after the end of 31st December 2012.
- (3) Section 14 shall—
 - (a) cease to have effect at the end of 31st December 2012; and
 - (b) any action taken by the Authority against an authorised person under section 206A of the Financial Services and Markets Act 2000 shall have

effect for no longer than six months after the end of 31st December 2012."

AMENDMENT
TO BE MOVED
IN COMMITTEE

[Supplementary to the Marshalled List]

Clause 5

BARONESS NOAKES
LORD HUNT OF WIRRAL

35A* Page 4, line 10, at end insert—

- "() The FSA must issue a statement of policy about—
- () its understanding of the objective, and
 - () in what circumstances and how it intends to use its powers to achieve the objective.
- () Before issuing the statement of policy, the FSA must consult—
- () the Treasury,
 - () the Bank of England, and
 - () such other persons as it considers will or may be affected by the statement."

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 4th March 2010, as follows—

Clauses 2 to 6 Schedule 1 Clauses 7 to 36 Schedule 2 Clauses 37 to 39

*[Amendments marked * are new or have been altered]*

**Amendment
No.**

Clause 2

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 14** Page 2, line 25, at end insert "within 14 days of the date of the meeting"
- 15** Page 2, line 25, at end insert—
"() The minutes shall record the views of each of the members of the Council and the extent to which they are in agreement."
- 16** Page 2, line 28, at end insert "or market sensitive"
- 17** Page 2, line 33, at end insert—
"for as long as the conditions in these paragraphs are met"
- 18** Page 2, line 33, at end insert—
"() The Council must publish its understanding of commercial confidentiality for the purposes of subsection (5)(a)."
- 19** Page 2, line 34, at end insert "and must publish minutes of these meetings"
- 20** Page 2, line 39, at end insert—
"() Where the Council is unable to reach agreement on the exercise of its functions, the Chancellor of the Exchequer shall determine how it should exercise its functions."

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

After Clause 2

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 21** Insert the following new Clause—
"Decisions of the Council

- (1) The Council shall notify the relevant authorities of any decisions which require the relevant authorities to act or refrain from acting.
- (2) The relevant authorities shall act or refrain from acting in accordance with decisions notified to them under subsection (1) provided that to do so is in accordance with the powers available to them under the relevant legislation."

Clause 3

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 22 Page 2, line 41, leave out "Treasury" and insert "Council"
- 23 Page 3, line 3, leave out "Treasury" and insert "Council"
- 24 Page 3, line 9, at end insert "or market sensitive"
- 25 Page 3, line 14, at end insert—

"() Where a matter has been omitted from either the annual report or the minutes published under section 2(4) and the action involves financial assistance as defined in section 257 of the Banking Act 2009, a report should be laid before Parliament when the conditions under subsection (3) no longer apply."

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

Clause 4

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 26 Page 3, line 29, after "England" insert—
- ""the relevant legislation" means, for the Financial Services Authority, the Financial Services and Markets Act 2000, and for the Bank of England, the Banking Act 2009,"

The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.

After Clause 4

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 27 Insert the following new Clause—
- "Identification of additional powers needed to fulfil responsibilities for financial stability**
- (1) The Treasury must prepare a report setting out the powers that are needed by the Treasury, the Financial Services Authority and the Bank of England to fulfil their responsibilities for financial stability.
 - (2) If the existing powers of the Treasury, the Financial Services Authority or the Bank of England are not sufficient to allow them to fulfil their responsibilities, the report shall identify the extent to which they are not sufficient and make recommendations for remedying them.
 - (3) The report must be laid before Parliament within one year of the commencement of this Act."
- 28 Insert the following new Clause—

"Disclosure of financial assistance to the Bank of England

- (1) Where the Treasury provides financial assistance to the Bank of England in order to facilitate actions by the Bank of England in pursuit of its financial stability objective under section 2A of the Bank of England Act 1998, the Treasury shall lay a report setting out details of the financial assistance before Parliament.
- (2) A report under subsection (1) shall be laid as soon as possible after the provision of the financial assistance but may be delayed for as long as the Treasury considers that there would be a threat to the stability of the UK financial system if such a report were laid.
- (3) Where the laying of a report is delayed, the Chancellor of the Exchequer shall ensure that information is given on a confidential basis to those Members of Parliament whom he considers should be informed.
- (4) "Financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent)."

29 Insert the following new Clause—

"Bank of England's financial stability objective

After subsection (1) of section 2A of the Bank of England Act 1998, insert—

- "(1A) In considering that objective, the Bank must have regard to—
- (a) the economic and fiscal consequences for the United Kingdom of instability of the UK financial system;
 - (b) the effects (if any) on the growth of the economy of the United Kingdom of anything done for the purpose of meeting that objective; and
 - (c) the impact (if any) on the stability of the UK financial system of events or circumstances outside the United Kingdom (as well as in the United Kingdom)."

30 Insert the following new Clause—

"Banking Liaison Panel minutes

In section 10 of the Banking Act 2009, after subsection (4) insert—

- "(5) The Treasury must publish minutes of the meetings of the Banking Liaison Panel.
- (6) Subsection (5) does not apply to minutes or any proceedings relating to matters which are commercially confidential."

31 Insert the following new Clause—

"Financial Stability Committee minutes

In section 2C of the Bank of England Act 1998, after subsection (3) insert—

- "(4) The Bank must publish minutes of the meetings of the Financial Stability Committee.
- (5) Subsection (4) does not apply to—
- (a) minutes of any proceedings relating to matters which are commercially confidential,
 - (b) minutes of any proceedings relating to any action to be taken by the Bank, the Treasury or the Financial Services Authority the purpose of

which may be impeded or frustrated by publication, or

- (c) anything which, if published, might pose a threat to the stability of the financial systems of the United Kingdom."

32 Insert the following new Clause—

"Conformity with Banking Act 2009

For the avoidance of doubt, "the UK financial system" as used in this Act has the same meaning as "the financial systems of the United Kingdom" as used in the Banking Act 2009."

Clause 5

BARONESS NOAKES

LORD HUNT OF WIRRAL

33 Page 4, line 8, at end insert—

"() proceedings of the Council for Financial Stability as set out in section 2 of the Financial Services Act 2010"

34 Page 4, line 9, after "Treasury" insert "and the Bank of England"

35 Page 4, line 10, at end insert—

"() In pursuing that objective, the Authority shall aim to work with other relevant bodies (including the Treasury and the Bank of England)."

35A Page 4, line 10, at end insert—

"() The FSA must issue a statement of policy about—

() its understanding of the objective, and

() in what circumstances and how it intends to use its powers to achieve the objective.

() Before issuing the statement of policy, the FSA must consult—

() the Treasury,

() the Bank of England, and

() such other persons as it considers will or may be affected by the statement."

The above-named Lords give notice of their intention to oppose the Question that Clause 5 stand part of the Bill.

After Clause 5

BARONESS NOAKES

LORD HUNT OF WIRRAL

36 Insert the following new Clause—

"Competition objective

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

(2) In section 2(2) (the FSA's regulatory objective), after paragraph (d) insert—
"(e) competition".

(3) In section 2(3) omit paragraphs (f) and (g).

(4) After section 6, insert—

"6A Competition

- (1) The competition objective is: regulating in a way which facilitates competition in financial services and markets in the United Kingdom between those who are subject to any form of regulation by the Authority, or those in any category of authorised participants, and in a way which minimises the adverse effect on competition that may arise from anything done in the discharge of the Authority's general functions.
- (2) This competition objective is without prejudice to the statutory powers of the Office of Fair Trading and the Competition Commission."

Clause 6

BARONESS NOAKES

LORD HUNT OF WIRRAL

37 Page 4, line 13, leave out subsections (2) and (3)

LORD MYNERS

38 Page 4, line 13, leave out "2(2)" and insert "2 (the FSA's general duties)—

(a) in subsection (2)"

39 Page 4, line 14, at end insert ", and

(b) in subsection (3) (matters to which FSA must have regard in discharging its general functions), after paragraph (g) insert—

"(h) the desirability of enhancing the understanding and knowledge of members of the public of financial matters (including the UK financial system)""

40 Page 4, line 15, at end insert—

"() In section 5(2) (the protection of consumers), after paragraph (b) insert—

"(ba) any information which the consumer financial education body has provided to the Authority in the exercise of the consumer financial education function;"."

BARONESS NOAKES

LORD HUNT OF WIRRAL

41 Page 4, line 19, leave out "Authority" and insert "Treasury"

LORD HODGSON OF ASTLEY ABBOTTS

42 Page 4, line 19, leave out "consumer" and insert "customer"

43 Page 4, line 26, leave out "consumer" and insert "customer"

LORD HODGSON OF ASTLEY ABBOTTS

BARONESS NOAKES

44 Page 4, leave out lines 27 to 30 and insert—

"() promoting an understanding of the basic principles of personal financial management, including management of debt, control of spending, living within an income and protection against disaster;

() promoting an understanding of the basic principles of planning for the future, including the process of saving to meet financial objectives;"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 45 Page 4, line 27, at end insert "and saving"
46 Page 4, line 29, leave out "supply" and insert "purchase"
47 Page 4, line 32, leave out from "dealing" to end of line 33
48 Page 4, line 36, after "and" insert "generic"

LORD HODGSON OF ASTLEY ABBOTTS

- 49 Page 4, line 38, leave out "consumer" and insert "customer"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 50 Page 5, line 3, at end insert—

""financial planning" means the basic principles of personal financial management including management of debt, control of spending, living within income levels, protection against unplanned financial problems and planning for the future (including the process of saving to meet financial objectives)"

VISCOUNT ECCLES

Viscount Eccles gives notice of his intention to oppose the Question that Clause 6 stand part of the Bill.

Schedule 1

LORD HODGSON OF ASTLEY ABBOTTS

- 51 Page 52, line 24, at end insert ", and which at any time shall comprise at least 8 members but not more than 12"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 52 Page 52, line 24, at end insert—

"() The board must include at least two members who represent the interests of consumers."

- 53 Page 52, line 24, at end insert—

"() Members of the board may be persons who are employed by the body except that such persons must not comprise a majority of the board."

- 54 Page 52, line 24, at end insert—

"() The board must include persons who have knowledge and experience of training, education and consumer affairs."

- 55 Page 52, line 24, at end insert—

"() The board must include persons who have knowledge of financial knowledge and education in different parts of the United Kingdom."

- 56 Page 52, line 24, at end insert—

"() The board must include at least two members who are or who represent authorised persons."

- 57 Page 52, leave out lines 25 to 31 and insert—

"Appointment of members

- (1) A member of the board is to be appointed—

- (a) for at least one and no more than four years, and
- (b) on such other terms and conditions as the Authority thinks fit.
- (2) A member is to hold and vacate office in accordance with the terms and conditions of his appointment, subject as follows.
- (3) A member may resign at any time by notice in writing to the Authority.
- (4) The Authority may dismiss him by notice in writing on the grounds that—
 - (a) the member has been absent from meetings of the board without permission of the board for a period of more than three months;
 - (b) the member is the subject of a bankruptcy restrictions order (or interim order);
 - (c) the member has had his estate sequestrated in Scotland or, under Scottish law, has made a composition or arrangement with, or granted a trust deed for, his creditors;
 - (d) the member is unfit for office by reason of misconduct;
 - (e) the member has failed to comply with the terms of his appointment; or
 - (f) the member is otherwise unable, unfit or unwilling to perform his functions.
- (5) The Treasury must approve the appointment, removal and terms and conditions of the chair and the chief executive.
- (6) Where a member ceases to be a member otherwise than on the expiry of his term of office he may not receive any compensation in respect of loss of office.
- (7) A person who has ceased to be a member is eligible for re-appointment—
 - (a) if he is an employee of the board on any number of occasions while he remains an employee; and
 - (b) in any case no more than twice."

LORD HODGSON OF ASTLEY ABBOTTS

58 Page 52, leave out lines 25 to 27 and insert—

"() The members of the board may be appointed by the Authority, or such other body as the Minister may designate, and the Authority or designated body must ensure that at least one quarter of the members represent the interests of members of the public and at least one quarter represent educational bodies."

LORD MYNERS

59 Page 52, line 31, at end insert—

"() The Authority may appoint a person to be a member of the board only if it is satisfied that the person has knowledge or experience which is likely to be relevant to the exercise by the body of the consumer financial education function."

BARONESS NOAKES

LORD HUNT OF WIRRAL

60 Page 52, line 31, at end insert—

"Remuneration controls

- (1) The constitution of the consumer financial education body must provide for the remuneration arrangements for members of the board and for other members specified by the Authority to be approved by the Authority.
- (2) If the remuneration arrangements provide that a member of the board or any employee of the board could receive remuneration in any period of 12 months of a sum in excess of £150,000 or such higher sum as is notified to the board by the Treasury, they must also be approved by the Treasury."

61 [Re-tabled as Amendment 72A]

BARONESS NOAKES
LORD HUNT OF WIRRAL

62 Page 53, leave out lines 22 to 28

63 Page 53, leave out lines 30 to 34

64 Page 53, line 34, at end insert—

"Interests of consumers

In discharging the consumer financial education function, the consumer financial education body must—

- (a) act in the best interests of the persons intended to benefit from its activities, and
- (b) act on the basis of the identified needs of those persons."

LORD HODGSON OF ASTLEY ABBOTTS

65 Page 54, leave out line 8

BARONESS NOAKES
LORD HUNT OF WIRRAL

66 Page 54, line 8, leave out "and" and insert—

"() persons who might be required to contribute to its funding under paragraphs 12 and 13 of this Schedule; and"

67 Page 54, line 10, at end insert—

"() It shall be sufficient for the purposes of paragraph (e) of subsection (4) for the consumer financial education body to consult persons or bodies which in its opinion represent the views of the persons mentioned in that paragraph."

LORD HODGSON OF ASTLEY ABBOTTS

68 Page 54, line 13, at end insert "and shall include with the published budget a statement saying whether the budget, as approved by the Authority, is in the opinion of the board adequate to carry out the functions required of it in the financial year"

LORD MYNERS

68A* Page 54, line 28, at end insert—

"(ab) how the extent to which each of those objectives is met is to be determined;"

68B* Page 54, line 32, at end insert—

"() In sub-paragraph (4) references to objectives for a financial year include objectives for a longer period that includes that year."

BARONESS NOAKES
LORD HUNT OF WIRRAL

69 Page 54, line 32, at end insert—

"() An annual plan shall also set out the longer term objectives of the consumer financial education body and how achievement of those objectives is to be measured."

70 Page 54, line 36, at end insert—

"() the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department;"

LORD HODGSON OF ASTLEY ABBOTTS

71 Page 54, leave out line 37

BARONESS NOAKES
LORD HUNT OF WIRRAL

72 Page 54, line 44, at end insert—

"Annual accounts and audit

- (1) The consumer financial education body must—
 - (a) keep proper accounting records, and
 - (b) prepare a statement of accounts in respect of each financial year.
- (2) A statement under sub-paragraph (1)(b) must be prepared by the consumer financial education body in such form as the Treasury may direct.
- (3) The consumer financial education body must send a copy of a statement under sub-paragraph (1)(b) to—
 - (a) the Authority,
 - (b) the Treasury, and
 - (c) the Comptroller and Auditor General.
- (4) A copy of a statement must be sent under sub-paragraph (3) within such period, beginning with the end of the financial year to which the statement relates, as the Secretary of State may direct.
- (5) The Comptroller and Auditor General must—
 - (a) examine, certify and report on a statement received under this paragraph, and
 - (b) send a copy of the certified statement and of the report on it to the Treasury as soon as possible.
- (6) The Treasury must lay before Parliament a copy of the statement and report sent under sub-paragraph (5)(b)."

LORD HODGSON OF ASTLEY ABBOTTS

72A* Page 55, line 10, at end insert—

"() set out how it has used its resources in the most efficient, effective and economic way"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 73 Page 55, line 10, at end insert—
"() The consumer financial education body must send a copy of the report to the Treasury which must lay it before Parliament."

- 74 Page 55, leave out lines 38 and 39

LORD MYNERS

- 75 Page 56, line 1, at end insert "*or payment service providers*"
76 Page 56, line 4, after "persons" insert "or payment service providers"
77 Page 56, line 5, after "person" insert "or payment service provider"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 78 Page 56, line 7, at end insert—
"() The Authority must ensure that the proportion of the relevant costs which authorised persons will be required to contribute towards, by virtue of the rules, does not exceed a reasonable estimate of the costs associated with the activities of those authorised persons."

- 79 Page 56, line 7, at end insert—
"() Before making the rules, the Authority must consult the persons who may be required to make payments under the rules."

LORD MYNERS

- 80 Page 56, line 15, at end insert—
"() "Payment service provider" means a person who is a payment service provider for the purposes of the Payment Services Regulations 2009 as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1)."

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 81 Page 57, line 23, after "The" insert "Authority, the"
82 Page 57, leave out lines 24 and 25 and insert "make loans"
83 Page 57, line 29, leave out "grant or"
84 Page 57, line 29, leave out "or other form of financial assistance"
85 Page 57, line 38, leave out "may" and insert "shall"
86 Page 57, leave out lines 42 and 43

VISCOUNT ECCLES

Viscount Eccles gives notice of his intention to oppose the Question that Schedule 1 be the First Schedule to the Bill.

Clause 7

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 87 Page 5, line 18, leave out paragraph (b)
88 Page 5, line 23, leave out subsection (4)

LORD HOWARD OF RISING

89 Page 5, line 24, at end insert—

"() After section 138 insert—

"138A Reduction in regulatory burden

- (1) Before making general rules, the Authority must consider whether the regulatory burden on authorised persons as a result of the rules would increase.
- (2) If the Authority considers that the regulatory burden on the authorised persons would increase as a result of the rules, the Authority must not make the rules unless and until it has removed other general rules so that there is no overall increase in regulatory burden.
- (3) The Authority shall review at least once in every year the regulatory burden imposed by general rules and shall seek to reduce that burden by at least 5 per cent over the subsequent 12 months.
- (4) If the Authority considers that it is not able to reduce the regulatory burden in accordance with subsection (3), or if it fails to achieve a 5 per cent reduction in any year, it shall make a report to the Treasury which shall lay that report before Parliament.
- (5) In this section "regulatory burden" means the costs imposed on authorised persons and any other persons as a result of general rules."

BARONESS NOAKES

LORD HUNT OF WIRRAL

90 Page 5, line 30, leave out paragraph (b)

91 Page 5, line 34, at end insert ", and

(c) after subsection (4) insert—

"(5) If the Authority uses the powers created by this section it must send a report to the Treasury which may lay the report before Parliament as soon as is practicable."

92 Page 5, line 34, at end insert—

"() In Schedule 2, after paragraph 7 insert—

"Treasury management advice

7A Giving or offering or agreeing to give advice to persons on treasury management."

Clause 8

BARONESS NOAKES

LORD HUNT OF WIRRAL

93 Page 6, line 5, after "promote" insert—

"(a)"

94 Page 6, line 6, after "supervision" insert ", and

(b) international financial stability"

95 Page 6, line 7, leave out "financial stability objective" and insert "objectives"

96 Page 6, line 7, at end insert "whilst maintaining the competitive position of the United Kingdom in respect of financial services and markets"

- 97 Page 6, line 10, at end insert "and the protection and enhancement of the international financial system"
- 98 Page 6, leave out lines 16 and 17
- 99 Page 6, line 17, at end insert—
 "() the desirability of European Union rules regarding regulation and supervision conforming with other international regulation and supervision"
- 100 Page 6, line 17, at end insert—
 "() In discharging the duty under subsection (1), the Authority must produce an annual report setting out progress made, and the report should include information about—
 (a) compliance in the UK with the principles set out in subsection (3)(a);
 (b) comparable progress made in other countries; and
 (c) the impact of any significant divergence between the information required by paragraphs (a) and (b).
 () The Authority must send a copy of the report to the Treasury which must lay a copy before Parliament."
- 101 Page 6, line 17, at end insert—
 "() The Authority must, consulting the Treasury, determine and review its strategy in relation to its duties under this section."
- 102 Page 6, line 30, at end insert—
 "() "The United Kingdom" means the whole of the United Kingdom and each of its constituent parts."

After Clause 8

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 103 Insert the following new Clause—
"Bank of England"
 (1) The Bank of England Act 1998 is amended as follows.
 (2) In section 2A(2), after "Treasury" insert ", the Council for Financial Stability"."
- 104 Insert the following new Clause—
"Investment schemes constituted by contract"
 (1) The Financial Services and Markets Act 2000 is amended as follows.
 (2) In section 237—
 (a) for subsection (1) substitute—
 "(1) In this Part—
 (a) "unit trust scheme" means a collective investment scheme under which the property is held on trust for the participants;
 "contractual scheme" means a collective investment scheme which is constituted by a contract.";
 (b) for subsection (2) substitute—

"(2) "operator", in relation to—

- (a) a unit trust scheme with a separate trustee, means the manager,
- (b) a contractual scheme, means the manager,
- (c) an open-ended investment company, means that company, and
- (d) an investment partnership, means that partnership.";

(b) in subsection (3), in the list of definitions insert—

""an authorised contractual scheme" means a contractual scheme in respect of which an authorisation order is in force under any provision made in regulations under section 262 by virtue of subsection (2)(1) of that section;

"an authorised investment partnership" means an investment partnership in respect of which an authorisation order is in force under any provision made in regulations under section 262 by virtue of subsection (2)(1) of that section;"

(c) in subsection (4) after paragraph (a) insert—

"(aa) an authorised contractual scheme;

(ab) an authorised investment partnership;"

(3) After section 236 (open-ended investment companies) insert—

"236A Investment partnership

- (1) In this Part "an investment partnership" means a collective investment scheme which is incorporated under the Limited Liability Partnership Act 2000 and which satisfies the purpose condition and the realisation condition.
- (2) The purpose condition is that the property belongs beneficially to, and is managed by or on behalf of, a limited liability partnership ("LLP") having as its purpose the investment of its funds with the aim of—
 - (a) spreading investment risk; and
 - (b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.
- (3) The realisation condition is that, in relation to LLP, a reasonable investor would, if he were to participate in the scheme—
 - (a) expect that he would be able to realise, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of interest or shares in, or securities of, LLP held by him as a participant in the scheme); and
 - (b) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.
- (4) In determining whether the realisation condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—
 - (a) Chapter 3 of Part 18 of the Companies Act 2006;
 - (b) Chapter VII of Part VI of the Companies (Northern Ireland) Order 1986;
 - (c) corresponding provision in force in another EEA State; or
 - (d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding

provisions.

- (5) Section 262 shall apply to an investment partnership as if references in that provision to an "open-ended investment company", "company" or "body" shall be to an "investment partnership".
- (6) The Treasury may by order amend the definition of "an investment partnership" for the purposes of this Part."
- (4) After section 262 (open-ended investment companies) insert—

"CHAPTER IV A

SCHEMES CONSTITUTED BY CONTRACT

262A Schemes constituted by contract

- (1) The Treasury may by regulations make provision for—
 - (a) facilitating the carrying on of collective investment by a scheme constituted by contract;
 - (b) regulating such contractual schemes.
- (2) The regulations may, in particular, make provision—
 - (a) for the registration in Great Britain of such a contractual scheme;
 - (b) as to the purposes for such a contractual scheme, the investments which it may issue and otherwise as to its constitution;
 - (c) as to the management and operation of such a contractual scheme and the management of its property;
 - (d) as to the powers, duties, rights and liabilities of such a contractual scheme and of other persons, including—
 - (i) the persons who direct or control its affairs;
 - (ii) its depositary (if any);
 - (iii) its auditor; and
 - (iv) any persons who act or purport to act on its behalf;
 - (e) as to the merger of one or more such contractual schemes and the division of such;
 - (f) for the appointment and removal of an auditor for such a contractual scheme;
 - (g) as to the winding up and dissolution of such a contractual scheme;
 - (h) for such a contractual scheme, or any person who directs or controls its affairs or any depositary of such a contractual scheme, to be required to comply with directions given by the Authority;
 - (i) enabling the Authority to apply to a court for an order removing and replacing any person who directs or controls its affairs or any depositary of such a contractual scheme;
 - (j) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;
 - (k) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.
- (3) Regulations under this section may—

- (a) impose criminal liability;
 - (b) confer functions on the Authority;
 - (c) in the case of provision made by virtue of subsection (2)(l) authorise the making of rules by the Authority;
 - (d) confer jurisdiction on any court or on the Tribunal;
 - (e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);
 - (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
 - (g) make consequential amendments, repeals and revocations of any such legislation;
 - (h) modify or exclude any rule of law.
- (4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation."

105 Insert the following new Clause—

"Bank of England

- (1) The Bank of England Act 1998 is amended as follows.
- (2) In section 2A(3), after "Treasury" insert "and the Financial Services Authority".

Clause 9

BARONESS NOAKES
LORD HUNT OF WIRRAL

106 Page 7, line 5, leave out paragraph (a)

107 Page 7, line 10, at end insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"

BARONESS NOAKES
LORD HUNT OF WIRRAL
LORD MYNERS

108 Page 7, line 11, leave out "The first"

109 Page 7, line 13, leave out subsections (7) and (8)

BARONESS NOAKES
LORD HUNT OF WIRRAL

110 Page 7, line 15, after "report," insert—

"() require additional descriptions of authorised persons to be subject to the regulations,"

111 Page 7, line 15, after "report," insert—

"() require matters to be disclosed in an executives' remuneration report which are not required under any relevant international standards regarding the content of such reports,"

Clause 10

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 112** Page 7, line 45, at end insert—
- "() When making regulations under section 9, the Treasury must have regard to international standards regarding the content of such reports.
- () If there is any significant change in the international standards regarding the content of executives' remuneration reports, the Treasury must review such changes and consider whether it would be desirable to revise any regulations made under section 9."
- 113** Page 8, line 1, leave out subsection (6)
- 114** Page 8, leave out lines 11 to 14

Clause 11

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 115** Page 8, line 20, leave out "must" and insert "may"
- 116** Page 8, line 21, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 117** Page 8, leave out line 28
- 118** Page 8, leave out line 33
- 119** Page 8, line 33, at end insert—
- "() When making rules about remuneration policies, the Authority must have regard to the desirability of expressing those rules as principles which should be followed, except where departure therefrom can be explained."
- 120** Page 8, line 35, after "to" insert "the Implementation Standards and"
- 121** Page 8, line 37, at end insert—
- "() The general rules do not include provisions made by the Authority's remuneration code."
- 122** Page 8, line 37, at end insert—
- "() If there is any significant change in the implementation standards or any other international standards about the remuneration of individuals working in the financial sector, the Authority must review such changes and consider whether it would be desirable to revise any rules made under this section."
- 123** Page 8, line 37, at end insert—
- "(4A) Rules made under this section shall not have effect unless the Authority has sent a draft of the rules to the Treasury and the Treasury has made an order approving the rules.
- (4B) An order under subsection (4A) is subject to the affirmative procedure."
- 124** Page 8, leave out lines 38 to 41
- 125** Page 8, line 38, leave out "The Treasury may direct the authority to" and insert "The Authority must"
- 126** Page 8, line 38, leave out "direct" and insert "by order require"

- 127 Page 8, line 41, leave out "as to the contents of the policies"
- 128 Page 8, leave out lines 42 and 43
- 129 Page 8, line 43, at end insert ", any authorised persons intended to be covered by the direction and any other persons who appear to the Treasury to have an interest in the direction"
- 130 Page 8, line 43, at end insert—
 "() The Treasury must lay a copy of any direction issued under subsection (5) before each House of Parliament as soon as possible after it has been made."
- 131 Page 8, line 43, at end insert—
 "() An order under subsection (5) is subject to the affirmative resolution procedure."
- 132 Page 9, line 5, after "may" insert "exceptionally"
- 133 Page 9, line 10, after "for" insert "(but not require)"
- 134 Page 9, line 12, at end insert—
 "() If general rules contain the matters referred to in subsection (9), the general rules shall also provide for a right of referral to the Tribunal."
- 135 Page 9, line 16, leave out from "risks" to end of line 17
- 136 Page 9, line 25, at end insert—
 ""officer" has the same meaning as in section 10(7) of the Financial Services Act 2010;"
- 137 Page 9, line 27, at end insert "; and
 "the Authority's remuneration code" means the code published by the Authority on 12 August 2009"

After Clause 11

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 138 Insert the following new Clause—
- "Review of sections 9 to 11**
- (1) Not later than three years after the commencement of sections 9 to 11, the Treasury shall prepare a report setting out the Treasury's assessment of—
 - (a) the impact of those sections on the remuneration practices of authorised persons, and
 - (b) the desirability of those sections continuing in force with or without amendment.
 - (2) Before preparing the report, the Treasury shall consult authorised persons.
 - (3) The Treasury shall lay the report before both Houses of Parliament.
 - (4) If the Treasury consider that the sections should not continue in force, they may by order repeal them.
 - (5) If the Treasury consider that amendments are desirable to the sections, they may by order make those amendments.
 - (6) An order under this section is to be subject to the affirmative procedure."

Clause 12

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 139** Page 9, line 36, leave out "must" and insert "may"
- 140** Page 9, line 37, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 141** Page 10, line 1, after "any" insert "material"
- 142** Page 10, line 4, after "specified" insert "material"
- 143** Page 10, line 15, at end insert—
"() If subsection (6) applies, the rules must allow an authorised person to make a referral to the Tribunal."
- 144** Page 10, line 20, at end insert ", except that the Authority may exclude authorised persons from the requirements of the general rules where the Authority considers that the costs imposed on those authorised persons would exceed the benefits in terms of the stability of the UK financial system"
- 145** Page 10, line 24, at end insert—
"() the authorised persons who are intended to be required to produce recovery plans; and
() any other persons who appear to the Authority to have an interest in recovery plans"
- 146** Page 10, line 26, leave out "must" and insert "may"
- 147** Page 10, line 27, after "person" insert "in relation to whom any power under Part 1 of the Banking Act 2009 is exercisable"
- 148** Page 10, line 35, after "any" insert "material"
- 149** Page 10, line 36, after "any" insert "material"
- 150** Page 11, line 6, at end insert—
"() If subsection (7) applies, the rules must allow an authorised person to make a referral to the Tribunal."
- 151** Page 11, line 15, at end insert—
"() the authorised persons who are intended to be required to produce resolution plans; and
() any other persons who appear to the Authority to have an interest in resolution plans"
- 152** Page 11, line 22, after "(1)(b)" insert "or subsection (4)(a)"
- 153** Page 12, line 10, at end insert—
"() If subsection (2) applies, the rules must allow an authorised person to make a referral to the Tribunal."
- 154** Page 12, line 17, at end insert—
"() Where the person required to provide assistance under subsection (4) is not the authorised person or a director or employee of the authorised person, the skilled person shall arrange for that person to be reimbursed for any expenses incurred in complying with the requirement and to receive reasonable remuneration for such compliance."

LORD MYNERS

155 Page 12, line 30, at end insert—

"() An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of section 139B or 139C or this section."

BARONESS NOAKES

LORD HUNT OF WIRRAL

156 Page 12, line 30, at end insert—

"() Nothing in subsection (6) overrides section 413."

157 Page 12, line 34, after "standards" insert "for the time being in force"

158 Page 12, line 36, at end insert—

"() If there is any significant change in the international standards regarding the content of recovery plans, the Authority must review such changes and consider whether it would be desirable to revise any rules made under this section."

159 Page 12, line 36, at end insert—

"(9) General rules about recovery or resolution plans made under sections 139B or 139C shall not have effect unless the Authority has sent a draft of the rules to the Treasury and the Treasury has made an order approving the rules.

(10) An order under subsection (9) is subject to the affirmative procedure."

160 Page 13, line 22, at end insert "and the Bank of England"

161 Page 13, line 23, leave out "negative" and insert "affirmative"

162 Page 13, line 38, leave out "The Authority" and insert "If the Authority considers that it is necessary in order to—

(a) maintain confidence in the UK financial system, or

(b) protect the stability of the UK financial system,

it"

Clause 13

BARONESS NOAKES

LORD HUNT OF WIRRAL

163 Page 13, line 38, leave out from "prohibiting" to end of line 41 and insert "or limiting short selling in relation to financial instruments of a specified description"

164 Page 13, line 41, at end insert—

"() Before making rules under this section, the Authority must consult—

(a) the Treasury, and

(b) the Bank of England."

165 Page 14, line 8, at end insert—

"() When making short selling rules, the Authority must have regard to any other international standards and measures taken or proposed about short selling."

166 Page 14, line 8, at end insert—

- "() The authority may make short selling rules under this section only if it considers that it is necessary to do so in order to—
- (a) maintain confidence in the UK financial system; or
 - (b) protect the stability of the UK financial system."

167 Page 14, leave out lines 13 to 17

LORD MYNERS

167A* Page 14, line 25, at end insert—

- "() The Authority must, when making short selling rules, have regard to any international agreement as to measures to be taken in respect of short selling."

BARONESS NOAKES

LORD HUNT OF WIRRAL

168 Page 14, line 28, leave out "The cases in which"

169 Page 14, line 29, leave out "include any case where" and insert "if"

170 Page 14, line 33, leave out "effect (or one of the effects)" and insert "intention (or one of the intentions)"

171 Page 14, line 35, at end insert—

- "() Subsection (2) shall not apply if and to the extent that S already holds more of the relevant financial instruments than are covered by the transaction referred to in paragraph (a)."

172 Page 14, line 36, leave out from "by" to end of line 37 and insert "articles 76 and 80 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001"

173 Page 14, leave out lines 41 and 42

174 Page 15, line 22, after "may" insert ", after consulting the Treasury and the Bank of England,"

175 Page 15, line 31, at end insert—

- "() The Authority shall keep emergency rules under review and shall consult those who it believes are or may be affected by the rules as to their practical impact."

176 Page 16, line 7, at end insert—

- "() A notice issued under subsection (1) shall state the amount of the penalty which may be imposed in the event of failure to provide the required information."

177 Page 16, line 7, at end insert—

- "() A notice issued under subsection (1) shall include a statement that the recipient should seek advice in relation to their rights in relation to the notice."

178 Page 16, line 16, at end insert—

- "() This section does not apply to information or documents which are subject to legal professional privilege."

179 Page 16, line 32, at end insert—

- "() Section 175 applies to information and documents required to be provided or produced under this section."

LORD MYNERS

179A* Page 16, line 32, at end insert—

"131EA Power to require information: supplementary

- (1) If the Authority has power under section 131E to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—
 - (a) take copies of or extracts from the document; or
 - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) In subsection (2)(b) "relevant person", in relation to a person who is required to produce a document, means a person who—
 - (a) has been or is or is proposed to be a director or controller of that person;
 - (b) has been or is an auditor of that person;
 - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
 - (d) has been or is an employee of that person.
- (4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.
- (5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.
- (6) A person ("P") may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—
 - (a) P is the person under investigation or a member of that person's group;
 - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group; or
 - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (7) If a person claims a lien on a document, its production under section 131E does not affect the lien."

BARONESS NOAKES
LORD HUNT OF WIRRAL

180 Page 16, line 35, after "satisfied" insert "beyond reasonable doubt"

LORD MYNERS

180A* Page 16, line 38, at end insert "or 131EA"

181 Page 17, line 6, leave out "four" and insert "three"

BARONESS NOAKES
LORD HUNT OF WIRRAL

182 Page 17, line 10, at end insert—

"() The imposition of a penalty under this section does not make any transaction

void or unenforceable."

Clause 14

BARONESS NOAKES

LORD HUNT OF WIRRAL

183 Page 19, line 35, at end insert—

"(9) This section shall not come into force until the report required by subsection (10) has been approved by Parliament.

(10) The Treasury shall prepare a report setting out—

(a) the evidence that it believes demonstrates that the powers created by this section are necessary, and

(b) proposals by the Authority for their use of the powers."

184 Page 19, line 35, at end insert—

"() The Authority shall publish a statement of policy setting out how it intends to use the power under this section and in particular—

(a) how it will determine the length of a suspension or restriction under subsection (3);

(b) the circumstances in which it expects to limit a suspension under subsection (4);

(c) the circumstances in which when it expects to restrict a restriction under subsection (5);

(d) the circumstances in which it would withdraw or vary a suspension or restriction under subsection (6);

(e) the circumstances in which it will use the power to apply to all of the regulated activities of the person concerned under subsection (7); and

(f) the circumstances in which it expects to use the powers in this section in addition to those in sections 205 and 206."

Clause 16

LORD MYNERS

184A* Page 20, line 5, after "that" insert "(a)"

184B* Page 20, line 6, after "approval," insert "and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,"

BARONESS NOAKES

LORD HUNT OF WIRRAL

185 Page 20, line 7, leave out "P" and insert "the authorised person"

BARONESS VALENTINE

186 Page 20, line 7, at end insert—

"() No penalty may be imposed on P under this section after the end of 31st December 2012."

LORD MYNERS

186A* Page 20, leave out lines 8 to 14

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 187** Page 20, line 8, leave out "not impose a penalty" and insert "impose a penalty only"
- 188** Page 20, line 8, leave out "P" and insert "the authorised person"
- 189** Page 20, line 10, leave out from "that" to end of line 14 and insert "the authorised person—
- (a) either—
 - (i) did not know, and
 - (ii) could not reasonably be expected to have known,that P was at that time performing a controlled function without approval, or
 - (b) was instructed to undertake these activities by an authorised person or, where the authorised person was a company director or officer, who was an approved person."
- 190** Page 20, leave out lines 11 and 12 and insert—
- "(a) did not know or,
 - (b) was reckless as to whether,"
- 191** Page 20, leave out lines 11 and 12 and insert—
- "(a) knew, or
 - (b) could reasonably be expected to have known,"
- 192** Page 20, line 13, leave out "that"
- 193** Page 20, line 24, after "the" insert "authorised"

LORD MYNERS

- 194** Page 20, line 25, leave out "four" and insert "three"

BARONESS NOAKES
LORD HUNT OF WIRRAL

- 195** Page 20, line 25, leave out "four" and insert "two"
- 196** Page 20, line 32, at end insert—
- "(8) This section shall not come into force until the report required by subsection (9) has been approved by Parliament.
- (9) The Treasury shall prepare a report setting out—
- (a) the evidence that it believes demonstrates that the powers created by this section are necessary, and
 - (b) proposals by the Authority for their use of the powers."
- 197** Page 20, line 34, leave out second "a" and insert "an authorised"
- 198** Page 20, line 37, leave out second "a" and insert "an authorised"
- 199** Page 20, line 40, leave out second "a" and insert "an authorised"

LORD MYNERS

- 200** Page 21, line 6, after "determining" insert "whether a penalty should be imposed and"

201 Page 21, line 9, at end insert—

"(ab) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;"

202 Page 21, line 13, at end insert—

"(2A) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.

(2B) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval."

Clause 17

BARONESS NOAKES

LORD HUNT OF WIRRAL

203 Page 22, line 31, leave out subsection (4)

LORD MYNERS

204 Page 22, line 31, leave out ""four" and insert ""three"

After Clause 17

LORD MYNERS

205 Insert the following new Clause—

"Publication of decision notices

(1) Section 391 of the Financial Services and Markets Act 2000 (publication) is amended as follows.

(2) In subsection (1) (which prevents the FSA and the person to whom a warning or decision notice is given or copied from publishing the notice or any details concerning it), omit "or decision notice".

(3) After that subsection insert—

"(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details."

(4) In subsection (4) (duty of FSA to publish information about a final notice), before "final notice" insert "decision notice or".

BARONESS NOAKES

LORD HUNT OF WIRRAL

206 Insert the following new Clause—

"Publication

For section 391(1) of the Financial Services and Markets Act 2000 substitute—

"(1) The Authority may publish such information about the matter to which a warning notice or decision notice relates as it considers appropriate.""

Clause 18

LORD HUNT OF WIRRAL

BARONESS NOAKES

207 Page 23, line 2, leave out "the same, similar or related" and insert "common"

208 Page 23, line 3, at end insert—

"() In deciding whether an order for collective proceedings is appropriate, the court should consider—

- (a) whether other methods of redress would be more appropriate,
- (b) the representative's financial interest in seeking a collective redress order,
- (c) whether the representative has demonstrated sound substantiated grounds for asserting the cause or causes of action,
- (d) the representative's ability to manage the proceedings which may involve multiple parties,
- (e) the source of funding, and
- (f) the proportionality of costs of such proceedings to the amounts in dispute."

209 Page 23, line 6, at end insert—

"() A person may not be authorised if they have a direct financial interest in the proceedings, other than as a claimant."

210 Page 23, line 7, leave out subsection (6) and insert—

"() Proceedings may be authorised under subsection (1) as long as each represented person has a valid claim of the specified kind against the defendant to the proceedings, with each proceeding limited to one defendant."

211 Page 23, line 9, at end insert—

"(7) Proceedings may be authorised under subsection (1) only if the representative—

- (a) is authorised to act as representative on an ad hoc basis under the civil procedure rules, or
- (b) is authorised to act as representative and on such terms as specified by order of the Lord Chancellor, in accordance with criteria to be published by the Lord Chancellor for the purposes of this section.

(8) An application by a body to be authorised under subsection (7) is to be made in a form approved by the Lord Chancellor for the purpose.

(9) Before issuing criteria or authorising a body under subsection (7)(b), the Lord Chancellor shall consult the Lord Chief Justice.

(10) The Lord Chief Justice may nominate a judicial office holder to carry out the functions under subsection (8).

(11) In this section—

"judicial office holder" has the same meaning as in section 109(4) of the Constitutional Reform Act 2005;

"court" means in England and Wales, the High Court, or, in Scotland, the Court of Session."

Clause 19

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 212** Page 23, line 13, at end insert ", but the court shall not direct that proceedings are to be brought on an "opt-out" basis unless it is satisfied that it would not be practicable to obtain redress by means of proceedings brought on an "opt-in" basis"

LORD HODGSON OF ASTLEY ABBOTTS

- 213** Page 23, line 13, at end insert—

"() The court may only direct that the proceedings are to be brought on an "opt-out" basis if the class representative is a government-sponsored body."

LORD MYNERS

- 213A*** Page 23, line 37, leave out ", 42, 45 and 46" and insert "and 45"

Clause 20

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 214** Page 24, line 3, at end insert—

"() With regard to cases taken with any element of opt-in, the court must direct that all persons who opt-in to a proceeding at any stage are bound by the court's decision, even if they subsequently opt-out."

Clause 21

LORD MYNERS

- 214A*** Page 24, line 10, after "action" insert "of a consumer"

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 215** Page 24, line 14, at end insert ", and

(c) is brought by or on behalf of (and is limited to) persons who are consumers;"

- 216** Page 24, leave out lines 27 and 28

- 217** Page 24, leave out lines 37 to 39

LORD MYNERS

- 217A*** Page 25, line 1, at end insert—

""consumer" means an individual acting otherwise than for the purposes of a business carried on by the individual,"

LORD HUNT OF WIRRAL

BARONESS NOAKES

- 218** Page 25, line 4, leave out "and "relevant ancillary service" have" and insert "has"

- 219** Page 25, line 9, at end insert "but nothing in sections 18 to 24 gives rise to any additional causes of action"

- 220** Page 25, line 12, leave out from "service," to end of line 13 and insert "after the date of such order"

- 221** Page 25, line 14, leave out "negative" and insert "the affirmative"

- 222** Page 25, line 15, at end insert—

"() Any orders made under this section cannot be made until the Treasury has held

a full public consultation."

223 Page 25, line 15, at end insert—

"() In this section "consumer" means any natural person, who in the matters to which the claim relates, is acting for purposes which are outside his trade, business or profession."

Clause 22

BARONESS NOAKES

LORD HUNT OF WIRRAL

224 Page 25, line 17, at end insert—

"() Regulations will apply to Scotland only if the Treasury has obtained the consent of the Scottish Ministers."

LORD HUNT OF WIRRAL

BARONESS NOAKES

225 Page 25, line 19, leave out "the Office of Fair Trading" and insert "any defendant named in a claim"

226 Page 25, line 25, at end insert—

"() provide that the court may not make such an order in respect of matters which are, or which are proposed to be, the subject of a consumer redress scheme,"

227 Page 25, line 35, leave out subsection (3) and insert—

"() With respect to individual claims for redress that fall within the scope of a class that has been approved by the court, regulations may provide that the statute of limitations applicable to such claims, where the limitation period has not expired when the class is approved by the court, can be suspended.

() The period of suspension is to be limited to the date from which the class is approved until any time limit has expired on collection of any redress awarded by the court to any such individuals.

() For those individuals who have had the limitation period for their individual claim suspended, but subsequently opt out of a class, the suspension of the limitation period should be lifted immediately, such that the limitation period continues to run from the point at which it was suspended.

() This provision can not be applied to limitation periods that have expired before a class is approved by the court."

LORD MYNERS

228 Page 26, line 10, leave out "are subject to negative resolution procedure" and insert "that contain provision by virtue of subsection (2)(e) or (f) are subject to affirmative resolution procedure.

(7) Any other regulations under subsection (1) are subject to negative resolution procedure."

LORD HUNT OF WIRRAL

BARONESS NOAKES

229 Page 26, line 10, leave out "negative" and insert "the affirmative"

Clause 23

LORD HUNT OF WIRRAL
BARONESS NOAKES

- 230** Page 26, line 14, leave out subsection (2)
- 231** Page 26, line 17, leave out "in particular"
- 232** Page 26, line 36, leave out from "calculated" to end of line 39
- 233** Page 26, line 41, at end insert—

"() Any money not paid to represented persons is to be returned to the defendant."

Clause 24

LORD HUNT OF WIRRAL
BARONESS NOAKES

- 234** Page 26, line 43, leave out subsection (1) and insert—

"() Provision about collective proceedings shall be incorporated into the rules of the court.

- () The rules shall provide that a collective proceeding shall not be authorised unless—
- (a) the specified kind of claims raises common issues of law or fact;
 - (b) the claims or defences of the representative are typical of the claims or defences of the members of the collective proceedings;
 - (c) the representative will fairly and adequately protect the interests of the members of the collective proceedings;
 - (d) prosecuting separate actions by or against individual members of the collective proceedings would create a risk of—
 - (i) inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct for the party opposing the class; or
 - (ii) adjudications with respect to individual members of the collective proceedings that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
 - (e) the Authority has refused to act or failed to act reasonably expeditiously pursuant to its powers under section 404 of FSMA;
 - (f) the court is of the view that the questions of law or fact common to members of the collective proceedings predominate over any questions affecting only individual members, and that a collective proceeding is superior to other available methods for fairly and efficiently adjudicating the controversy having regard to such factors as it may consider appropriate including the likely difficulties in managing a class action and in determining damages pursuant to regulations made pursuant to section 22(2)(f);
 - (g) the court has considered, and is convinced of, the merits of authorising the class for collective proceedings."

- 235** Page 27, line 19, after "about" insert "disclosure"

236 Page 28, line 11, at end insert—

"() The rules must provide that no disclosure of evidence is required until after a class has been authorised, and until the deadline for appealing the authorisation decision has expired, or a court decision has been made in response to such an appeal, except where such disclosure is made by a firm voluntarily in relation to the right to be heard in section 22(2)(a)."

237 Page 28, line 12, at end insert—

"() Court rules must provide that only judges with specialist knowledge of class actions are able to authorise and decide on collective proceedings."

238 Page 28, line 12, at end insert—

"() The rules must provide for any defendant to a claim to have the right to appeal a court decision to authorise a class for collective proceedings within two weeks of class authorisation."

239 Page 28, line 12, at end insert—

"() Rules under subsection (2)(d) and (e) must require the court, when considering the suitability of any proposed representative, to be satisfied that such person

- (a) would fairly and adequately represent the interests of represented persons;
- (b) does not have an interest that is in conflict with the interests of represented persons;
- (c) has prepared a plan for the collective proceedings that sets out a method to the satisfaction of the court for bringing the proceedings on behalf of represented persons and for notifying represented persons of the fact and progress of the proceedings;
- (d) has in place adequate resources for the conduct of the collective proceedings, which shall include adequate resources for the conduct of the collective proceedings (including any adverse costs awards). "

240 Page 28, line 12, at end insert—

"() Rules under subsection (2)(h) must provide that a party to collective proceedings may obtain disclosure of documents in the possession of represented persons other than the representative with the permission of the court."

241 Page 28, line 12, at end insert—

"() Rules under subsection (2)(j) shall provide—

- (a) that the representative shall be liable for the claimants' costs, except—
 - (i) where the court authorises a sub-class representative in respect of a sub-group of represented persons, who shall be liable for the costs associated with the determination of the issues common to the sub-group;
 - (ii) the costs of the determination of represented persons' own individual claims, for which individual represented persons shall be liable;
- (b) that the general rule shall be that the unsuccessful party shall pay the

costs of the successful party, although the court may make a different order;

- (c) that security for costs shall be available against a claimant who is acting as a representative if there is reason to believe that he will be unable to pay the defendant's costs if so ordered to do."

242 Page 28, line 12, at end insert—

"() Rules under subsection (2)(1) must provide that—

- (a) a settlement of collective proceedings shall not take effect unless the court conducts a hearing as to the fairness of the proposed settlement, upon notice to the parties prescribed under the rules, and approves the contents of the settlement agreement on terms which it considers to be appropriate; and
- (b) when approved, a settlement—
 - (i) binds every represented person who has not opted out of or been excluded from the proceedings;
 - (ii) binds every represented person who has opted into the proceedings; and
 - (iii) does not bind a party to the proceedings in any subsequent proceeding between the party and a person who has opted out of, had been excluded from, or who has failed to opt into, the proceedings."

Clause 25

LORD HUNT OF WIRRAL

BARONESS NOAKES

243 Page 28, line 17, leave out "or county court"

LORD MYNERS

244 Page 28, line 18, at end insert—

"(or, as regards any appeal, any appellate court)."

Before Clause 26

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

245 Insert the following new Clause—

"Securing consumer protection

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 5 insert—

"5A Securing consumer protection

- (1) This section applies where the Authority becomes aware that any feature or combination of features of a financial services market, product, service, or provider in the United Kingdom is, or appears to be, significantly harming the interests of consumers.
- (2) The Authority must take such action, including but not limited to making rules under section 404, as it considers reasonable and practicable to remedy, mitigate or prevent any detrimental effects on consumers resulting from or

relating to the feature or features of a financial services market, product or provider.

- (3) The Authority must ensure that action taken under subsection (2) shall have regard to the need to achieve as comprehensive solution as is reasonable and practicable.
- (4) Action under subsection (2) may include action by the Authority itself and recommendations on the taking of action by others where the Authority cannot by itself meet the requirements of subsection (3).
- (5) For the purposes of subsection (1) the Authority may become aware by any of the following—
 - (a) its own research reviews, monitoring, supervision or enforcement work,
 - (b) on a referral by the scheme operator of the ombudsman scheme or the Office of Fair Trading, or
 - (c) following acceptance of a request from a designated consumer body made under subsection (6).
- (6) A designated consumer body may by presenting evidence of apparent or likely significant harm to the interests of consumers request that the Authority takes action under this section.
- (7) The Authority shall within 90 days of a request under subsection (6) publish a response stating—
 - (a) whether it accepts or rejects the need for action, and
 - (b) the reasons for its decision.
- (8) For the purpose of section 5(c) "designated consumer body" includes—
 - (a) a body designated by the Secretary of State by order under section 11 of the Enterprise Act 2002;
 - (b) the financial services consumer panel;
 - (c) the consumer financial education body.
- (9) The Authority shall prepare and publish a report within one year of any of the events set out in subsection (5) setting out the action it intends to take and the reasons for its decisions.
- (10) In this section reference to a financial services market, product or provider refers to regulated activities as defined by section 22."

Clause 26

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 246** Page 29, line 5, leave out "it appears to the Authority" and insert "the Authority has evidence"
- 247** Page 29, line 7, after "requirements" insert "of the Authority's rules"
- 248** Page 29, line 9, leave out "(or may suffer)"
- 249** Page 29, line 13, leave out "to make rules" and insert "for a scheme to be made"

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

- 250** Page 29, line 19, at end insert—
"(c) a person carrying on a business of a kind mentioned in section 226A(3) of FSMA 2000 (consumer credit matters)"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 251** Page 29, line 20, leave out "make rules" and insert "propose a scheme"
- 252** Page 29, line 30, leave out third "the" and insert "its"
- 253** Page 29, line 31, leave out "(or may cause)"
- 254** Page 29, line 32, leave out second "the" and insert "its"
- 255** Page 29, line 32, leave out "(or may cause)"
- 256** Page 29, line 36, at end insert—
"() If the firm identifies a case which may fall within the scope of the consumer redress scheme on which the limitation period is due to expire between the establishment and conclusion of the scheme, the limitation period for such cases will be determined as follows—
(a) for a case which is subsequently ruled out of the scheme, the limitation period is suspended between the establishment of the scheme and the date that the case is ruled out of the scope of the scheme; and
(b) for a case that is ruled as within the scope of the scheme, the limitation period will be treated as expiring on conclusion of the scheme."
- 257** Page 29, leave out lines 37 to 40
- 258** Page 29, line 38, leave out "rules are" and insert "scheme order is"
- 259** Page 29, line 41, leave out "making rules" and insert "proposing a scheme"
- 260** Page 29, line 42, at end insert "and the firms to be subject to the scheme, and must seek the approval of the Regulatory Decisions Committee of the governing body of the Authority"
- 261** Page 29, line 43, at end insert—
"(11) If the Authority proposes a scheme under this section, it shall apply to the court for a consumer redress scheme order.
(12) "Consumer redress scheme order" means an order imposing a consumer redress scheme on relevant firms.
(13) Any application by the Authority under this section shall—
(a) attach a draft order setting out the rules of the proposed consumer redress scheme in full; and
(b) be notified to relevant firms and be published as required by the Civil Procedure Rules or as otherwise directed by the court.
(14) Upon an application under subsection (11), the court may make a consumer redress scheme order if it is satisfied that—
(a) the making of such an order represents the most appropriate means for the fair and efficient resolution of the liability of relevant firms to pay redress to consumers;
(b) the consumer redress scheme is just and equitable; and

- (c) the consumer redress scheme order complies with section 404A.
- (15) At any time after the making of a consumer redress scheme order, any relevant firm, the Authority, the ombudsman scheme or any other party permitted by Court rules to do so, may apply to the court for—
- (a) any amendment to be made to the consumer redress scheme order, or
 - (b) clarification or directions regarding the operation of the consumer redress scheme;
- and upon any such application the court may make any order it considers appropriate (including making any amendment to the consumer redress scheme order)."

262 Page 29, line 43, at end insert—

"() A firm which is aggrieved by the rules made by the Authority under this section may refer the matter to the Tribunal."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

263 Page 29, line 43, at end insert—

"(11) For the purpose of sections 404 to 404F the Authority shall be taken to mean—

- (a) for relevant firms as defined by subsection (2)(a) (authorised persons) and (2)(b) (payment service providers), the Financial Services Authority,
- (b) for relevant firms as defined by subsection (2)(c) (consumer credit matters) where the relevant firm is not also an authorised person, the Office of Fair Trading,
- (c) for relevant firms as defined by subsection (2)(c) where the relevant firm is an authorised person, either the Financial Services Authority, the Office of Fair Trading, or both."

BARONESS NOAKES

LORD HUNT OF WIRRAL

264 Page 30, line 2, leave out "Rules under section 404" and insert "A consumer redress scheme order"

265 Page 30, line 7, leave out "examples of"

266 Page 30, line 8, at end insert—

"() setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting compliance with a requirement;"

267 Page 30, line 14, leave out "(or may cause)"

268 Page 30, line 23, after "occurring" insert "before or"

269 Page 30, line 41, leave out "examples" and insert "things"

270 Page 30, line 41, leave out "rules" and insert "consumer redress scheme order"

271 Page 30, line 42, leave out "examples of"

272 Page 30, line 43, leave out ", or would be,"

273 Page 30, line 45, leave out "rules" and insert "consumer redress scheme order"

274 Page 30, line 46, leave out ", or would not be,"

275 Page 30, line 48, leave out from beginning to end of line 5 on page 31 and insert—
"(4) Matters may not be set out in the consumer redress scheme order as a result of subsection (1)(d) if a court would not grant such relief in the circumstances specified."

276 Page 31, line 1, leave out from "which" to end of line 2 and insert "have been determined by a court or tribunal to be applicable in any such case."

277 Page 31, line 5, at end insert "and the cost to relevant firms of providing such redress, including the calculation and administration of such redress"

278 Page 31, line 20, at end insert—

"() Rules may not require consumer redress schemes to cover things done or omitted to be done before this section comes into force."

279 Page 31, leave out lines 21 and 22

280 Page 31, line 22, at end insert—

"404AA Rules of court about consumer redress schemes

- (1) Rules of court may make provision about consumer redress schemes.
- (2) Such rules shall be designed with the objectives of ensuring, inter alia, that—
 - (a) applications concerning consumer redress schemes are heard and determined expeditiously; and
 - (b) notice of such applications is published so as to bring the application to the attention of those who may be affected by the consumer redress scheme.
- (3) The rules may in particular—
 - (a) make provision about applications for or in connection with consumer redress scheme orders;
 - (b) make provision about the notice to be given to relevant firms regarding such applications;
 - (c) make provision about the publication of such applications, so as to bring the application to the attention of those persons who may be affected by a consumer redress scheme order;
 - (d) set out the criteria to be applied by the court when deciding whether to make a consumer redress order (or the terms of such an order including the rules of the consumer redress scheme);
 - (e) make provision for any other matter relating or incidental to the proper management and conduct of the consumer redress scheme;
 - (f) make provision for the court to consider whether other means may be more appropriate for the fair and efficient resolution of the liability of relevant firms to pay redress to consumers, and to give directions as it considers necessary."

281 Page 31, line 31, leave out "subsection (4)" and insert "this section"

282 Page 31, leave out lines 33 and 34

283 Page 31, line 37, leave out "make a complaint under the ombudsman scheme" and insert "notify the Authority which may then take enforcement action against relevant firms to ensure that redress is made to the consumer in accordance with the

scheme"

284 Page 31, line 41, leave out from beginning to end of line 20 on page 32 and insert—

- "() A relevant complaint cannot be dealt with by the ombudsman whilst the consumer redress scheme is in operation unless it becomes clear that the complaint will not be within the scope of the scheme.
- () A relevant complaint which falls within the scope of a consumer redress scheme cannot be dealt with by the ombudsman at any time.
- () If a relevant complaint has been determined within a consumer redress scheme as not being eligible for redress, it cannot be dealt with by the ombudsman."

LORD MYNERS

285 Page 32, line 41, at end insert—

"404CA Applications to Tribunal to quash rules or provision of rules

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
 - (a) dismiss the application; or
 - (b) make an order (a "quashing order") quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
 - (a) the application includes a claim for damages arising from any matter to which the application relates; and
 - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.

- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
- (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
 - (b) such other person as may be agreed from time to time by—
 - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
 - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
- (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
 - (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
- (a) the Tribunal refuses to grant permission to make an application under this section, and
 - (b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section."

BARONESS NOAKES

LORD HUNT OF WIRRAL

286 Page 32, line 45, leave out ", or may have contemplated using,"

287 Page 33, line 2, at end insert "; and

- (c) are either—
 - (i) a natural person who, in the matters to which the claim relates, are acting for purposes which are outside their trade, business or profession;
 - (ii) a trade, business or profession with an annual turnover not exceeding £2 million;
 - (iii) a charity with an annual income of less than £1 million; or
 - (iv) a trustee of a trust with net asset value of less than £1 million;
 (determined, in each case, at the time when the collective proceedings order is made)."

288 Page 33, leave out lines 10 and 11

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

289 Page 33, line 13, at end insert—

"() persons holding a standard consumer credit licence under section

22(1)(a) of the Consumer Credit Act 1974 and carrying on a business of a kind mentioned in section 226A(3) of the Financial Services and Markets Act 2000"

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 290** Page 33, leave out lines 41 and 42
- 291** Page 33, line 46, after "interest" insert "at a specified rate prescribed by the Lord Chancellor and set by reference to the official bank rate set by the Bank of England"
- 292** Page 34, leave out lines 11 to 16 and insert "are confined to failures to comply with the Authority's rules and principles"
- 293** Page 34, line 11, leave out "include" and insert "are to"
- 294** Page 34, line 16, at end insert "and which arises as a result of any provision made by or under this or any other Act or a rule of law"
- 295** Page 34, leave out lines 17 to 21 and insert—
"(4) A relevant firm shall not be regarded as having failed to comply with a requirement except to the extent that the relevant firm has breached a legal duty or other legal obligation, prohibition or restriction which is actionable against it having regard to, amongst other things, whether the relevant firm has effectively excluded or limited its liability to consumers."
- 296** Page 35, leave out lines 1 to 5

After Clause 26

BARONESS NOAKES

LORD HUNT OF WIRRAL

- 297** Insert the following new Clause—
- "Store cards and consumer credit agreements**
- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) After section 60 insert—
- "60A Form and content of retail credit-token agreements**
- (1) The Secretary of State may make regulations as to the form and content of documents embodying retail credit-token agreements, and the regulations shall contain such provisions as appear to him appropriate including requirements to ensure that—
- (a) the rate of interest on the credit to be provided under the agreement for credit (or all the rates on a per annum basis where there is more than one rate of interest) does not prejudice the interests of debtors; or
- (b) the agreement for credit includes a seven day cooling off period during which credit would not be available to the debtor.
- (2) "Retail credit-token" means a credit-token (which has the meaning given by section 14(1)) which results in the provision of credit under a credit-token agreement provided by a retailer or group of retailers which can only be used for purchases from the retailers concerned.
- (3) A "retailer" means a person or business providing goods and services to an

individual.

(4) Accordingly, a "retail credit-token agreement" is a regulated agreement."

(3) For section 67 substitute—

"67 Cancellable agreements

- (1) A regulated agreement that is not a retail credit-token agreement may be cancelled by the debtor or hirer in accordance with this Part if the antecedent negotiations included oral representations made when in the presence of the debtor or hirer by an individual acting as, or on behalf of, the negotiator, unless—
- (a) the agreement is secured on land, or is a restricted-use credit agreement to finance the purchase of land or is an agreement for a bridging loan in connection with the purchase of land, or
 - (b) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business (whether on a permanent or temporary basis)—
 - (i) the creditor or owner;
 - (ii) any party to a linked transaction (other than the debtor or hirer or a relative of his);
 - (iii) the negotiator in any antecedent negotiations.
- (2) A retail credit-token agreement may be cancelled by the debtor in accordance with this Part."

(4) For section 68 substitute—

"68 Cooling-off period

The debtor or hirer may serve notice of cancellation of a cancellable agreement between his signing of the unexecuted agreement, and—

- (a) the end of the fifth day following the day on which he received a copy under section 63(2) or a notice under section 64(1)(b), or
- (b) if (by virtue of regulations made under section 64(4)) section 64(1)(b) does not apply, the end of the fourteenth day following the day on which he signed the unexecuted agreement, or
- (c) if the cancellable agreement is a retail credit-token agreement, the end of the seventh day following the day on which he signed the unexecuted agreement."

298 Insert the following new Clause—

"Amendment of the Unfair Terms in Consumer Contract Regulations 1999

In the Unfair Terms in Consumer Contract Regulations 1999 after regulation 6(1), insert—

"(1A) Paragraph 2 shall not apply to contracts for the supply of financial services."

Clause 27

BARONESS NOAKES

LORD HUNT OF WIRRAL

299 Page 35, line 15, leave out "a person" and insert "an individual"

300 Page 35, line 20, at end insert—

- "() A request shall not be in compliance with this section unless it is—
- (a) on paper or on another durable medium;
 - (b) separate from any other document; and
 - (c) signed by the individual making the request."

After Clause 27

LORD WHITTY

301 Insert the following new Clause—

"Restrictions on appropriation of payments

- (1) The Consumer Credit Act 1974 ("the CCA 1974") is amended as follows.
- (2) After section 81(2) insert—
- "(3) Where a debtor or hirer is liable to make payments in respect of a regulated agreement where more than one interest rate applies, on making a payment in respect of the agreement which is not sufficient to discharge the total amount then due under the agreement, the sums so paid by him shall be appropriated towards the satisfaction of the amounts outstanding in the order of those which bear the highest rate of interest.
- (4) A consumer credit business who does not act in accord with section 81(3) commits an offence."
- (3) In Schedule 1 (prosecution and punishment of offences), after the entry relating to section 80(2) insert—
- "81(4) Breach of restrictions on provisions of credit limit increase.
 - (a) Summarily.
 - (b) On indictment.The statutory maximum. A fine."
- (4) An offence under section 81(4) of the CCA 1974 is to be treated for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (civil sanctions) as contained in the CCA 1974 immediately before the day on which that Act of 2008 was passed."

LORD MARLESFORD

302 Insert the following new Clause—

"Central register of credit card holders

- (1) The Treasury shall by order establish a central register of credit card holders.
- (2) The register shall include the names and addresses of all holders of credit cards issued by UK financial institutions.
- (3) The register shall be such as to enable a UK financial institution considering issuing a credit card to an applicant (A) to determine—
 - (a) whether A holds a credit card already,
 - (b) the credit limit on any card already held by A, and
 - (c) whether A is aged under 21 at the time of the application.
- (4) The register shall also record details of any special circumstances which make it permissible under subsection (2) of section (*Credit cards: conditions of issue to applicants aged under 21*) for more than one credit card to be issued to a

person aged under 21.

- (5) No details of individual financial transactions on any credit card shall be recorded in the register."

303 Insert the following new Clause—

"Credit cards: due diligence etc

- (1) Any person (P) issuing a credit card to an applicant (A) shall do so only having performed due diligence, and having complied with the requirements of sections (*Credit cards: conditions of issue*) and (*Credit cards: conditions of issue to applicants aged under 21*).
- (2) "Due diligence" means having taken the steps in subsections (3) and (4).
- (3) Step 1 is ascertaining whether A already holds any other credit cards, according to the central register established under section (*Central register of credit cards*).
- (4) Step 2 is ascertaining whether A is aged under 21 at the date of application."

304 Insert the following new Clause—

"Credit cards: conditions of issue

- (1) A person (P) issuing a credit card to an applicant (A) shall include in the conditions of use of the card—
- (a) a requirement that the debt on the card shall be reduced to zero every 6 months,
 - (b) a condition that, in the event of failure to reduce the debt to zero in accordance with paragraph (a), no further credit shall be extended to A,
 - (c) a condition that, in the event of failure by A to make any contractual repayment to P, no further credit shall be extended to A.
- (2) No debt arising either from failure by A—
- (a) to reduce a debt to zero, or
 - (b) to make any contractual repayment to P,
- shall be enforceable at law unless P can demonstrate compliance with section (*Credit cards: due diligence etc*)."

305 Insert the following new Clause—

"Credit cards: conditions of issue to applicants aged under 21

- (1) Any person (P) issuing a credit card to an applicant (A) where A is aged under 21 shall do so only having verified whether the register established under section (*Central register of credit cards*) indicates that A already holds a credit card.
- (2) Where A already holds a credit card P shall not issue a card to A unless P considers that there are special circumstances which make issuing a card appropriate.
- (3) Where P issues a card in accordance with subsection (2), the special circumstances shall be recorded in the register established under section (*Central register of credit cards*)."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

306 Insert the following new Clause—

"Other measures to protect consumers

- (1) A bank must set up arrangements to permit current account customers to draw funds from the account through a network of outlets to be determined by the Secretary of State.
- (2) In this section "bank" means a UK institution which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (within the means of section 22 of that Act, taken with Schedule 2 and any order under section 22)."

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

BARONESS NOAKES

307 Insert the following new Clause—

"Action against unfair unauthorised bank charges

- (1) The Unfair Terms in Consumer Contract Regulations 1999 (SI 1999/2083) is amended as follows.
- (2) After regulation 6(1), insert—
 - "(1A) Paragraph (2) shall not apply to a relevant contract.
 - (1B) For the purposes of this section, a relevant contract means a contract for the supply of personal current account banking services, and includes all past contracts currently in effect."
- (3) After regulation 6(2) insert—
 - "(3) In so far as it is in plain and intelligible language, the assessment of fairness of a term in a relevant contract shall not relate—
 - (a) to the definition of the main subject matter of the contract, or
 - (b) to the adequacy of the main price or remuneration, as against the goods or services supplied in exchange.
- (4) When assessing whether a charge falls within the main price or remuneration within the meaning of paragraph (3), account shall be taken of all the relevant circumstances at the time the contract was concluded, including whether the imposition of the charge is contingent on other uncertain events and whether the charge is likely to have been considered by the consumer prior to concluding the contract.
- (5) Where a term of a contract provides for the charging of a consumer and the circumstances in which that charge can be imposed are not certain to arise during the term of the contract, then such price or remuneration shall not fall within the main price or remuneration for the purposes of paragraph (3).
- (6) If, for the purposes of paragraph (3), there is doubt about what represents the main price or remuneration, the interpretation which is most favourable to the consumer shall prevail.""

308 Insert the following new Clause—

"Restriction on increasing credit limits

- (1) The Consumer Credit Act 1974 ("the CCA 1974") is amended as follows.

312 Page 42, line 38, after "may" insert "not"

313 Page 42, line 41, at end insert—

"(3A) If subsection (3) applies, the rules must provide for a committee to oversee the exercise by the FSCS manager of functions under the rules.

(3B) The committee referred to in subsection (3A) must include authorised persons on whom levies may be imposed."

314 Page 42, leave out lines 42 to 46

After Clause 29

BARONESS NOAKES

LORD HUNT OF WIRRAL

315 Insert the following new Clause—

"Compensation scheme oversight

In the Financial Services and Markets Act 2000, after subsection (4) of section 213, insert—

"(4A) If subsection (4) applies, the rules must provide for a committee to oversee the exercise by the FSCS manager of functions under the rules.

(4B) The committee referred to in subsection (4A) must include authorised persons on whom levies may be imposed.""

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

BARONESS NOAKES

316 Insert the following new Clause—

"Compensation limits

After section 213 of the Financial Services and Markets Act 2000 (compensation scheme) insert—

"213A Compensation payable to depositors

(1) Each depositor will be entitled to receive from the scheme manager in respect of each bank brand a sum which is the lower of—

(a) the deposit protection amount; and

(b) their gross balance held by the person.

(2) The Treasury may by order, either in general or specifically, determine what constitutes a bank brand.

(3) The Treasury must by order specify measures to allow for the protection of monies which temporarily exceed the deposit protection amount.""

Clause 30

BARONESS NOAKES

LORD HUNT OF WIRRAL

317 Page 43, line 32, leave out "might" and insert "are likely to"

318 Page 43, line 33, at end insert—

"() This section does not apply to information or documents which are subject to legal professional privilege."

319 Page 43, line 33, at end insert—

"() A notice may only be given under paragraph (a) or (b) of subsection (2) if the Authority considers that the activities of the relevant investment fund pose or would be likely to pose a serious threat to the stability of the UK financial system."

320 Page 43, line 34, after "notice" insert ", in respect of information in connection with the service provided to an authorised person,"

321 Page 43, line 35, after "only" insert "in respect of information in connection with the service provided to an authorised person and"

322 Page 43, line 41, at end insert—

"() The Authority must ensure that a service provider, or a person who is connected to a service provider, is reimbursed for reasonable costs in complying with a notice under this section."

After Clause 30

BARONESS NOAKES

LORD HUNT OF WIRRAL

323 Insert the following new Clause—

"Bank of England information powers

(1) The Banking Act 1998 is amended as follows.

(2) After section 2C insert—

"2D Financial stability: information

(1) The Bank of England may by notice in writing require a person to provide information—

(a) which the Bank thinks will help it pursue its financial stability objective set out in section 238 above, or

(b) which the Bank requires in relation to recovery and resolution plans, as set out in section 139 of the Financial Services and Markets Act 2000.

(2) In particular, a notice may require a person to notify the Bank if events of a specified kind occur.

(3) A notice may require information to be provided—

(a) in a specified form or manner;

(b) at a specified time;

(c) in respect of a specified period.

(4) The Bank may disclose information obtained by virtue of this section to—

(a) the Treasury;

(b) the FSA;

(c) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank of England or the FSA in relation to financial stability.

(5) Subsection (4)—

(a) overrides a contractual or other requirement to keep information in confidence, and

- (b) is without prejudice to any other power to disclose information.
- (6) The Treasury may by regulations permit the disclosure of information obtained by virtue of this section to a specified person.
- (7) The Bank may publish information obtained by virtue of this section.
- (8) The Treasury may make regulations about the manner and extent of publication under subsection (7).
- (9) Regulations under this section—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) It is an offence—
 - (a) to fail without reasonable excuse to comply with a requirement under this section;
 - (b) knowingly or recklessly to give false information in pursuance of this section.
- (11) A person guilty of an offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine."

Clause 31

BARONESS NOAKES
LORD HUNT OF WIRRAL

324 Page 46, line 39, at end insert—

"() The Treasury may not make the information provided in accordance with this section available to any other person."

325 Page 46, line 40, leave out subsection (7)

326 Page 47, line 4, leave out subsection (9)

Clause 36

BARONESS NOAKES
LORD HUNT OF WIRRAL

327 Page 50, line 10, leave out "negative" and insert "affirmative"

Schedule 2

BARONESS NOAKES
LORD HUNT OF WIRRAL

328 Page 61, line 35, leave out paragraph 11

329 Page 61, line 40, leave out paragraph 13

LORD MYNERS

330 Page 63, line 31, at end insert—

"25A In section 348(5)(d) (restrictions on disclosure of confidential information by Authority etc), after "a person appointed" insert "to collect or update information under section 139E or"."

BARONESS NOAKES
LORD HUNT OF WIRRAL

331 Page 65, line 41, at end insert—

"In section 236(1) after the words "investment condition" insert "but which is not an investment partnership within the meaning given by section 236A".

In Chapter V of Part XVII (recognised overseas schemes) in every case after the words "open-ended investment company" insert "or "investment partnership",

In section 270(4) (schemes authorised in designated countries or territories) for paragraph (c) substitute—

"(c) an authorised contractual scheme;

(d) an authorised investment partnership;

(e) any combination of such schemes, companies and partnerships."

In section 272(6) (individually recognised overseas schemes), for paragraph (c) substitute—

"(c) authorised contractual schemes;

(d) authorised investment partnerships;

(e) any combination of such schemes, companies and partnerships.""

LORD NEWBY

LORD OAKESHOTT OF SEAGROVE BAY

332 Page 66, line 7, at end insert—

"In section 33C of the Consumer Credit Act 1974, omit subsection (3)."

Clause 38

LORD MYNERS

333 Page 50, line 33, leave out second "to" and insert ", 26,"

334 Page 50, line 42, after "20," insert "25A,"

LORD HUNT OF WIRRAL

BARONESS NOAKES

335 Page 51, line 3, at end insert—

"() The provisions in sections 18 to 26 expire three years after they come into force."

After Clause 38

BARONESS VALENTINE

336 Insert the following new Clause—

"Expiration etc.

(1) Sections 9, 10, 11, 12, 15 and 17 shall cease to have effect at the end of 31st December 2012.

(2) Section 13 shall—

(a) cease to have effect at the end of 31st December 2012; and

(b) any rules or regulations made under sections 131B to 131J of the

Financial Services and Markets Act 2000 shall not apply to any transaction undertaken after the end of 31st December 2012.

- (3) Section 14 shall—
- (a) cease to have effect at the end of 31st December 2012; and
 - (b) any action taken by the Authority against an authorised person under section 206A of the Financial Services and Markets Act 2000 shall have effect for no longer than six months after the end of 31st December 2012."

**AMENDMENTS
TO BE MOVED
IN COMMITTEE
[Supplementary
to
the
Second
Marshalled
List]**

*[Amendments marked * are new or have been altered]*

Schedule 2

LORD WHITTY

Page 63, line 31, at end insert—

“25A (1) Section 349 (exceptions from section 348) is amended as follows.

330A*

(2) After subsection (1)(b) insert—

“(c) where disclosure would support the FSA’s consumer protection objective”.”

Page 63, line 36, at end insert—

330B* “26A (1) Section 391 (publication) is amended as follows.

(2) In subsection (1), after “it” insert “except where disclosure would support the FSA’s consumer protection objective”.”

**AMENDMENTS
TO BE MOVED
IN COMMITTEE
[Supplementary to the Second Marshalled List]**

Clause 26
BARONESS NOAKES
LORD HUNT OF WIRRAL

Page 29, leave out lines 4 to 16 and insert—

- "() The Authority may exercise the power in subsection (3) if it is satisfied that—
- (a) there has been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
 - (b) as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings;
 - (c) a consumer redress scheme represents the most appropriate means for the fair and efficient resolution of the liability of relevant firms to pay redress to the consumers in respect of the failure (having regard to the costs of a consumer redress scheme as against its benefits and having regard to the other ways in which consumers may obtain redress); and
 - (d) the consumer redress scheme is just and equitable."

Page 29, line 20, leave out "rules" and insert "a scheme"

Page 29, line 38, leave out "rules are" and insert "scheme is"

Page 29, line 41, leave out "rules" and insert "a scheme"

Page 29, line 43, at end insert—

- "(11) The Authority's power to make a consumer redress scheme under subsection (3) extends to amending any consumer redress scheme provided that the scheme as amended could have been made under subsection (3).
- (12) The Authority may exercise its power to amend a consumer redress scheme—
- (a) on its own initiative, or
 - (b) at the request of a relevant firm.
- (13) If the Authority proposes to exercise the power under subsection (3)—
- (a) it must give relevant firms a warning notice;
 - (b) it must provide to such bodies as it considers appropriate to represent the interests of consumers likely to be affected by the proposed scheme ("appropriate consumer associations"), such information concerning the warning notice as it considers appropriate;
 - (c) it must specify a period (which may not be less than 28 days) within which appropriate consumer associations may make representations to the Authority.
- (14) If the Authority decides to exercise the power under subsection (3)—
- (a) it must give relevant firms a decision notice;
 - (b) it must provide to appropriate consumer associations such information concerning the decision notice as it considers appropriate.
- (15) If the Authority decides to exercise the power under subsection (3), any relevant firm and any appropriate consumer association to which information concerning the decision notice was given may refer the matter to the Tribunal.

- (16) If the Authority proposes to decline a request to amend a consumer redress scheme under subsection (12)(b), it must give the relevant firm a warning notice.
- (17) If the Authority decides to decline a request to amend a consumer redress scheme under subsection (12)(b)—
- (a) it must give the relevant firm a decision notice;
 - (b) the relevant firm may refer the matter to the Tribunal.
- (18) Section 394 shall not apply to appropriate consumer associations by virtue of subsections (13) and (14) of this section."

Page 30, line 2, leave out "Rules under section 404" and insert "A consumer redress scheme"

Page 30, line 41, leave out "rules" and insert "consumer redress scheme"

Page 30, line 45, leave out "rules" and insert "consumer redress scheme"

Page 31, line 35, leave out second "a" and insert "an accurate"

Page 33, line 46, leave out from "interest;" to end of line 2 on page 34

**AMENDMENTS
TO BE MOVED
IN COMMITTEE**

[Supplementary to the Second Marshalled List]

After Clause 33

LORD MYNERS

Insert the following new Clause—

“Northern Ireland credit unions: removal of exemption in respect of deposits

In Part 2 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (persons exempt in respect of accepting deposits), omit paragraph 24A (Northern Ireland credit unions).”

Clause 38

LORD MYNERS

Page 50, line 23, leave out “35,” and insert “33,

() sections 34 and 35,”