PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ACCOUNTS AND REPORTS (AMENDMENT) (EU EXIT) REGULATIONS 2018

Wednesday 12 December 2018

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not later than

Sunday 16 December 2018

The Committee consisted of the following Members:

Chair: Philip Davies

† Bradley, Ben *(Mansfield)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
Daby, Janet *(Lewisham East)* (Lab)
Day, Martyn *(Linlithgow and East Falkirk)* (SNP)
† Elliott, Julie *(Sunderland Central)* (Lab)
† Esterson, Bill *(Sefton Central)* (Lab)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Henderson, Gordon *(Sittingbourne and Sheppey)* (Con)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† Mak, Alan *(Havant)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Tolhurst, Kelly *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Whittingdale, Mr John *(Maldon)* (Con)
† Wragg, Mr William *(Hazel Grove)* (Con)

Ian Bradshaw, *Committee Clerk*

† attended the Committee

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Wednesday 12 December 2018

[Philip Davies *in the Chair*]

Draft Accounts and Reports (Amendment) (EU Exit) Regulations 2018

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kelly Tolhurst): I beg to move,

That the Committee has considered the draft Accounts and Reports (Amendment) (EU Exit) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr Davies. Since the UK's 2016 referendum decision to leave the EU, the Department for Business, Energy and Industrial Strategy has undertaken a significant amount of work on the withdrawal negotiations, preparing for a range of potential outcomes. We have been working, and must continue to work, to prepare for a no deal scenario.

The regulations aim to address failures of retained EU law to operate effectively, as well as other deficiencies arising from the withdrawal of the United Kingdom from the European Union, in the field of accounts and reports of UK corporate bodies. The law in the UK on the preparation and filing of accounts and reports for corporate bodies is compliant with the EU accounting directive. There is also a directly applicable EU regulation that relates to the preparation of accounts in accordance with international accounting standards—the so-called IAS regulation. Both the accounting directive and the IAS regulation apply throughout the European economic area. The Department intends to introduce a separate statutory instrument that will address how we intend to deal with the deficiencies presented by the IAS regulation after the UK's withdrawal from the EU.

The fundamental elements of the current companies' accounts and reports legislation will remain the same after exit. However, that legislation still needs to be amended to ensure that it works effectively once the UK has left the EU. An important component of the accounting directive, and therefore the UK's company law, relates to reciprocal arrangements for company group structures—for example, exemptions permitted to businesses from producing consolidated accounts if the parent is registered anywhere in the EEA and is producing consolidated accounts that are compliant with EU law. In the absence of a negotiated agreement regarding the economic relationship between the UK and the EU, it would be inappropriate to continue with preferential treatment for EEA entities, or UK entities with EEA parents.

The statutory instrument will mean that businesses registered in EEA states will be treated in the same way as those from third countries. UK businesses with EEA parents will therefore no longer benefit from the exemption from having to produce consolidated accounts because their EEA parent company produces consolidated accounts. However, UK businesses with parent entities registered in the UK will not be affected by the changes.

The regulations do not create new criminal offences. However, the scope of the pre-existing criminal offences will be extended, in that some companies that previously benefited from an exemption will no longer do so. They will be exposed to the possibility of committing a criminal offence in a way that they were not before. Also, some businesses with links to the EEA will now fall within the scope of existing criminal offences in the UK for failure to file accounts and reports. For example, dormant companies with parent entities listed in the EEA will no longer be exempt from preparing and filing accounts with Companies House. Failure to do so would mean that they would be committing an offence, and they would be liable to incur fines and penalties. That is consistent with the approach for similar companies with parents outside the EEA.

Ian Murray (Edinburgh South) (Lab): Will the Minister tell the Committee whether she anticipates, or has anticipated, more parent companies moving to the EEA from the UK as a result of the UK leaving the European Union?

Kelly Tolhurst: I do not have any indication of the number of companies that have stated that they would leave the UK after EU exit.

The accounting directive sets out the requirements for businesses to report payments to Governments worldwide relating to the extraction of natural resources by way of logging and mining. Alongside that, it provides a power for the Commission to grant equivalence to third countries for their systems of reporting payments to Governments regarding logging and mining activities. This statutory instrument transfers that power to the Secretary of State.

The Government have carried out a de minimis impact assessment of the regulations, because the overall costs to business were expected to be small. That confirmed that the impact on business would be minimal and that the resulting costs would be in relation to the company's size. There is a small chance that certain second-order impacts may arise from changes to one of the exemptions. Currently, the ability to switch between accountancy frameworks—the requirements for the preparation of companies' annual accounts—is limited to once every five years, unless the company de-lists from any regulated market in the EEA. The change made by this statutory instrument will mean that a company can only satisfy that condition by de-listing from the UK market.

Although we think the amendment is a minor one, it may provide an incentive for companies to de-list from the UK markets. Companies list their securities on capital markets primarily to access a larger capital and investor base—for example, because they are considering growing their businesses. They do not take de-listing decisions lightly. Given the scale of the changes introduced by this statutory instrument, it is very unlikely that they would do so to try to circumvent the reporting requirements.

The Government have worked closely with business and regulatory bodies to ensure that regulations achieve continuity wherever possible, while addressing the deficiencies arising from the UK's withdrawal from the EU. My officials have benefited from the wisdom of our many stakeholders, and the statutory instrument incorporates their views. In the event that the UK leaves

the EU without an agreement, the regulations will be critical in ensuring that UK accounting law continues to provide transparency and certainty to investors. The regulations will also ensure that companies operating in the UK have clear guidance for preparing and filing their accounts. I commend the regulations to the Committee, and I ask the Committee to support and accept them.

2.36 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure, as always, to serve under your chairmanship, Mr Davies. Yet again—for the third time in a week—we are here to discuss the consequences of no deal and the changes that are needed to regulations. Yet again, we are told in the explanatory notes that they are relatively minor, but when we dig deeper we find that they affect quite a large number of pieces of legislation and that in combination, they are significant. The combined effect of these SIs, along with many other aspects of the way Brexit is progressing, demonstrates just how important it is that the Government rule out any prospect of no deal as urgently as possible. Businesses are crying out for that certainty. The more of these SIs we consider, the more uncertainty is created.

In this case, the reporting requirements will change significantly, in particular—but not exclusively—for companies where the parent company is in the EEA and subsidiaries are in the UK. The advice note produced last month by specialists Linklaters contains the heading:

"Brexit set to increase accounting requirements for UK entities with EEA parents or subsidiaries".

That is not something that any Government or any business would want to read. It summarises the fact that this SI, along with the others, will lead to great potential difficulties for businesses and the economy.

I think the Minister quoted from paragraph 2.11 of the explanatory memorandum, which states that

"it is inappropriate to continue with preferential treatment for EEA entities, or UK entities with parents or subsidiaries from EEA States, or entities listing on EEA regulated markets, because that would amount to unreciprocated preferential treatment."

I do not deny that that would be the case in the disastrous event of no deal, but we must be trying to avoid that. That prompts some questions, which I would like to explore with the Minister, about the impact of this SI.

Paragraph 7.4 sets out in a little more detail what is anticipated. It talks about the changes to the Companies Act 2006—at least, I think that is what it refers to:

"Section 399 CA06 set out conditions under which UK subsidiaries with EEA parents were exempt from the requirement to file group accounts. That exemption has been reduced in scope so that it applies only to UK subsidiaries with UK parents."

How many companies are going to be affected? What proportion of the economy will be affected? I asked a similar question yesterday and I do not think we ever quite got the answer. Perhaps the Minister can have another go today. She may not have had the answer yesterday, and if she does not have it today, I am happy for her to say so and to write to me separately.

That also applies to the point about an impact assessment. As with previous SIs, the Government say that it is not relevant because of the limited impact. Let us get an honest assessment of the impact of the changes. How many companies will be affected? What size are those companies? What proportion of the economy will be affected?

My hon. Friend the Member for Edinburgh South asked an interesting question about the potential for businesses to move from the UK into the EEA after Brexit. What assessment has been made of that? What came back from the consultation about the prospect of that happening? Presumably, if a company that is registered in the UK at the moment wants to avoid additional reporting requirements, it would be tempted, if it has an EEA parent, to re-register in the EEA. What are the consequences if that happens?

What consequences have the Government considered, in terms of the feedback from the consultation and any assessment they have carried out? If no assessment has been carried out, why on earth not? This could have quite serious consequences. I can think of a very sizeable business located in my hon. Friend's constituency that might be affected by such a desire to shift registration, and I can imagine the consequences of shifting that registration and the business operations associated with it. Some answers would be very much appreciated, if we are to do justice to our scrutiny of the regulations.

How was the consultation carried out? How many businesses were consulted? What business organisations were consulted? What were their responses? Paragraph 10.2 of the explanatory memorandum describes it as an informal consultation, but that does not give an indication of its scale or scope, or what the responses were. In order to make sure that we are properly assessing the impact, scale and consequences of the regulations, we need answers to those questions as well.

I have made the point about the Government's decision that the regulations do not justify a full impact assessment. Frankly, if this is of a more sizeable scope and if the potential for businesses to relocate is significant, there will be a significant impact. I am surprised that the Government have decided that an impact assessment is not required.

I turn to other matters. How will the new arrangements operate? What will the arrangements be for companies listed in the EEA that have subsidiaries in the UK? What will be the reporting arrangements to replace what happens at the moment? It was not clear from the Minister's initial remarks how that will work, so perhaps she can confirm that. Will Companies House be sufficiently resourced to address the additional accounting requirements that Linklaters refers to in its analysis? For that matter, will businesses be sufficiently resourced to address the additional work? Will additional funding be required for Companies House, or will it just have additional responsibilities without extra resources to discharge them?

Specifically, will the Minister describe the impact of the regulations on extractive industry companies registered in the EEA? How will they be affected? I understand from the explanatory notes and analysis that there is a particular issue about the effect of the changes on country-by-country reporting by extractive companies, such as those in the mining sector. As Linklaters tells us, there will be significant issues in respect of the exemption from the requirement to prepare consolidated accounts. There will also be significant impacts when it comes to the exemption from the requirement to prepare a non-financial information statement, the ability to change

[Bill Esterson]

accounting frameworks on de-listing, the dormant company exemption from producing accounts, country-by-country reporting by extractive companies in mining, qualified partnership accounts and overseas company regimes.

Those significant changes go substantially beyond what the Minister said in her opening remarks about the scale and scope of what we are being asked to approve. Will she give that her detailed attention, with any support that her officials can deliver this afternoon? Will she write to the Committee to answer the questions that I have raised?

On their own, but especially with the other statutory instruments we have been asked to approve, the regulations are an indication that significant changes are being made to the legislative framework of this country as a result of no deal planning. I accept that we have no choice other than to address the regulations this afternoon, but that does not mean we have to do so without adequate scrutiny.

2.48 pm

Kelly Tolhurst: I thank the hon. Member for Sefton Central for his usual thorough reading of the statutory instrument and preparation for the debate. I want to finish by reminding the Committee that the SI is being brought forward for a no deal scenario. As a Government, we are still working towards a deal, and that is what we hope we will have as we leave the European Union.

Ian Murray: I would hate to get into a debate about Brexit, because I am sure you would call me out of order, Mr Davies, but would it not be much better for the Government to rule out a no deal scenario? We could then spend most of our time in the House dealing with what we need to deal with, rather than preparing for no deal.

Kelly Tolhurst: Actually, I think it is quite right that as a Government we are preparing for no deal, and we will continue to do so. That is why I am here presenting a statutory instrument—so that in the event of no deal we will be able to give business confidence and clarity on what the outcome will be, whether it is liked or not, in a no deal scenario.

I will try to answer some of the questions that the hon. Member for Sefton Central posed about the statutory instrument. He asked about the total number of companies that might be affected. There are approximately 3.8 million active companies on the UK register as it stands, and 98.5% of them happen to be micro or small businesses. There are approximately 35,000 medium-sized businesses and 20,000 large entities on the register. We have assessed that fewer than 20,000 companies will be affected by the statutory instrument, with a range of sizes and set-ups.

I was asked what assessment we have made of de-listing. As I have outlined, we did not carry out a full assessment, because we established from the data we have that the burden and cost to business will be below £5 million. The burden on business will relate to the potential costs of having to file accounts and make preparations, where they had been exempt. Obviously, that is a small cost to a limited number of organisations.

Obviously the de-listing is very difficult to assess. It is very difficult to assess how many companies would take the decision to leave the UK based in a no deal scenario. As I have said, as a Minister I have not been made aware of any companies that have registered an interest in leaving the UK, based on the changes that we are considering. We estimate that the number of organisations that might decide to de-list would be very small, but it is a very difficult number to assess.

Bill Esterson: The Minister said that nearly 20,000 businesses would be affected by the regulations. The explanatory memorandum states that there is "no significant" impact on business. I just wonder whether she can tell me how many businesses it would take for the Government to decide that it was a significant number worthy of an impact assessment.

Kelly Tolhurst: As the hon. Gentleman knows, because I have just outlined it, we are talking about approximately 20,000 businesses that would be affected, out of the current 3.8 million businesses that are registered in the UK. That is a small number of businesses in relation to the total number of registered companies. However, we are talking about the cost, and the burden will relate to the potential extra costs in relation to accounting and reporting.

We must remember that, as Members will have read and as I have mentioned, dormant companies for example have been exempt. They will no longer be exempt, so there will be a cost to that under the regulations in a no deal situation.

Ian Murray: To follow on from my hon. Friend the Member for Sefton Central, there is an impact assessment that says that the cost to business is negligible, but will the Minister's Department be producing an impact assessment of the cumulative cost to business of all the SIs that are going through in preparation for a no-deal Brexit, and when will we see it?

Kelly Tolhurst: I thank the hon. Gentleman for his question. We are assessing the impact as a Department in all ways, and we are doing that informally. We do it through working with stakeholders. These SIs are not just dreamed up. As I said in response to an earlier question, we have consulted our officials and worked with stakeholders. We have spoken to auditors and accountants—the people who will be responsible for imparting this information to the companies they work for and for understanding the true cost to business—so we are always assessing the impact of everything we do. Especially as a business Minister, one of my priorities is to make sure that when we do things around business, we reduce the burden when we can. The actual answer is that we need to prepare for scenarios, and in doing this we are aware of the potential outcomes and risks, which would affect 20,000 businesses.

Ian Murray: Will the Minister give way?

Kelly Tolhurst: Once more on this.

Ian Murray: The Minister is being incredibly generous, and I am grateful to the Chair for indulging me on this point, but it is incredibly important. The Minister quite

rightly says that the Government have not just dreamed these SIs up. Of course they have not, because there is a process that has to be run through if the Government decide that they wish to go down the route of a no deal Brexit. What is the cumulative effect on business of all the SIs that are currently before her Department? They have not been dreamed up, but they are there, they are measurable, and they can be added together to show the impact of the SIs that are currently on the table and their cost to business.

Kelly Tolhurst: I will try again to answer the hon. Gentleman's question. There is no policy change in this SI: it is correcting deficiencies in the retained EU law. If he is asking about the impact of no deal, I refer him to the work that has already been done by Government on the impact of a no deal scenario versus a deal scenario, rather than these individual statutory instruments. As he will know, there are a number of statutory instruments across all Departments that may well affect businesses in different ways, which do not come under my responsibilities as a junior Minister in the Department for Business, Energy and Industrial Strategy.

Nick Smith (Blaenau Gwent) (Lab): I just want to press the Minister on this point about the overall cost to business of the no deal planning that she has talked about. My hon. Friend the Member for Sefton Central has mentioned the specialist media coverage of the accounting requirements that have already taken place in one sector of the economy, and this is the third Delegated Legislation Committee on this topic in this week alone. By when will we receive from the Minister the true cost to business of these extra responsibilities and regulations from her Department?

Kelly Tolhurst: As the hon. Gentleman well knows, the assessments of the effect on business have been well reported. With this particular SI, we are talking about the impact on a very small number of businesses, compared to the 3.8 million that are registered. The vast majority of UK-registered companies will not be affected by the SI at all, because we are not changing the policy; we are correcting deficiencies so that we are legal and can operate correctly and efficiently in the case of a no deal scenario. Quite rightly, if we are able to establish a future relationship with the European Union—if we are in a situation where we have a deal—this is one of a number of elements that would be part of those ongoing negotiations. However, I am unable to give the hon. Member for Blaenau Gwent clarity on the direct question he asked regarding the total cost to business for all the SIs that have been passed or are coming up.

Nick Smith: On this topic, in this Department.

Kelly Tolhurst: If the hon. Gentleman is referring to accountancy, we are talking about the accountancy SI today.

Nick Smith: Will the Minister give way?

Kelly Tolhurst: I am going to carry on, because I have given as full an answer as I am prepared to give.

As I highlighted in my introduction, and as I have reiterated, we are not changing the way in which we ask companies to report. We will work with Companies House, as we do already, to ensure that we identify all the companies that are affected by not having the exemptions, that we have the data, and that any guidance that is needed is issued well before the SI comes into effect.

On the extraction industries, the hon. Member for Sefton Central is right that currently the EU Commission has the power to grant equivalency to third countries. We are not changing any of the criteria for that; rather than the EU Commission having that power, the Secretary of State would have the authority to make those decisions in a no deal situation. As I outlined, the SI will correct the deficiencies in EU retained law.

Bill Esterson: Will the Minister give way on that point?

Kelly Tolhurst: I give way.

Ian Murray: It is called scrutiny.

Bill Esterson: I think my hon. Friend has anticipated my question. Will the Minister explain what the scrutiny process will be for the Secretary of State's decision making in the event of no deal?

Kelly Tolhurst: I thank the hon. Gentleman for that question. As I outlined, the European Commission has the power to grant equivalency, and we are not changing any powers here. Having looked at this, we believe that it is small enough for us to have it in an Executive power. If the European Commission has those powers currently, it is right they would be transferred to the UK Secretary of State in a no deal situation. Scrutiny would operate exactly as it does currently.

Bill Esterson: Really?

Kelly Tolhurst: Absolutely, because the Secretary of State would make those decisions and grant those powers. Granting equivalency to third countries is obviously a small part of it.

Effective financial reporting underpins the success of every business. It helps to inform decision making, to improve performance and to promote confidence in a company's future. As the UK exits the EU, it is paramount that we maintain the integrity of the UK system of accounting and reporting. The regulations will ensure that it remains coherent, operable and understandable for companies, users of accounts, and the general public, who rely on the transparency that it provides. I commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 6.

Division No. 1]

AYES

Bradley, Ben	Mak, Alan
Clarke, Mr Simon	Tolhurst, Kelly
Harris, Rebecca	Whittingdale, rh Mr John
Henderson, Gordon	Wragg, Mr William
Lopez, Julia	

NOES

Charalambous, Bambos	Green, Kate
Elliott, Julie	Murray, Ian
Esterson, Bill	Smith, Nick

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Accounts and Reports (Amendment) (EU Exit) Regulations 2018.

3.6 pm

Committee rose.