PARLIAMENTARY DEBATES

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OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT FINANCIAL REGULATORS' POWERS (TECHNICAL STANDARDS ETC.) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

Wednesday 10 October 2018

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Sunday 14 October 2018

The Committee consisted of the following Members:

Chair: Sir David Crausby

† Aldous, Peter *(Waveney)* (Con)
† Baron, Mr John *(Basildon and Billericay)* (Con)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Chishti, Rehman *(Gillingham and Rainham)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
Efford, Clive *(Eltham)* (Lab)
† Glen, John *(Economic Secretary to the Treasury)*
† Grant, Mrs Helen *(Maidstone and The Weald)* (Con)
Johnson, Diana *(Kingston upon Hull North)* (Lab)
† Jones, Mr Kevan *(North Durham)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Scully, Paul *(Sutton and Cheam)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Yohanna Sallberg and Mike Winter, *Committee Clerks*

† attended the Committee

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[SIR DAVID CRAUSBY *in the Chair*]

Draft Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

2.30 pm

The Economic Secretary to the Treasury (John Glen): I beg to move,

That the Committee has considered the draft Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

It is a pleasure to serve under your chairmanship, Sir David. Since the UK's 2016 referendum decision to leave the EU, Her Majesty's Treasury has undertaken a significant amount of work on the withdrawal negotiations and in preparing for the range of potential negotiation outcomes. The best outcome is for the UK to leave with a good deal, and we have put forward a serious and credible proposal for the future relationship. Although we remain confident of agreement later this autumn, in the meantime we must and will continue the work of preparing for no deal.

As the Department responsible for financial services, the Treasury has undertaken particularly intensive work to ensure that there will continue to be a functioning legislative and regulatory regime for financial services in a scenario in which the UK leaves the EU without a deal or an implementation period. An essential part of that work involves using powers delegated to Ministers under the European Union (Withdrawal) Act 2018 to fix deficiencies in applicable EU law that will be transferred directly to the UK statute book at the point of exit. The approach taken in the Act is to maintain existing legislation at the point of exit to provide continuity.

Although the fundamental elements of the current financial services legislation will remain the same after exit, that legislation still needs to be amended to ensure that it will work effectively once the UK has left the EU. To achieve that, I am delighted to say that the Treasury is in the process of laying approximately 70 statutory instruments ahead of exit day. A key decision for my Department in approaching that work is how to divide responsibility for the huge body of financial services legislation that the Act brings to the statute book.

An important component of that legislation is level 2 legislation—technical standards, which run to 7,000 to 8,000 pages. The responsibility for developing technical standards currently lies with the European supervisory authorities, and they are adopted by the European Commission. As required by EU law, they do not take policy decisions; they set out at a granular level the requirements that firms need to meet to implement policy set out in higher EU legislation. Common examples of technical standards include those that set out the process for firms to provide supervisory information to regulators, including the specific form templates that they should use.

The 2018 Act will transfer those technical standards into UK law at the point of exit in the event that we do not reach an agreement with the EU on an implementation period. Many of them will be deficient and will need to be fixed by the appropriate body or regulator. The Government propose to allocate responsibility for them consistently with the UK's existing regulatory framework, as approved by Parliament in successive pieces of legislation.

The Financial Services and Markets Act 2000—the key piece of framework legislation for regulation of financial services in the UK—delegates responsibility to the Prudential Regulation Authority and the Financial Conduct Authority for making the detailed rules that apply to firms in order to operationalise the framework that Parliament has set in legislation. On the same basis, the Government propose to transfer responsibility for technical standards from the European supervisory authorities to the Bank of England, the PRA, the FCA and the Payment Systems Regulator. That transfer will be made through statutory instruments to amend EU regulations in relation to each sector of the financial services industry. They will amend each mandate to make technical standards to give power to the appropriate regulator; for example, the SI to amend the capital requirements regulation will transfer the relevant technical standards to the PRA. Each SI doing that will be subject to parliamentary approval through the affirmative resolution procedure.

The SI that we are discussing today amends the FSMA and other relevant Acts to set out the procedure that the regulators will use when they are given the power to make technical standards by the relevant sectoral SIs. That approach is consistent with the FSMA framework, and recognises the fact that it is the UK regulators that have the necessary expertise and resources to maintain standards after the UK's exit from the EU. That is particularly true given the important role the UK regulators have played in the EU to develop those standards, through their membership of the boards and working groups of the European supervisory authorities.

Sarah Champion (Rotherham) (Lab): I am listening to the Minister with interest. He is talking just about financial services. Has any estimation been made across Government Departments of how many years of SIs we are likely to have post Brexit to tie everything up?

John Glen: I cannot speak for other Departments; I can set out only what I am responsible for in the Treasury. Other Ministers will introduce SIs and that will be a matter for the scrutiny of the House. I do not have a holistic answer today. I will investigate, and if possible I will write to the hon. Lady.

The SI will also sub-delegate the section 8 deficiency-fixing power in the European Union (Withdrawal) Act to enable the regulators to make the necessary corrections to the technical standards, as well as to regulator rules made under FSMA, so all those rules will operate effectively from day one of exit. The same constraints that apply to Ministers when acting under that power would apply to the regulators. It could be used only to make changes to correct deficiencies in EU law, and would be subject to a two-year time limit. To ensure that the regulators fixed deficiencies in technical standards in line with the fixes Parliament will approve in onshoring SIs, the SI will require the Treasury to approve the deficiency fixes the regulators propose to make.

In advance of laying the SI, the Treasury published the instrument in draft, along with an explanatory policy note, in April 2018, in order to maximise transparency to Parliament and industry. We have engaged stakeholders on these issues and will continue to do so, and we are publishing advance drafts of our onshoring SIs throughout the autumn—I think some were published in the last few days. The regulators are also committed to a fully transparent process for fixing deficiencies in technical standards and their own FSMA rules. The regulators plan to issue consultations on their proposed deficiency fixes. The first of those has been launched today by the FCA, and the Bank of England will follow shortly.

In conclusion, the SI will be essential for ensuring that EU technical standards for financial services continue to work effectively in the UK from day one of exit. UK regulators operating within the statutory framework set by Parliament in FSMA are best placed to ensure that the technical standards are fit for purpose as we prepare to withdraw from the EU and in the period following exit. They will exercise that function in an open and transparent way, with their ongoing responsibility for technical standards made subject to the statutory requirements for consultation as set out in FSMA. I hope that all colleagues will join me in supporting the regulations, which I commend to the Committee.

2.38 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on the Committee under your chairmanship, Sir David. I am grateful to the Minister for the explanation that he provided.

As the Minister mentioned, the SI is intended, as I understand it, to enable regulators, particularly the Bank of England, the Prudential Regulation Authority, the Payment Systems Regulator and the FCA, to remedy any deficiencies in binding technical standards, so that they can operate effectively from the point of the UK exiting the EU. The SI also, as I understand it, and as stated in the explanatory notes, but not necessarily reflected in the Minister's remarks, enables authorities to have ongoing responsibility for making technical standards required under retained EU law in financial services and amending them so that they remain fit for purpose in the future. It is not just about exit day. As I understand it, it is about a potentially much longer period, at least as expressed in the explanatory notes and my reading of the SI.

The regulators' powers are subject to the constraints in the European Union (Withdrawal) Act, as the Minister explained. They are limited to addressing deficiencies and dealing with any failure of UK law to operate effectively after exit, and that power is time limited under the withdrawal Act.

We first have to question why we have ended up here. It is deeply worrying that the Government feel that they have to go down this path because of the possibility of a no-deal Brexit, which the Brexit Secretary now recklessly describes as offering countervailing opportunities. I am not sure about the Minister, but I have yet to find somebody working in financial and related professional services who can find any countervailing opportunities from a no-deal Brexit. Maybe he has and it would be great to hear of it, if so.

John Glen: There are some.

Anneliese Dodds: Perhaps a couple of hedges but not many beyond that, I would expect. We could be pushed in this direction by the Government's dogmatic rejection of a customs union with the EU and their inability to accept the reality.

As a result of that disturbing situation, it is right that those in Government who do want to act responsibly provide us with some kind of assurance of regulatory continuity, hence this SI, but I would say from the beginning that there is a misunderstanding in these proposals: the idea that technical, level 2, standards are non-political.

For two years I was a Member of the European Parliament and negotiated for the Socialists and Democrats a number of level 2 measures, relating to a raft of post-crisis financial services legislation: MAD/MAR, EMIR, CARRP, CSDR and last, but certainly not least, MiFID II. Parliamentarians were deeply involved in negotiations on those level 2 measures, which addressed a massive range of different issues. Of course, those negotiations were with the European Commission as well as regulators, mainly ESMA, in the case of the negotiations I was involved with.

The regulations seem to suggest that there would be public consultation only on changes and no more extensive engagements. That ignores the fact that so-called technical standards can emasculate the intent of legislative proposals at a stroke. One good example of that would be around the new regime in MiFID II for regulating commodities trading, where there is a lot of evidence, as Members will know, that having virtually non-regulated commodities markets had led to spikes in the cost of commodities, which had then led to serious problems in many countries in the global south, including potential famines.

Parliamentarians believed they had got to a situation and agreed at so-called level 1—primary legislation level—that we would have a new regulatory regime that would impose position limits on different types of commodities. That would mean we would not have that kind of speculation pushing up prices again, because we would not have individual traders controlling huge parts of these really important markets, and manipulating them just for financial gain. But the technical standards were really weak initially. We had a big fight and got them back to a much better position—that was through a political process, not a technical one. It would be interesting to hear the Minister's thoughts on whether we are really considering these level 2 measures to the extent that they require. Of course, we as parliamentarians do not want to be poring over level 3, which is the real technical nitty-gritty. That would not be sensible but level 2 measures surely require more scrutiny than we are offered here.

I would like the Minister to respond to three questions. First, at EU level there is a strong institutional aid to the promotion of financial stability in the form of Finance Watch, which is funded by the EU. We lack any such body in the UK. That is significant, given where we are today, 10 years since the fall of Lehman Brothers. I hope the Minister can reflect on how the political imperative of ensuring financial stability will be ensured, or otherwise, by these arrangements.

[Anneliese Dodds]

It is interesting to look at the language and narrative that Government have given in relation to these proposals and contrast that with some of what has come from EU level. I quote from the report by Irish MEP Brian Hayes just before the summer in the European Parliament. It stated:

"In the absence of a transition period, the Commission and the European supervisory authorities must be prepared to protect financial stability."

That was the first value that he isolated, yet we tend to find that a bit of an afterthought in Government communications on this topic.

Secondly, I am very concerned whether the regulators, particularly the PRA and FCA, have the requisite capacity. That is related to the point made earlier about whether parliamentarians have the capacity to deal with the huge volume of SIs. Of course, it is the PRA and FCA that would have to deal with the arrangements for level 2 legislation. What assessment has been undertaken by the Government of their readiness to accomplish that task? I say that having looked at the document that has just been released by the FCA, snappily entitled "Brexit: proposed changes to the Handbook and Binding Technical Standards—first consultation", which is 781 pages long. Admittedly, quite a lot of that is a new revised handbook, but it is a very big task that we are giving to our regulatory authorities. It is not clear that they really have the requisite capacity to deal with that task. For example, if we look at some of the new burdens that might be applied to the FCA, the document states that credit rating agencies that are currently registered with the European Securities and Markets Authority and that wish to register with the FCA will need to send the information by exit day—that is information on all credit ratings issued and not withdrawn. We are talking about a lot of information that will have to be transferred to the FCA. Will it be able to cope with that?

The last question I have is about regulatory co-ordination. From my reading of the SI and the explanatory memorandum, these arrangements are not just about the exit point but about ongoing arrangements that are intended to ensure that binding technical standards will remain effective. It is not clear how co-ordination will be ensured between what occurs on the UK side and on the EU side. We could say it would be a function of a no-deal Brexit, which the SI is intended to deal with, but I am concerned by some of the suggestions. For example, the FCA document suggests that we should just remove binding technical standards, such as requirements to co-operate in

"supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities".

That seems to be the assumption underlying what a no-deal Brexit would look like. I hope the Government will further consider what future regulatory co-ordination could look like at the same time as we are staring down the barrel of no deal.

2.47 pm

Mr John Baron (Basildon and Billericay) (Con): I thank the Minister for his opening comments, and it is a pleasure to be speaking in this debate under your chairmanship, Sir David. As the Committee is discussing how we can ensure that those financial standards presently governed by EU law are transferred to our own regulatory bodies in good order and that any deficiencies are made good—it could become a very real issue if we do indeed leave without a deal in five months' time—I would like to highlight for the Minister and the Committee a real concern in the financial services industry about some present EU regulations that, if transferred wholesale, would continue to cause major concerns, particularly to investment trust investors.

Let me start by highlighting for Members my interests in this issue, which include my business interests. I have also written a *Financial Times* book relating to investment trusts, and I direct Members to my entry in the Register of Members' Financial Interests. I believe there may even be people on my side of the Committee, if nowhere else, who have bought the book—in which case, my apologies.

The EU's core retail financial services regulations—known as packaged retail investment products, or PRIPs—have at their heart a key information document, which is supposed to be produced for every single investment trust and unit trust, and from 2020, in order to help investors better understand what they are buying. The intention is good, but the problem is the execution. Many in the industry believe that these key information documents—or KIDs—are grossly misleading on the assessment and comparison of risk, grossly misleading on the projection of future returns and certainly misleading on the comparison with similarly mandated sister funds within the unit trust sector. I suggest to the Minister that all this makes for a perfect storm from which investors might seek redress in numbers if no corrective action is taken soon. No wonder that all three of our major trade organisations—the Investment Association, the Association of Investment Companies and the Personal Investment Management & Financial Advice Association—believe that the regulations should be scrapped or reworked. Even the FCA has instigated a call for evidence, believing that something is wrong here.

Let me give some examples, and perhaps to help Members, I should describe very briefly what an investment trust is. They are unique to this country. They are quite old—the oldest form of collective investment—and quite difficult to ignore as an industry. The Scottish Mortgage Investment Trust for example is a FTSE 100 company. An investment trust is a closed-ended company with a limited number of shares, like Marks & Spencer, GlaxoSmithKline or BP, but instead of managing clothes, pharmaceuticals or oil, it manages investments of different types and with different briefs.

The unit trust, which is the investment trust's better-known cousin, is another form of collective investment and is open-ended. Investors put money in, which adds to the pot; it is not closed-ended. It is generally recognised that while investment trusts have a better long-term track record—as closed-ended companies, they can gear and they have discounts because their share price will sometimes be at variance with their net asset value—they can be more volatile in the short term because of the very same factors that make for good investment: their gearing and movement in discounts, when compared to unit trusts. I ask hon. Members to bear that in mind as we go through the regulations.

When it comes to the issue of assessment and comparison of risk between investment trusts and unit trusts, the documents required and produced under EU regulations are grossly misleading. The documents have similar titles, and I do not want to get too technical here, but the investment trust sector is governed by key information documents, or KIDs, whereas the unit trust sector, from 2020, will be governed by documents called key investor information documents, or KIIDS, which are being produced now in preparation for 2020. They have similar titles, but very different methodologies for assessing risk. When measuring risk on equities between investment trusts and unit trusts, the risk-reward indicator average puts unit trusts at 5.1 and investment trusts at 4—there are seven bands; the higher the band, the riskier the investment. In other words, it assesses investment trusts as less risky than unit trusts, which is simply not the case. It is generally accepted across the industry that investment trusts are actually riskier because they are more volatile, although they produce superior returns over the longer term. Yet here we have an example in which an EU-inspired KID is actually saying completely the reverse. Investors could be misled into believing that investment trusts are less risky than unit trusts and there could be repercussions because that is simply not the case.

The documents also overstate expected returns. The problem is that the documents extrapolate recent returns. In a bull market, KIDs will suggest higher returns, while in a bear market, they will suggest lower returns. We all know that past returns should be no guide when investing. The 42 KIDs forecast 20%-plus returns per annum in a moderate performance bracket for investment trusts. In any normal existence, 20% cannot be achieved without taking on a significant degree of risk. Anyone who knows the financial services industry, as I do, having worked in the City for 15 years as a director at both Henderson and Rothschild & Co, where I invested money on behalf of individuals and charities—apologies, Sir David; I should perhaps have mentioned that—knows that it is necessary to take on extra risk to earn 20%. If we are not careful and do not address that point, we will encourage the kind of investment behaviour that we should really be doing our best to avoid—buying high and selling low. That is the complete opposite of what people should do in the investment world. Extrapolating recent returns misleads the investor, so KIDs again are of no help.

Finally—I am conscious that time is short for everyone—those documents are misleading for another reason. KIDs are produced for investment trusts, and their equivalent is produced for unit trusts. There is such a thing as sister funds, where an investment trust manager also runs money in a unit trust—the same manager, with a similar brief and remit, and a similar portfolio. There is often a large overlap between the portfolios held by a unit trust and an investment trust. I mentioned that investment trusts, because of their gearing and discounts, are higher risk, but Association of Investment Companies research compared 56 investment trust KIDs with those of their unit trust sister funds, and none of the 56 had a higher risk indicator. That is misleading. In fact, the vast majority—53—had a lower risk indicator. Again, that is completely misleading.

I take issue with the shadow Minister's swipe at a no-deal Brexit. The industry and many businesses actually say that no deal would not be the Armageddon she suggests. We trade with the majority of the rest of the world on no-deal terms. We have no trade deals with China, India, Brazil or America, because the EU has been very poor at negotiating trade deals. In essence, we trade on World Trade Organisation terms with those countries.

The shadow Minister asked for a specific example of who would be smiling if we left the EU and were able to take control in the event of no deal. I suggest to her, and more importantly—in the nicest possible way—to the Minister, that this is a concrete example of what our financial regulators need to grip when power returns to this country. At the moment, we have a completely misleading EU directive, in part because other EU countries do not understand investment trusts, because they do not exist there. They are almost uniquely UK investments, which have done very well over the years.

I ask the Government, well before March 2019, which is not far away at all, as part of the preparations for no deal, to prepare the ground to either scrap or rework that EU legislation. It is still possible that, at the end of March, that legislation, about which the whole industry is up in arms, will suddenly be incorporated into UK law and given to bodies such as the FCA to oversee. Meanwhile, thinking about the audience outside this place, I suggest that the FCA needs to raise its game. True, it has asked for evidence, but the writing has been on the wall for a long time. It should warn investors not to rely on the information in KIDs, because it is misleading. The time to act is now, before too many investors get hurt. I leave that thought for the Minister to consider.

2.59 pm

Alison Thewliss (Glasgow Central) (SNP): I will not go into the same level of detail as the hon. Member for Basildon and Billericay, but I will touch briefly on some of the issues behind the draft regulations. As far as the Scottish National party is concerned, neither the draft regulations nor the way Brexit is proceeding should mark the end of cross-channel co-operation on financial regulatory enforcement. As was said, we are 10 years on from the financial crash. Some of the issues that came out of that crash have not, for us, entirely been resolved yet. My great fear relates to some of the chat that is around about Brexit being a means of deregulation, and of watering down very important financial regulations that came about through the EU.

The hon. Member for Oxford East talked in some technical detail about how we got to this point and how the regulations were formed. We are passing a lot of the regulations straight from one unaccountable body, as the Brexiteers would have it, to other unaccountable bodies—the FCA and others—with very little scrutiny from Parliament, now or in future. There is no detail on how Parliament will have any control over them.

Regulation 10 of the statutory instrument states:

> "A standards instrument may be made only if it has been approved by the Treasury",

and there are two conditions on which the Treasury may refuse to approve a standard. The first is if it would have "implications for public funds". Perhaps the Minister will give more detail on that, but it seems to be pretty political. The other is if it would

> "prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions."

[Alison Thewliss]

Again, that is more of a political thing; it is entirely in the hands of the Treasury to approve or not approve it. It worries me that some of the regulations may be watered down in order to get those trade deals—that the very high standards that we have managed to achieve through the EU could be watered down at the expense of trade deal with countries that are not quite as well developed in their regulations, or that have a different regulatory approach from ours.

I echo the points made by the hon. Member for Oxford East about capacity and timescale. To break down the long list of regulations that will be transferred over, the FCA gets 77, the Prudential Regulation Authority gets 26 in its own right and the Bank of England gets 20, but jointly, the PRA and FCA together get 51, and the FCA and the Bank of England get 10 together. The Payment Systems Regulator gets only one to look at, so it will probably be okay, but who knows?

I am not clear whether the communication lines for joint co-operation exist already in each of the 61 areas in which co-ordination is proposed, or whether they are yet to be set up. Are the mechanisms in place for that co-ordination and co-operation? That needs to be done correctly. The lines of communication need to be open and well understood. Mechanisms may well need to be in place, so if the Minister has any more detail on how those mechanisms will operate, that would be useful and reassuring.

There has been a lot of chat about how the City of London will be affected. The BBC quoted the Minister on the Bank of England estimate that 5,000 jobs will be lost in the City. That figure does not appear to be in dispute, and he does not appear to be greatly worried about that. I am deeply worried about it, because there are implications beyond the City: Glasgow has a financial sector that employs around 30,000 people. Our financial services district has grown immensely over the past decade; Barclays has invested in the River Clyde site. We have the biggest insurance centre outside London, which goes back to the 1700s and employs around 8,500 people. They need to know about the regulations and how they will be affected.

In Edinburgh, around 40,000 people are employed in the financial sector, with more than 30 banks having operations there, and three of the UK's leading insurance companies having their headquarters there. This is not just a City of London debate; it profoundly affects Scotland. I am interested to know what discussions the Minister has had with his counterparts in Holyrood about the risks—or opportunities, if that is what he feels there will be—for Scotland in all this.

For us, it is a retrograde step to lose the European Banking Authority; we have lost the influence that helped us to set up a lot of the rules. The explanatory memorandum stresses that

"UK regulators have the necessary expertise and resource"

to maintain them, because we were part of setting up a lot of the rules and regulations. We are losing not only involvement but influence in that. The EU will continue to make its own rules, create directives, and collaborate and co-operate. We will be playing catch-up with that if we still want to have any engagement with it. We will continue to be rule takers, rather than rule makers. We are losing out because of Brexit, and will lack influence thereafter, which is hugely frustrating. I deeply regret that Scotland is being shackled to that because we are not independent. We would be part of the EU, and want to have a part in all this. We would not want to turn our back on the co-operation that has been so good for the Scottish economy.

I seek reassurances from the Minister, because I am deeply worried about that loss of influence and what it will mean for jobs in my constituency and Scotland. I am deeply worried about the watering down of regulation after Brexit and the overall loss of control from this place that we will see. If only a limited amount rests in the hands of Treasury Ministers, and all this goes to the FCA and other institutions that we do not have direct control over, we will lose any influence that we might have, and the system that we might want to set up. We will face the economic issues that we had in 2008 if we cannot be assured that we have the control, and the tight and robust regime, that will protect us all.

3.6 pm

Mr Kevan Jones (North Durham) (Lab): As an old friend, it is a pleasure to serve under your chairmanship, Sir David. I suspect this the first of an avalanche of statutory instruments that will keep you and other Chairs very busy over the coming years. The Minister could not say how many SIs would be generated.

John Glen: I have been helpfully informed by my friends on my left that there will be about 800 SIs across Government. I provide that answer now to the hon. Member for Rotherham.

Mr Jones: I am sorry to be pernickety, but that is 800 across Government. Can the Minister say how many will be generated by this sole piece? He obviously does not know; perhaps he could write to Committee members.

Sarah Champion: He tried.

Mr Jones: He did try, to be fair to him; he is not a bad Minister. This puts a spotlight on a cost of Brexit that is not being factored in. Those 800 SIs will all have a cost to them. It would be interesting if the Minister supplied information about not just the number of SIs relating to this regulation, but the estimated cost of each of them, including the cost of preparations by the Department. That will be a huge cost across Government.

My hon. Friend the Member for Oxford East and the hon. Member for Glasgow Central made a good point about the capacity of the Bank of England, PRA and FCA to implement this and take over this responsibility. I have sat on many Committees since I have been in Parliament, and I do read the explanatory notes, even when the subject is boring or dry, as this may be. Uniquely for an explanatory note on a piece of legislation, no costs are included in this one. It will be interesting to see if all the SIs we get have explanatory notes in which no costs are included, as though this were a zero-cost game.

There is not just the question of what the SI will cost; there are other costs. Clearly, the tasks being taken on by the Bank of England, the PRA and the FCA will involve cost. If we are to do justice to the transparency of the Brexit process and those claiming great wins for the taxpayer out of it, the full extent of those costs needs to be known. It is unfair on those organisations to be given extra responsibilities but no cash to go with them, unlike other parts of Whitehall, where hundreds of millions are being spent employing new civil servants. This is a hidden cost of Brexit. This is one piece of legislation; how many times will it be duplicated across Government? I suggest many, many times, adding up to millions and millions of taxpayers' pounds.

The explanatory notes state that no consultation was done, although the statutory instrument was published in draft in April. The notes say:

"The financial services regulators plan to undertake public consultation on any changes they propose to make to Binding Technical Standards or rules made under the powers conferred upon them by the Financial Services and Markets Act 2000 using the powers delegated to them".

The important point there is about who will decide. Will there be ministerial or parliamentary oversight of what is in the consultation? Who draws it up? Is that left to the regulators to do? There will obviously be controversy on the issue that the hon. Member for Basildon and Billericay raised, and people will complain about it. Again, how will that be dealt with? Will Parliament or a Minister have any say over the regulators and how they conduct the consultation? It is said that the devil is always in the detail, and that was clearly demonstrated by the hon. Gentleman.

There may well be unintended consequences to taking on some of these regulations. There may well be better ways of doing things—I do not disagree with that—but where will the political pressure to get the authorities to change the regulations come from, if there is simply a general consultation? For example, someone has already decided that the regulation the hon. Gentleman referred to does not need looking at, but Parliament does need to look at it. Ministerial oversight is needed—not just of the draft regulations, but in a whole load of areas. Basically, we are delegating our responsibility to determine what should and should not be looked at to statutory bodies. In many cases, we might have a very different view from regulators.

We are all told that the draft regulations are being put in place for the nightmare scenario in which we do not get any deal in the negotiations that are taking place. I am interested in what happens to the SI if we do get a deal. Can the Minister explain—he may not be party to this—where this small piece of possible legislation is in the great negotiations? What happens if we get a deal? Does the SI fall?

As for regulators taking over these responsibilities, what will happen in future? Let us suppose we get no deal, the draft regulations go through and we try to transpose everything into UK legislation—this point was made eloquently by the hon. Member for Glasgow Central. What happens if our regulations get out of kilter with the EU regulations? Clearly, the sector is not based on a single company; We are talking about global business—money moving around the world—that does not recognise boundaries. What is the mechanism to ensure that if there are changes in EU regulations, we reflect them, or take them on board directly? Again, will that be left to the regulators? Will they decide which option we take, or will the decision come back to Parliament?

If such decisions are to come back to Parliament, we will be very busy in a whole host of areas for years to come. Basically, when EU regulations in this or any other area change, how do we ensure that we are not at a competitive disadvantage, or that the regulations for institutions based both in the EU and here do not somehow clash? This is not easy. It demonstrates one of the problems with what someone—I cannot remember who—on the leave side said: they said that that the deal would be the easiest ever done. No, it will not. This demonstrates in one small area the technical detail that will hit us.

I worry, because if our regulations are rather weaker—the hon. Member for Basildon and Billericay seems to think that our savers or investors are disadvantaged by the current regulations—and savers and investors are somehow less protected, that leads us to the point made by the hon. Member for Glasgow Central about what came out of the 2008 crash. What we needed was not more regulation for regulation's sake, but international regulation to ensure that people in this country investing in a pension fund that might be investing overseas were protected, and vice versa. When people ask, "Will these dry regulations affect ordinary people?" the answer is: yes, they will if we get them wrong. That is why this is important.

Mr Baron: The right hon. Gentleman makes some good points. For absolute clarity, I was suggesting that current EU regulation was not serving investors well, and if it is to be encapsulated in our regulatory governance in March next year, we need to act quickly to put it right, because the consequences could almost make for a mis-selling scandal, if not a perfect storm. I just want to make him aware of that.

Mr Jones: I do not have expertise in this field, as the hon. Gentleman does, and I defer to him, but that is one area; what else is there? A proper consultation might have thrown these things up. The sector in which he is involved may well have made representations, particularly around the points he made.

Even if these measures are incorporated into UK legislation post March next year, how do they get unpicked? Who decides that? I sit on the important Regulatory Reform Committee, and we may well be very busy if we get flooded with things that have to be incorporated and then must be unpicked later on.

This statutory instrument seems quite mundane, boring and dry on the face of it, but it demonstrates the bigger picture that will hit Parliament. Not only will it have to spend an amount of time on this, but there will be unintended consequences that may not be relevant straightaway, but certainly will be. All those people said that leaving the EU would be simple, but these are the unintended consequences.

3.18 pm

John Glen: I thank colleagues for the debate and the many points raised, all of which I shall do my best to interrogate individually. First, I acknowledge the rigour of the scrutiny from the Opposition Front Benchers.

Mr Jones: And the Back Benchers.

John Glen: I will come to the right hon. Member for North Durham later. I will do my best to deal with the serious points raised. It is worth reminding the Committee that the Government are working flat out in financial services, which I am responsible for, to secure a deal. Today, we are discussing the contingency arrangements

[John Glen]

for no deal. Obviously, there are a range of views, as expressed, about the desirability of no deal, but this is about doing what is prudent—essential, really—to have a functioning regulatory regime in place.

To refer back to the comments of the hon. Member for Rotherham, the Government expect to lay about 800 SIs before Parliament in time for exit. Some have already been laid before Parliament. I acknowledge the question from the right hon Member for North Durham about the numbers in this area, and will seek to clarify that as soon as I can. On that point, this is a live piece of work, and we are looking at how SIs should be aggregated appropriately. We are in live consultation, so I may not be able to give an accurate number.

Mr Jones: The Committee would appreciate the Minister taking a rough stab at it. I accept that he does not know now, but perhaps his Department could do that. The only alternative is to flood him with parliamentary questions, which we do not really want to do.

John Glen: I am happy to answer any parliamentary question. I think we said there are about 70 SIs, but that will not be fully accurate.

The hon. Member for Oxford East asked, at the macro level, whether financial stability will be protected. The statutory objectives of the regulators for financial stability will not change. They are enduring. A tripartite system was set up as a consequence of the crash. I think there is broad cross-party agreement on the need for that to continue, and it will.

The hon. Lady asked about holding regulators to account. Parliament will be involved in every aspect of the process to onshore EU financial services regulations, so all the changes the Treasury proposes to level 1 legislation and delegated Acts will be put before Parliament for it to approve. Any transfer of responsibility to the regulators, including any transfer of powers to make technical standards, will be put before Parliament for it to approve through affirmative-procedure SIs.

The Treasury is working closely with the Bank of England, the PRA, the FCA and the PSR on how to fix deficiencies, including in the technical standards that we propose should become the responsibility of regulators. As was said, the Treasury will be required to approve all the deficiency fixes proposed by the regulators to ensure they are consistent with the deficiency fixes that Parliament will be asked to approve in onshoring.

Anneliese Dodds: The Minister is saying that there will be a change, to the extent that level 2 arrangements will be determined by the regulators. That is a shift away from arrangements at EU level, where parliamentarians—albeit European parliamentarians—are involved in negotiations about level 2 arrangements with the Commission and the regulator. That is a change. As I understand it, we are shifting to level 2 arrangements being uniquely the preserve of regulators, albeit with oversight from the Treasury, compared with a process where there is negotiation, in which parliamentarians are involved.

John Glen: We are seeking to give responsibility to the most appropriate body. The regulators are doing what they do. Frankly, some binding technical standards will not be suitably scrutinised or carried out within the Treasury. I refer back to the point I made about tier 1—or tier 2. Binding technical standards are sort of tier 3 within tier 2—it is a bit complicated—but basically, Parliament will have scrutiny over fundamental change, and the consequential changes that flow from that will be delegated to the appropriate body.

I think the hon. Lady asked whether this is about more than fixing deficiencies for exit. The withdrawal Act provides for the transfer of functions where necessary. Binding technical standards will need to be maintained by an appropriate body. After exit, that will be the UK regulators.

On what the hon. Lady said about her role as a Member of the European Parliament, it is absolutely right to say that we will have more to do because we will not have that scrutiny. As I understand it, MEPs can veto some binding technical standards proposals, but the UK FSMA framework of 2000 does not work in that way. Parliament has delegated technical rules to UK regulators, which is a difference.

The draft regulations set out the procedure where responsibility for future binding technical standards is transferred to regulators by other SIs. All those SIs will be scrutinised individually by separate Committees—I will probably be sat here introducing them—and subject to approval by Parliament under the affirmative procedure.

I turn to the Treasury's authority over regulatory changes. It is appropriate that the Treasury approves all the deficiency fixes that the regulators propose, and Ministers will be accountable to Parliament for that. On the responsibility for binding technical standards that regulators will take on post-exit, the Treasury will need to approve future changes to those technical standards and will be able to veto a proposal for the two reasons set out in the draft regulations: if it appears the proposal would

"have implications for public funds",

or if it would

"prejudice…negotiations for an international agreement".

I cannot anticipate what they are, but all I know is that I would be subject to parliamentary scrutiny on that.

Mr Jones: That is very interesting. As I understand it, the buck stops finally with the Treasury and the Minister. How does Parliament get into that? Are the proposals published or laid before Parliament? How would Parliament be able to have a view of that?

John Glen: Any changes that the regulators make must be consistent with the higher legislation that Parliament has approved.

Mr Jones: What if they are not?

John Glen: Then the regulators would have to explain why not, and I would have to explain and justify that. They are not licensed to innovate through this onshoring process. They are not given that discretion. We talk about correcting deficiencies, which is quite a technical term, but it means that where the legislation currently refers to EU institutions and EU bodies, technical wording needs to be changed to make it legally effective. It is not about innovating in terms of doing the sorts of significant changes that my hon. Friend the Member for Basildon and Billericay is suggesting that I take on board.

Mr Jones: So basically the Minister is saying, "Take 'EU' out and stick 'UK' in." If that is the case—

Alison Thewliss: What is the point?

Mr Jones: That says a lot about a lot of these things. As this SI goes through, therefore, have those various bodies that will get these powers got the necessary technical expertise to be able to determine that, or is that a Treasury decision?

John Glen: They have been given the responsibility where their technical expertise is formed and known, and where their role currently is to deal with this stuff. It is not exclusively about a language change, but I am just trying to give an indication of the lack of policy innovation that is going on here.

Alison Thewliss: Will the Minister give way?

John Glen: I was trying to bring clarity, but I seem to have done the opposite. I am happy to give way.

Alison Thewliss: Let us see if we can get some clarity. The Minister is saying that recommendations will be made by the regulatory authorities to him as the Treasury Minister, but he can overrule that, if that will cost him money or it will cost him in a trade deal.

John Glen: Where there are deficiency fixes that the regulator has proposed, they will be subject to approval, but I will be scrutinisable on those decisions, through Select Committees and the normal mechanisms of Parliament.

Mr Jones: I accept that the Minister is saying that he, as the Minister, will be scrutinised by Select Committees and others, but what role is there for Parliament to be able to challenge any of these?

John Glen: Regulation fixes will be put in the public domain and laid before Parliament for information, so there is nothing hidden about it.

Mr Jones: That is not good enough, because I could lay anything. Let us be honest: the Minister could write anything and place it in the House of Commons Library, but if Members of this elected House do not have an ability to question or change it, is not that a deficiency in the process? Otherwise, it gives the Minister the power to decide what is deficient or not. Afterwards, he can produce a report for the Select Committee or place it in the Library, but actually we have no influence at all as Members of Parliament.

John Glen: I just draw the Committee's attention back to the purpose of this, which is to onshore, to ensure that we have a regulatory regime in place for a no-deal scenario. This is not about seeking to give additional powers to change in any way the policy framework that is set by the primary legislation that we have debated in the House. We are in the realm, I think, of constructing hypothetical scenarios of fixes that produce some meaningful change, which they would not be licensed to do in the first place, and saying that those would not be subject to scrutiny. They will be laid before Parliament, but it would not get to that point, because they are not licensed to do the sorts of things that the right hon. Gentleman suggests that they would do.

Mr Baron: If I may just move away from the hypotheticals, I have tried to outline a serious deficiency in EU regulation here. Can I have an assurance from the Minister that our regulatory bodies will have the power to put that right, if we leave without a deal?

John Glen: The purpose of this process and this statutory instrument is to provide the framework to onshore the binding technical standards that are needed. Turning to my hon. Friend's point, I will ensure that the FCA is aware of the issues that have been raised—I am sure it already is. I am told that this summer, it launched a call for input to seek feedback for consumers and firms, which closed on 20 September. Next time I see Andrew Bailey—I see him regularly; I saw him just last week—I will ask him to consider that.

I will come on to the other points and the broader principles. Some of the considerations about where we will be in the future are subject to the deal that we end up with. Again, I do not want to be drawn into hypotheticals at this point. I will come back to my hon. Friend's point in a minute.

The hon. Member for Oxford East raised a number of other issues about resourcing. The right hon. Member for North Durham also raised this, in terms of the regulators having enough resource. In my travels to Indonesia, Malaysia and Japan over the summer, I have seen that UK regulators are highly regarded and among the most important and most respected in the world. They have the resource and expertise, and the Government are confident that they are ready and able to do what has been asked of them. The hon. Member for Glasgow Central was also concerned about this point. I have had no indications from my conversations with the PSR, the PRA or the FCA that there is a resourcing issue. If that changes, I am sure they will be very keen to come and talk to me about it.

Alison Thewliss: Nobody is questioning their expertise. The concern is more about whether we have enough people with the expertise. What assessment has the Minister done of that?

John Glen: Given the relationship that the Treasury has with the different regulators, it is for them to raise concerns with me with respect to the resourcing. All parties are intimately involved in a dialogue around the construction of the process. It is not done unto them by me or the Treasury. In terms of the adequacy of the resources, at the moment I have no concerns about that—it is matter that they would need to raise with me.

Mr Jones: The Minister says he has no concerns about it, but he does not know what the cost is. If he does not know what the cost is, I am not surprised that he does not have any concerns about it. I would also question the leaders of those organisations. If they have taken on responsibilities without knowing what costs are going to come down the line, that is foolish on their part, I would argue.

John Glen: All I can say is that the lines of communication are open between the FCA, the PRA, the PSR, myself and the officials. We are pretty open and clear. If there were concerns going through this process, which started several months ago, about the availability of resources, I am sure they would have been raised.

Mr Jones: In my experience as a Minister dealing with the Treasury, if responsibilities are taken on and then money is asked for afterwards, there is a likelihood that it will not be given. The estimated costs should have been set out in the explanatory notes, as they usually are. It is foolish to think of going along to the Treasury later with a begging bowl and trying to get money out of it—blood out of a stone comes to mind.

John Glen: I note the right hon. Gentleman's point and I will now move on to the issue of supervisory co-operation and the continuance of that, as raised by the hon. Member for Oxford East. While it is true that we will be outside the EU's framework, we want supervisory competition to continue. I am sure that the hon. Lady knows that there exists a high level of co-operation across many countries outside the EU framework, and our regulators stand ready to do this. A point was made about optimism for the future. The Chancellor set out some great opportunities in the Mansion House speech that we will have with global financial partnerships. The regulators will be deeply involved in that.

I turn now to the points made by my hon. Friend the Member for Basildon and Billericay and acknowledge the quality of his articles in the *Investors Chronicle*. I look forward to reading his book. The powers in the European Union (Withdrawal) Act 2018 deal only with fixing deficiencies at the point of exit, as he will know. Wider changes need to be considered at a later date, but I think he has put on the record some meaningful analysis of the implications of the regulations for the characterisation of risk around unit trusts versus investment trusts. I have heard that, as have my officials, and we will come back on that.

Mr Baron: I thank the Minister. All I have asked him to do is look at this and be conscious of it; I do not expect immediate answers now. Most of us, whether Brexiteer or remainer, would prefer a good trade deal that favoured both sides; trade deals tend to be good. Is the Minister able to confirm now—although I would be happy for somebody to do so afterwards—whether this bit of regulation, which is causing so much angst over here, will remain in force within the Chequers agreement? In which case, we have further battles to wage.

John Glen: Candidly, at the level we are at at the moment, in seeking a strong bilateral arrangement to determine the future dynamics of dialogue between the EU and the UK supervisory bodies, I cannot answer with that degree of specificity. I take the point and will seek to come back to him as soon as I can.

Anneliese Dodds: I am grateful to the Minister for giving way; he has been very generous. I have enormous respect for the hon. Member for Basildon and Billericay but, surely, it is important that whenever we talk about specific regulations we ground our discussion in an overall commitment not to seek to undercut EU-level regulation. Of course, there will be innovation and change, including at EU level. I would be surprised if these discussions are not happening in other European countries. I accept that the nature of the market is different in different European nations. But we have had this around many other regulations before. The danger is that we could end up with the mentality of a bonfire of regulation, which will overall have much more of an impact, because there are concerns that Brexit could be used as a means to undercut regulations generally. That is much more of a concern for industry than any specific regulation, in my experience anyway.

John Glen: I will take on that point, while also responding to the hon. Member for Glasgow Central, who made the same point about watering down of EU regulation. There is no provision to water down in the Act the regulations that we are seeking to onshore. The wider point has been made about the future direction. On that, again, I can be reassuring. We do not want to define ourselves as a nation by regulatory arbitrage.

I also acknowledge, as my hon. Friend the Member for Basildon and Billericay pointed out, that the financial services have ongoing issues with legislation that has been onshored while we have been members of the EU. They are not about reckless setting aside of prudential regulations. They are in areas, perhaps, on which there is greater emphasis in our UK financial services, as my hon. Friend mentioned, these are things that do not exist in other jurisdictions.

Those are matters that a future framework would at least give us a mechanism to examine and then there would be an understanding, if we achieve what we seek—reciprocal responses from both the sovereign regulatory supervisory bodies. But we are not starting from a point where we are seeking to deregulate.

On the point the hon. Member for Glasgow Central made about UK regulators losing influence, I visited Edinburgh and Glasgow over the recess and acknowledge the growing financial services hub that exists there. The UK is a major financial centre and UK regulators are major players in global forums for financial regulation. There are global colleges for supervision for banks, for example, where we are key players. Although I recognise that the context will be different, this is not the time for UK regulators to adopt a more detached role from international leadership in some of these areas.

Reference was made to the BBC report of the comment I made at the Lords Select Committee this morning about jobs. Throughout the last nine months that I have been doing this, I have been in frequent contact with firms about jobs lost. I was referring to a comment made by Sam Woods, the deputy governor of the Bank of England, about the contingency arrangements. In my opinion, it was not news; I was just reflecting what had been said by somebody else. Of course, contingency arrangements have been made, but I have seen no expectation or desire to move significant tranches of jobs to the EU beyond that. A deal would clearly arrest that fear. We have set out clear proposals on a future ambitious relationship with the EU. We hope that that will transpire, and we expect it to take place.

The other point was about rule-taking. We are not proposing that UK regulators will have to work within a framework, other than the UK Parliament framework. There would be parliamentary scrutiny of any significant changes that we wished to make, and we will set those changes in primary legislation.

The right hon. Member for North Durham made a point about the impact assessment. The regulations would have no cost to business, as they deal with the transfer of responsibility from the Treasury to the appropriate regulators. As a whole, the regulations will significantly reduce costs to business in a no-deal situation. That is the whole point--to ensure that the effects of the transition are minimised in an undesirable situation.

Through our dialogue with firms and trade bodies, we have attempted to minimise the disruption to firms, but it is inevitable that some preparation will be needed. The Government have committed to providing the UK regulators with the power to phase in regulatory requirements that will change as a result of exit, which will mitigate the cost to firms. Due to the wide scope of the changes needed and the broad set of firms affected, however, it has not been possible to accurately quantify the actual costs to firms—I concede that—but these regulations will reduce the cost to business in a no-deal scenario. That is undoubtedly their purpose.

Mr Jones: How?

John Glen: Because they will set a reliable regulatory framework that will mean that firms will not be at risk of defaulting or of not having the regulatory oversight that would not exist otherwise.

Anneliese Dodds: I would always hesitate to speak for my right hon. Friend the Member for North Durham, but I believe his question was actually about the cost to Government and the considerable amount of civil service time that is being eaten up by the process.

John Glen: With respect to that, we have prepared a narrative on the impact assessment, and I believe there is a conversation going on with the appropriate Committee to determine that, but we have not concluded that assessment. Obviously, it is necessary to move quickly to secure all these statutory instruments before the end of March. That has been our objective.

Sarah Champion: For clarity, is the Minister saying that we need to pass 800 statutory instruments before March? I thought he meant before the whole process was concluded.

John Glen: I need to write to the hon. Lady about the distribution of the 800 statutory instruments. As I understand it, 800 statutory instruments will be required across Government through the exit process.

I hope that I have dealt with the points that have been raised. I am sincerely sorry about those points that I have not dealt with, and I will write to hon. Members. I hope that it is clear that we have had full scrutiny of this statutory instrument, and that the Committee will now approve it.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

3.45 pm

Committee rose.