

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT FINANCIAL SERVICES AND MARKETS  
ACT 2000 (CARRYING ON REGULATED  
ACTIVITIES BY WAY OF BUSINESS)  
(AMENDMENT) ORDER 2018

*Wednesday 7 March 2018*

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**Sunday 11 March 2018**

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**The Committee consisted of the following Members:**

*Chair:* SIR DAVID CRAUSBY

† Bruce, Fiona (*Congleton*) (Con)  
 Burden, Richard (*Birmingham, Northfield*) (Lab)  
 Eagle, Ms Angela (*Wallasey*) (Lab)  
 † Henderson, Gordon (*Sittingbourne and Sheppey*)  
 (Con)  
 † Jenrick, Robert (*Exchequer Secretary to the*  
*Treasury*)  
 † Johnson, Dr Caroline (*Sleaford and North*  
*Hykeham*) (Con)  
 McKinnell, Catherine (*Newcastle upon Tyne North*)  
 (Lab)  
 † Mann, Scott (*North Cornwall*) (Con)  
 † Moore, Damien (*Southport*) (Con)

† Phillipson, Bridget (*Houghton and Sunderland*  
*South*) (Lab)  
 † Reynolds, Jonathan (*Stalybridge and Hyde*) (Lab/  
 Co-op)  
 † Rowley, Lee (*North East Derbyshire*) (Con)  
 † Rutley, David (*Lord Commissioner of Her Majesty's*  
*Treasury*)  
 † Sheppard, Tommy (*Edinburgh East*) (SNP)  
 † Soames, Sir Nicholas (*Mid Sussex*) (Con)  
 † Tami, Mark (*Alyn and Deeside*) (Lab)  
 † Walker, Thelma (*Colne Valley*) (Lab)  
 Claire Cozens, *Committee Clerk*  
 † **attended the Committee**

## Second Delegated Legislation Committee

Wednesday 7 March 2018

[SIR DAVID CRAUSBY *in the Chair*]

### Draft Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018

2.30 pm

**The Exchequer Secretary to the Treasury (Robert Jenrick):** I beg to move,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2018.

It is a real pleasure to serve under your chairmanship, Sir David. The draft order, which was drafted in consultation with the Financial Conduct Authority and the Prudential Regulation Authority, will set out the circumstances in which a business needs a deposit-taking licence to borrow via a peer-to-peer lending platform. Peer-to-peer lending platforms allow any investor, including a consumer, to lend money directly to businesses or to other consumers, but the draft order applies only to business borrowers.

Peer-to-peer lending is still a relatively new financial service: the world's first peer-to-peer loan originated here in the UK in 2005. At the industry's request, the Government legislated in 2014 to bring peer-to-peer lending platforms within the scope of financial services regulation. Running a peer-to-peer lending platform is a discrete activity—it is not another type of asset management service, for example—so we introduced bespoke legislation to regulate it as such.

We sought to balance consumer protection, which is extremely important to us, with allowing the sector to grow and evolve, to ensure that we lead the world in peer-to-peer lending and in creating a bespoke regime for it. This approach, which is typical of our commitment to ensuring that regulatory frameworks remain fit for purpose in the face of rapid technological change, has led us to be rated as the best place in the world to establish a FinTech business. The FCA is conducting a full and planned review of peer-to-peer lending and the industry more generally, to deepen our understanding and inform future regulation, should further steps be required.

Let me briefly set out what the draft order seeks to achieve. For a professional lender, there is a degree of responsibility involved in taking deposits from members of the public, who—perfectly understandably—may not have the same degree of financial literacy. A business that wishes to accept deposits from the public to wholly or materially finance its activities must be authorised and regulated by the FCA and the PRA. Such activity is considered as accepting deposits by way of a business, and regulatory permission for it is known colloquially as a banking licence. Requiring businesses to obtain such a licence ensures that depositors are protected from financial harm or loss.

The existing legislation, which was inherited by the industry, could be interpreted as implying that a business that borrows money via a peer-to-peer lending platform is, technically, accepting deposits from the public in the same way that a bank might. Such a business could be deemed to be accepting deposits by way of business and therefore to require a banking licence. In reality, such borrowers do not accept deposits as their core business; for the vast majority of commercial borrowers, using peer-to-peer lending is simply a new way of finding capital to finance working capital requirements, to fund investment in research and development, new equipment or premises, and to drive growth forward.

The current legislation has left some peer-to-peer lending platforms unsure whether a business borrowing via their platform requires a banking licence. The practicalities of obtaining and maintaining a banking licence just to borrow via a peer-to-peer platform are burdensome both for the borrower and for the platform. The requirement for a banking licence increases costs and ultimately risks making peer-to-peer lending unviable for most businesses as a source of finance.

The draft order will provide the clarity for peer-to-peer lending platforms and business borrowers that the industry and businesses require. We believe that it will be welcomed by all sides. It will make it clear that a peer-to-peer borrower that uses deposits solely to finance its other business activity should not need a banking licence. However, it will ensure that regulated financial institutions—those for which accepting deposits is the essence of their business—will still need a banking licence to accept funds from the public, regardless of whether they do so from a peer-to-peer lending platform or another means.

The certainty that the order provides will ensure that legislation that predates the invention of peer-to-peer lending does not place undue burdens on the sector or impede its growth. As such legislation focuses solely on business borrowers, this is a business borrower-facing piece of legislation. It does not affect the existing regulatory protections for consumers, which we agree are extremely important, as consumers increasingly turn to peer-to-peer platforms.

The Government's approach underlines our commitment to ensure that businesses can access the finance they need to grow and expand and can enhance competition in the financial services industry, while ensuring that we in the UK have a forward-looking regulatory regime adapting to new technology and continuing to lead the world.

2.36 pm

**Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op):** As ever, it is a pleasure to see you in the Chair, Sir David. I thank the Minister for his introduction. I agree that peer-to-peer lending is important. It is an exciting and fast-developing segment of our financial services industry. I am pleased that the UK plays host to some of the firms that lead the market, which provides a helpful alternative to companies for which traditional bank lending, for whatever reason, is not the right fit.

We are dealing with something quite new, and it is fair to say that the market has developed rapidly. The Financial Conduct Authority has worked hard to keep pace with innovation as far as possible, such as through

the introduction of the acclaimed regulatory sandbox, which has helped to incubate new financial services while prioritising consumer protection.

The one thing that, to be frank, confuses me about the Government's motivations is why they believe now is the time to bring forward this deregulatory measure. It makes sense that borrowers should not be treated or regulated as financial services organisations, but our research reveals that that is not happening. Indeed, the stakeholders I consulted in the peer-to-peer lending sphere said they had not yet seen any evidence of it. I think the Minister's words were that the legislation "could be" read in that way, but I do not believe it has been to date. I therefore simply ask him to provide further detail and clarity about the rationale in bringing the order forward. In particular, some concrete examples of when borrowers have been believed to be at risk of becoming regulated entities would be useful for the Committee.

The Opposition are supportive of creating a transparent, well-regulated environment for alternative finance to flourish. However, if we are to legislate to deregulate, we must be sure that we are doing so for the right, evidence-led reasons. I would be happy to receive that detail from the Minister either in writing or in his response.

2.38 pm

**Robert Jenrick:** I am grateful to the hon. Gentleman, who represents the Opposition, for his positive comments with respect to peer-to-peer lending. We believe it is an important development in financial services, and it is one we want to support, but we must ensure it is appropriately regulated to protect consumers and businesses of all scales, as well as to ensure that the industry has the clarity in regulations and law it deserves so that it can operate with confidence within the law.

That is the essence of the order. It will ensure that the industry can move forward with confidence, knowing that the law is clear and that those who want to use such services—smaller businesses in particular—can have clarity that they are not in breach of the law. It is a question not of deregulation or changing the law but of clarifying it so that everyone benefiting from the peer-to-peer lending industry today and in the future can understand that they are in compliance with the law.

To give a practical example of how the present situation might confuse or concern a business, a manufacturing business seeking to borrow money from a peer-to-peer lender—perhaps to purchase new equipment to help it grow and develop—might be concerned about whether the current law required it to have a banking licence. The industry has come to us proactively and said that it is important that the Government provide the greatest possible clarity for businesses that seek to raise money for perfectly legitimate purposes and are not engaged in financial services—businesses for which taking out money through a peer-to-peer lending platform would be not their sole, or even the majority of their, business function, but purely to service the future growth of their primary activity. We want to clarify the position for that kind of business in particular.

In terms of the future, I point the hon. Gentleman to the FCA's review. I am sure that it would welcome his comments and his involvement in that review if he or the Opposition had further points to make about the future of peer-to-peer lending.

*Question put and agreed to.*

2.41 pm

*Committee rose.*





