

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT EQUIVALENCE DETERMINATIONS FOR
FINANCIAL SERVICES AND MISCELLANEOUS
PROVISIONS (AMENDMENT ETC) (EU EXIT)
REGULATIONS 2019

Tuesday 12 February 2019

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The Committee consisted of the following Members:

Chair: SIR EDWARD LEIGH

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| † Antoniazzi, Tonia (<i>Gower</i>) (Lab) | † Phillipson, Bridget (<i>Houghton and Sunderland South</i>) (Lab) |
| † Burns, Conor (<i>Bournemouth West</i>) (Con) | † Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| Ellman, Dame Louise (<i>Liverpool, Riverside</i>) (Lab/Co-op) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Glen, John (<i>Economic Secretary to the Treasury</i>) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| † Henderson, Gordon (<i>Sittingbourne and Sheppey</i>) (Con) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| † Jack, Mr Alister (<i>Dumfries and Galloway</i>) (Con) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | Peter Stam, <i>Committee Clerk</i> |
| † Knight, Julian (<i>Solihull</i>) (Con) | |
| † Mann, Scott (<i>North Cornwall</i>) (Con) | † attended the Committee |

Ninth Delegated Legislation Committee

Tuesday 12 February 2019

[SIR EDWARD LEIGH *in the Chair*]

Draft Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019

2.30 pm

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

That the Committee has considered the draft Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.

May I say what a pleasure it is to serve under your chairmanship, Sir Edward? As the Committee will be aware, the Treasury has been undertaking a programme of legislation under the European Union (Withdrawal) Act 2018 to ensure that if the UK leaves the EU without a deal or an implementation period there will continue to be a functioning legislative and regulatory regime for financial services in the UK. This statutory instrument is an important part of that programme. It will address deficiencies related to the EU's equivalence framework for financial services once the UK is no longer an EU member state, and will make provision for elements of the UK's stand-alone equivalence framework in a scenario where the UK leaves the EU without an agreement.

Many members of the Committee will be familiar with the EU's framework for equivalence. The EU's internal market for financial services works by harmonising prudential regulation and supervisory standards. Common rules aim to provide adequate consumer protection and financial stability, so that financial services can safely be sold across borders within the EU. For the same reasons, the EU also harmonises to some extent the rules permitting financial services firms outside the EU to sell to consumers in the EU. EU legislation allows the European Commission to determine that a country outside the EU, often termed a third country, has a regulatory and supervisory regime in a particular area of financial services that is equivalent to the corresponding EU regime.

Equivalence provisions exist in several areas of EU financial services legislation. The ability to grant equivalence is a key component of financial services regulation and supports cross-border activity. Equivalence decisions can reduce or eliminate overlaps in regulatory and supervisory requirements, thus decreasing the regulatory burdens on firms. Some equivalence decisions can also provide improved prudential treatment or facilitate the exchange of services and products. This can lead to increased competition, which has benefits for firms and consumers, while protecting consumers and financial stability in the EU from risks associated with buying financial services from outside the EU.

Before making an equivalence decision, the Commission will undertake an assessment of the third country's regulatory and supervisory regime. The Commission

may also ask the European supervisory authorities—ESAs—for technical advice to support its assessment. As an EU member state, any equivalence decisions made by the Commission currently have effect in the UK. After exit, the Commission's current decisions will be retained EU law and will continue to permit third country firms to be treated as they are now.

In a no-deal scenario, the UK will be outside the European economic area and no longer part of the EU's equivalence framework for financial services. The UK will become a third country to the EU. We need to amend retained EU law to reflect that new relationship. The Government place significant importance on the need to have a functioning stand-alone equivalence regime, which will support our future relationships with the EU and other financial centres with which we want to build stronger partnerships.

Members of the Committee will be aware that other Treasury SIs that have completed their passage in Parliament have already transferred equivalence responsibilities from the Commission to the Treasury and functions from the ESAs to the UK financial regulators in a no-deal scenario. While maintaining the same substantive criteria that the EU currently uses to judge equivalence, this SI will help to complete the UK's framework and ensure that the UK has a stand-alone regime.

The instrument does three main things to support the development for a stand-alone UK equivalence framework in the event of a no-deal exit. First, it corrects deficiencies in existing equivalence decisions made by the Commission, which will be transferred to the UK's statute book as retained EU law on exit day. An example of this deficiency fix is replacing references to "the Union" with references to "the United Kingdom", to reflect the UK's new position outside the EU. Fixing those decisions is important to minimise disruption for some firms with business in equivalent countries and for some overseas firms that currently rely on them. This will help to avoid disruption to the UK's relationship with non-EU countries.

Secondly, the instrument replaces the functions given to the ESAs with functions for the UK financial services regulators. When undertaking new equivalence assessments, the Treasury may obtain technical advice from the UK financial services regulators—the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England. The SI also creates an obligation on the Treasury and the UK regulators to enter into a memorandum of understanding that sets out in more detail the operational processes to support equivalence assessments.

Thirdly, the SI creates a temporary power for Ministers to make equivalence and exemption decisions for EU and EEA member states by direction for some specified equivalence regimes listed in the SI. That is separate from and in addition to the permanent arrangements for making equivalence decisions after exit, which require a negative resolution instrument in Parliament. The temporary power is needed to prepare for the particular circumstances we would face if the UK left the EU without a deal. As an EU member state the UK has not previously needed powers to determine whether the EU is equivalent, but in a no-deal scenario it will be important for the Treasury to have powers to make such decisions in time for exit day, to respond quickly and effectively to any risks to the financial system and to avoid disruption for firms and markets.

Let us be clear: in such a situation, the UK would need to be nimble and able to act quickly to find the EU equivalent to the UK and support market functioning. Having an effective and time-limited power puts us in the optimum position to work with the European Commission to find each other's regimes equivalent, which would be the most sensible outcome to protect cross-border economic activity and avoid disruption, although, failing that, equivalence decisions by the UK of the EU should not be assumed.

To illustrate why the powers are required, I point out to the Committee that the Commission has published several draft legal acts granting exemptions to UK bodies in a no-deal scenario. That shows our shared view that some equivalence decisions are important to have in place for day one of exit. The power is intended to be used to mitigate risks around exit and would expire 12 months after exit day; thereafter, any future equivalence decisions for the EU and EEA member states would need to be made by regulations subject to the negative procedure, as they would for all other foreign countries. To ensure transparent use of the temporary power, the SI obliges Ministers to lay any direction before Parliament and to publish it.

The Treasury, as is customary with all these SIs, has worked closely with the Bank of England, the PRA and the FCA in the drafting of this instrument. It has also engaged the financial services industry on this SI and will continue to do so. The regulators and key industry stakeholders have expressed support for the provisions in the instrument as necessary to mitigate disruption and provide legal certainty about the UK's equivalence system.

The Government believe that the proposed legislation is necessary to ensure that the UK has a clearly defined and operable equivalence framework in a no-deal scenario. The powers it contains are necessary to ensure that the Treasury and UK regulators are able to respond if the UK leaves the EU without a deal or an implementation period. I hope colleagues will join me in supporting the regulations, which I commend to the Committee.

2.39 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Sir Edward. 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. I will spare the Minister the full list of our concerns; I think we are somewhere around 15 through the list, but these events are almost daily now, so he is aware of our concerns. It is enough to say that the Opposition would like to put on record our worries that the process of transposing this legislation has not been as accessible or as transparent as it should be.

Last night in the main Chamber we debated the Financial Services (Implementation of Legislation) Bill—the “in-flight” financial services Bill—which the Opposition voted against. One of the reasons for opposing that Bill is that the combination of work happening in Delegated Legislation Committees, along with the “in-flight” Bill, is creating a patchwork of new rules. We believe that is inherently vulnerable to clashes, gaps and inconsistencies.

That is also our view of today's instrument. Clearly, the objectives are the right ones, but the Minister and I have already voted on a great number of items of

regulation where in some instances the Government have transferred powers to the Financial Conduct Authority, the Prudential Regulation Authority, the Treasury or the Bank of England, so it is not entirely clear why we now need this separate instrument, to pass distinct powers to grant equivalence arrangements separate to the decisions that we have already taken in each of those specific instruments. Once again, while there is a sunset clause in this legislation, it is worrying that the Treasury is trying to give itself powers to keep in its back pocket to deploy should it decide that they need to be exercised.

Will the Minister clarify why we need stand-alone powers of this kind and which regulations he feels they would be used in reference to? What is the relationship between this general set of regulations on equivalence and the specific statutory instruments that we have already debated and which already relate to the transfer of powers? Why has the Treasury been given powers to make labour-intensive evaluations of regulatory standards in other countries, as opposed to that going to the Financial Conduct Authority, the Bank of England or the Prudential Regulation Authority? Is the Treasury properly resourced for this work? If not, will it receive extra resources for what it is being asked to do? Will there be a publicly available central register of all equivalence decisions, so that domestic and external market participants can have ready access to up-to-date information, along with the accompanying rationale for the decisions that have been made?

I note that these powers can be used before exit day, with a view to taking effect on 29 March. The Minister directly referred to this near the end of his speech. That is an uncomfortable proposition and distinct from some of the legislation we have already passed. With just 33 working days to go until we leave the European Union, can the Minister indicate in what context they would be used during this period and why that would be felt to be necessary? I believe the words that he used were that the Government need to be “nimble” in that scenario, but as parliamentarians we need more reassurance about that and about the general scope and intention of this legislation. I hope the Minister can provide that for us.

2.42 pm

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Sir Edward, and to join everyone here today.

I share a lot of the Opposition's concerns. They have been well expressed in previous Committees and yesterday on the floor of the House. We are concerned about the Government giving themselves more powers under this SI. This is a pattern in all these SIs and the Bill yesterday. The Government are giving themselves more powers and taking that power away from us as MPs. This is by no means taking back control, but giving themselves all the control and giving the Treasury very specific powers as well.

I have a couple of questions. The Minister said that equivalence cannot be assumed, but I would argue that the SI should have assumed that the UK would automatically grant equivalence to EU regulations in the absence of any kind of practical reasons standing against that. Failing to provide that automatic reassurance

[Alison Thewliss]

is another example of the UK Government's sowing mistrust in our European partners. The EU can revoke equivalence at any time, so it would be an act of good faith for the Government to say that for their part they would not do so, and that might be of some assistance.

Further to that, there is an additional burden on the Treasury, the Prudential Regulation Authority and the Financial Conduct Authority. Can the Minister tell me how many staff are working on equivalence assessments within those institutions? Knowing how many people are working on it would give a good idea of the Government's intention to use these powers. If there is nobody working on it, or one person in a cupboard at the back of the hall somewhere, perhaps one could say that they are not going to be looking at it, or they are not going to be using these powers, but if there is a squad of 50 working on it, that is quite different, not least because of the additional expense that that would impose.

It seems a little like the instrument, because it is not specific and is a bit broader, is intended to paper over the gaps that other statutory instruments might have left. Is its purpose to cover things in a more general sense?

We are running out of time, getting closer and closer to Brexit. The rhetoric around no deal is ramping up, which is certainly not helping to reassure businesses in Glasgow Central, Scotland or anywhere else. We have to face the reality that the UK Government are not ready to leave. Article 50 must be extended. We are running out of road here, and the risk is that we will end up with no legislation to cover things that need to be covered in the event of no deal, which seems increasingly likely.

2.45 pm

John Glen: I thank the hon. Members for Stalybridge and Hyde and for Glasgow Central for their observations. I will first attend to the general points about readiness and the intention of the Government, which is clearly to secure a deal.

I assure hon. Members, as I have on previous occasions, that there is no secret agenda in the Treasury to grab power. The SI is about contingency arrangements for the unwelcome outcome of no deal. We take this responsibility very seriously. An impact assessment was published on 7 February stating that there will be no new operational requirements for firms owing to the draft instrument.

I will now seek to address the specific points raised by Opposition Front-Bench Members. The hon. Member for Stalybridge and Hyde asked, in essence, why we need these extraordinary powers to grant EU and EEA equivalence on exit day. It is important to stress that this temporary power is intended only to mitigate cliff-edge risks and to support UK market activity and the continuity of cross-border business. The power is time limited; it will expire 12 months after exit day, which was determined following engagement with the industry and regulators. Thereafter, any further equivalence decisions regarding the EU and EEA will need to be made by regulations via the negative procedure.

The hon. Gentleman asked about the resources in the Treasury. The Treasury has been preparing to take on these additional functions and is well equipped, given its existing responsibility for financial services policy. We have worked closely with the FCA and the PRA during the development of the draft instrument, and we are confident that we are well placed to make future equivalence decisions.

The hon. Gentleman asked about the appropriateness of the Treasury making equivalence decisions, rather than the regulators. Under the EU's equivalence framework, the European Commission is responsible for making jurisdiction-level equivalence decisions. The European supervisory authorities are responsible for providing technical assessments to the Commission when requested and for making firm-level recognition decisions on third country firms. Our approach will ensure that there is a functioning equivalence framework in the UK after exit that mirrors the current split in responsibilities between the Commission and the ESAs, with the Commission's function transferring to the Treasury and the ESAs' functions transferring to the relevant regulatory authorities. That is consistent with what we have done in the other SIs.

The hon. Gentleman asked whether a central register of equivalence decisions will be created. All decisions will be laid in Parliament and published on gov.uk, so they will be publicly available. There are no plans at this point to have a central register, but the process is intended to be completely transparent.

The hon. Member for Glasgow Central asked whether Parliament would be consulted on a decision to revoke equivalence. In the future, equivalence decisions will be made and revoked by regulations subject to the negative procedure. This is a well-established procedure that allows Parliament to scrutinise proposed secondary legislation and to object if it has concerns, including about any decision to revoke an equivalence decision.

The hon. Lady asked about good will towards the EU and what will be the best decision. Clearly, we share a common heritage; the United Kingdom as a whole, including the excellent financial services located in Glasgow and Edinburgh, has contributed richly to the development of the EU regulations. We will obviously start from a common starting point. However, decisions around equivalence will be matters for both sides to come to terms with, and we will seek to do the best thing for the UK financial services industry in whatever prevailing conditions exist. We cannot anticipate that degree of co-operation, so we cannot make decisions proactively, as we might wish to do had we a deal and an implementation period, which would allow us to work such things out—as we intend.

Alison Thewliss: I understand what the Minister is saying, but surely it is in our interest—ours and the EU's—if we want to continue to interact as we do now, to do things in a similar way.

John Glen: Absolutely it is, but what we cannot do until we have a deal is to determine what no deal would look like. It is therefore appropriate for me, as the Minister responsible for the UK financial services industry, to seek to reserve those powers, as the Commission is doing now—largely.

The hon. Lady caught me out, as she has often done before, when she asked about the number of people working on equivalence at the regulators. All I can say is that the Treasury is confident that the regulators have in place the resources to meet that function and they have devoted significant time to preparing for changes. I do not have a specific figure, but I am confident in their overall provisioning for that programme of work. I draw attention to schedule 1, which sets out the files in question.

The statutory instrument is needed to ensure that the UK has a clearly defined equivalence framework once outside the EU and is able to support the continuity of

cross-border business in any scenario, and that the legislation functions appropriately if the UK leaves the EU without a deal or an implementation period. That is not our intention, but I am confident that, given the engagement we have had with the regulators and the industry, the SI is required. I hope that the Committee has found our sitting informative and will now support the draft regulations.

Question put and agreed to.

2.52 pm

Committee rose.

