PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT COMPANIES, LIMITED LIABILITY PARTNERSHIPS AND PARTNERSHIPS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Monday 4 February 2019

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not later than

Friday 8 February 2019

The Committee consisted of the following Members:

Chair: Ms Karen Buck

† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Bruce, Fiona *(Congleton)* (Con)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
Cooper, Rosie *(West Lancashire)* (Lab)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
Cryer, John *(Leyton and Wanstead)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Lewer, Andrew *(Northampton South)* (Con)
Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Ross, Douglas *(Moray)* (Con)
† Rowley, Lee *(North East Derbyshire)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Tolhurst, Kelly *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*

Medha Bhasin, *Committee Clerk*

† attended the Committee

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Monday 4 February 2019

[Ms Karen Buck *in the Chair*]

Draft Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019

4.30 pm

Fiona Bruce (Congleton) (Con): May I draw attention to an interest recorded in the Register of Members' Financial Interests? My law firm, of which I remain a partner, is a limited liability partnership.

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 Companies, Limited Liability Partnerships and Partnerships (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Ms Buck. The draft regulations, which were laid before the House on 10 January, will address deficiencies in retained EU law in relation to the Companies Act 2006 and supporting secondary legislation. They will ensure that UK law in the area continues to function after exit day. Hon. Members will notice that their provisions cover many different areas; I shall briefly summarise them.

The changes to the 2006 Act and the supporting secondary legislation will ensure that the system of regulation underpinning how companies report to and register with the UK companies registrar, Companies House, makes sense after we have left the EU and the European economic area. They will also remove the UK from ongoing participation in two EU-based processes in the field of company law: the cross-border mergers regime and the business registers interconnection system.

The draft regulations also cover other matters. They include a small number of amendments to address how businesses with membership, access and listing on EEA-regulated markets are dealt with; they will remove preferential treatment in such instances and in relation to EEA entities where there is a potential breach of the World Trade Organisation's most favoured nation rule. Where there is no such breach, and where it is appropriate to do so, we have maintained the status quo to offer certainty and consistency for business, including EEA businesses.

The main practical changes for business that stem from the draft regulations will be filing changes with an impact on some UK and EEA businesses after exit day, including a requirement for UK companies with an EEA-based corporate secretary or director to file two additional details with Companies House. Additionally, after exit day, EEA companies on the overseas companies register will be treated in exactly the same way as non-EEA companies, meaning that EEA companies that register with Companies House will be required to provide some additional details, while EEA companies that are already registered will have three months to provide the additional information required by the draft regulations. Linked to these filing changes is a requirement for EEA-based companies on the overseas companies register to provide additional minor details in their public-facing material, such as their website and letterhead; again, the draft regulations provide three months from exit day for the affected companies to do so.

In line with those changes, the draft regulations will also revoke legislation on two EU-based processes or systems currently administered by Companies House. The first is the cross-border mergers regime. Hon. Friends and noble Lords in Committees of both Houses have drawn attention to the removal of the current process for UK companies. I understand their concern, because I know that certain companies welcome the fact that it allows companies to merge across EEA jurisdictions. However, that is possible only under the EU cross-border mergers regime, which requires legal entities based in two EEA states. As the UK will no longer be an EEA member after exit, it will not be possible to continue to allow cross-border mergers, but companies will be able to transfer assets and liabilities using contractual arrangements.

The other system of which the UK will no longer be part after exit is the business registers interconnection system—a very new system, introduced only in 2017, that is used mainly to identify companies undertaking a cross-border merger or foreign branches of companies. All the information currently provided publicly on the Companies House register will still be available; the only thing that will cease is Companies House's access to the register to register connections across the EU.

I will now explain the changes made as a consequence of the insertion of a new definition of "regulated markets" into another statutory instrument, in line with regulations that Her Majesty's Treasury has laid before the House, and its effect in certain sections of the Companies Act 2006. In most places where it occurs, the change will have no material effect. There are only two occurrences where we have made the decision to apply the same requirements to EEA companies as we do to third-country companies. We judged that without such a change, there would be a risk of breaching the World Trade Organisation's most favoured nation rule.

The practical effect of each change is that certain intermediaries who deal in securities will no longer be able to hold shares in their parent company where they are a UK-based holding company. This benefit will, after exit, be extended only to intermediaries with access to UK-regulated markets. We are providing a one-year transition for that change. Certain investment companies will no longer be able to benefit from some relaxations on controls on their distribution of profits unless they have access to a UK-regulated market. In addition, we will treat EEA-based credit reference agencies in the same way as third-country credit reference agencies after exit. Companies House will no longer be able to send the protected information that it holds on directors to EEA credit reference agencies and processors.

My officials have worked extensively with Companies House throughout the development of these regulations, and I thank them for their expertise. It is also relevant to point out to hon. Members that this has been done

alongside ensuring that the UK's company registry fully reflects the UK's departure from the EU on exit day. That includes updating all relevant forms that companies use to file information, as well as updating guidance. That should be emphasised, because it means that companies will have certainty and clarity on what they need to do when the UK leaves the EU. We completed a de minimis impact assessment of the regulations, which shows that the overall costs to business are expected to be small.

As the Committee has heard, the regulations provide numerous technical changes to the operation of UK company law, and they respond to the reality of the UK's leaving the EU. They are not overly burdensome for business and they will ensure that the UK has coherence in its approach to overseas companies. I therefore commend the regulations to the Committee.

4.37 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck. At the end of the Minister's speech, I was taken by her remark about "certainty and clarity" when we leave the EU. Oh, my word—nothing could be further from the truth. I do not know whether she was trying to find out whether anybody was listening to her speech. Perhaps it was a test. I heard her, and I can only assume that that was said in a moment of great irony and humour, because it is the last thing that will happen if we leave without a deal, which is what a lot of the regulations are about.

Once again, the Minister and I are here to discuss a statutory instrument that makes provision for a regulatory framework after Brexit in the event that we crash out without a deal. On each occasion, my Labour Front-Bench colleagues and I have spelled out our objections to the Government's approach to secondary legislation. The volume and flow of such legislation is deeply concerning for accountability and proper scrutiny. In this case, it appears that dozens and dozens of regulations are being changed. They are set out in detail in paragraphs 6.1 to 6.6. I shall not go through them all, but Members can count up for themselves to see whether my description is right.

The Government have assured the Opposition that no policy decisions are being taken. That is a very odd thing to claim, because establishing a regulatory framework inevitably involves matters of judgment and raises questions about resourcing and capacity, which are surely policy matters. Secondary legislation ought to be used for technical, non-partisan and non-controversial changes because of the limited accountability it allows. Instead, the Government continue to use it as a vehicle for pushing through contentious legislation with high policy content.

As legislators, we have to get this right. The regulations represent real and substantive changes to the statute book and, as such, they need proper, in-depth scrutiny. As I said at the start of my response to the Minister, there is no certainty or clarity for business—or anybody else—if we leave without a deal, which is ultimately what the regulations are about. In the light of that, we put on record our deep concern that the process surrounding the regulations is not as accessible and transparent as it should be.

The Minister spoke about filing by businesses in the UK and in the EU, and she said that EEA businesses would have two additional filings as a result of the changes. She also said that if the regulations were implemented as a result of a no-deal Brexit, EEA and non-EEA companies would be treated the same.

Companies have three months to implement the changes that the regulations set out, and that does not sound like a long time to ensure that every affected company finds out. Can the Minister tell the Committee what plans the Government have to make sure that every single company affected by the regulations is aware of the changes that it needs to make to be compliant with UK law? If companies are not made aware of the changes, there will be significant consequences for them. I am interested to know what plans the Department has and what process will be followed.

The Minister mentioned the business registers interconnection system, which is the EEA system that joins our Companies House system with similar systems across the rest of the EEA, if I understand correctly. We will no longer be involved in BRIS when we leave the EU, and that will have an impact on foreign branches of EEA-based businesses. Given her comment that internationally based companies will be treated the same, regardless of whether they are EEA or non-EEA, and that there will not be access to BRIS, what will be the impact for anybody who wants to use the EEA systems —the equivalents of Companies House—that are part of BRIS?

In my experience, we in this country use Companies House to check the legitimacy of a business, inspect accounts, find out who the shareholders are, find the registered office address and carry out checks before trading with another business. It is important for business-to-business activity and to enable consumers to understand whether they are buying from a reputable trader. That is a domestic matter, but at the moment, BRIS means that a straightforward and updated system can be used for such activity across the EEA. As BRIS is ending, what system will replace it?

My assumption—the Minister can confirm it or not—is that for all EEA companies, we will move to the system that we have for companies based in countries outside the EEA. For businesses that are based in the EEA and have branches in the UK, that could lead to a delay in updating the registers. If information is not up to date, the consequence for businesses buying or selling, or for consumers buying, could be that they do not get a true picture of the status of a company that they seek to trade with. Will she clarify whether that explanation is accurate? What plans are in place to deliver the best possible replacement arrangements for international cross-border trade, for businesses and consumers? The existing arrangements provide immediacy, certainty and confidence, which is why BRIS was set up in the first place.

Those are my key questions, but I have a small number of additional comments. In paragraph 7.8 of the explanatory memorandum, the Government refer to the measure applying to a "very few companies". Will the Minister say how many companies are a "very few"? My other points are, as ever, about consultation and impact. We have this discussion every time we debate a statutory instrument of this sort, and I will not disappoint Members by omitting it today. Paragraph 10.1 indicates that the Government have not been able publicly

[Bill Esterson]

to consult. That is cause for concern, and it is a reminder that the Minister's statement about certainty and clarity is odd for yet another reason. Will she explain why the Government were unable to consult before laying these regulations before the House? I know that the Law Society helped to draft the regulations, but without wider input from those who will be affected by them, it is difficult to see how confident we can be that they are entirely satisfactory.

As ever, I remind the Committee that when other jurisdictions, such as the European Union, carry out an impact assessment, they consider the wider impact, and not just the very narrow direct impact of the regulations. It would be extremely advisable for the Government to change their policy and carry out a proper impact assessment. Perhaps the Minister will wish to reconsider her comment that these measures deliver certainty and clarity for when we leave the EU; they do not.

4.48 pm

Kelly Tolhurst: I thank the hon. Gentleman for his comments. I said that the measures give clarity and confidence to business. This statutory instrument is intended to do exactly that for company law, and to provide companies with clarity about how retained EU law and the register will operate if we leave the European Union in a no-deal situation. Although the hon. Gentleman thought I was joking, I actually meant what I said.

Let me pick up a couple of the points that the hon. Gentleman has made. He mentioned EEA companies, and I assume that he was talking about EEA corporate appointments. A UK company that make a corporate appointment of a director or a secretary will have to file two extra pieces of information, which we have identified as being of low cost to business. Some 1,900 of those businesses have already been identified by Companies House, and they will all be written to. We have already updated the advice and guidance from Companies House on that. The regulations also refer to EEA companies that will register on the UK overseas companies register, and we estimate that to be 3,200 companies. Again, Companies House will write to the companies affected, and the guidance has been updated. As he will have seen from the regulations, those companies have to provide more basic information to Companies House, which is an administrative task. As I mentioned in my opening comments, the front-facing aspects—the websites and letterheads—will also need to show additional information. The guidance will be updated.

BRIS is a publicly accessible database, and the hon. Gentleman is correct to say that we will no longer be part of it if we leave the EU in a no-deal situation. Currently, people outside the EEA can access that information via the website, as we do in the UK through Companies House, so access is not restricted.

I could not find the paragraph in the explanatory memorandum that the hon. Gentleman mentioned that referred to a small number of companies. I think he was referring to the number of companies affected by the changes in the regulated markets.

Bill Esterson: I am happy to help. Paragraph 7.8 says:

"This measure applies to very few companies, but transitional provisions have nevertheless been provided that will allow sufficient time for impacted companies to consider the impact of the change on their operations and take appropriate action".

My question was about how many companies she means by the phrase "very few companies", which refers to:

"Investment companies that only have shares admitted to an EEA market".

Kelly Tolhurst: I thank the hon. Gentleman for that clarification; that was the area I was thinking of. As far as intermediaries are concerned, five companies would be affected, but our records show that no investment companies have been identified as being affected.

On consultation, as I outlined, we have consulted, worked with and used the expertise of Companies House to ensure that we are making the best provisions to enable UK companies to implement the regulations that we require for them to be legal if we leave the European Union without a deal. By working with those experts, we believe that we have devised the simplest and best way forward.

As I set out, the changes in the regulations cover a variety of amendments to the UK company law framework, so that, on exit day, the UK statute book is workable and coherent. It should be emphasised that certainty is crucial for business confidence. In some cases, the changes are not material and will have no impact on business; they are simply provisions to tidy up the Companies Act 2006 and related secondary legislation. The communication or pre-emption offer to shareholders is one example. The changes are no less important for that reason, however, and they will mean that UK statute is on a stable footing on exit day.

As I have set out, other areas will have an impact. They include the level-down approach for EEA companies in relation to certain filing requirements for the register, as well as the changes for some entities in relation to benefits that are currently based on access to EEA-regulated markets. The removal of the cross-border mergers regime is another example of where businesses will notice a change to processes that existed as a result of our membership of the EU.

The regulations cover many different changes, but, taken individually, their impact on business will be small. My officials are working with Companies House and others to ensure that the register will be operational for exit day, and that will significantly reduce the impact felt by companies that are affected by the changes. Overall, the regulations will ensure that the UK's company law framework remains coherent, operable and understandable for business, and I commend them to the Committee.

Question put and agreed to.

4.55 pm

Committee rose.