PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT FINANCIAL SERVICES CONTRACTS (TRANSITIONAL AND SAVING PROVISION) (EU EXIT) REGULATIONS 2019

Wednesday 13 February 2019

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Sunday 17 February 2019

The Committee consisted of the following Members:

Chair: MARK PRITCHARD

† Burden, Richard *(Birmingham, Northfield)* (Lab)
† Cowan, Ronnie *(Inverclyde)* (SNP)
† Dowd, Peter *(Bootle)* (Lab)
† Dunne, Mr Philip *(Ludlow)* (Con)
† Jenrick, Robert *(Exchequer Secretary to the Treasury)*
† Johnson, Gareth *(Dartford)* (Con)
† Jones, Darren *(Bristol North West)* (Lab)
† Kawczynski, Daniel *(Shrewsbury and Atcham)* (Con)
† Matheson, Christian *(City of Chester)* (Lab)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Trevelyan, Anne-Marie *(Berwick-upon-Tweed)* (Con)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Whittingdale, Mr John *(Maldon)* (Con)

Robert Cope, Kevin Candy, *Committee Clerks*

† attended the Committee

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[Mark Pritchard *in the Chair*]

Draft Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

2.30 pm

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

That the Committee has considered the draft Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019.

As members of the Committee who follow Treasury statutory instruments with interest will be aware, we have been undertaking a programme of legislation to ensure that if the UK leaves the European Union without a deal or an implementation period, a functioning legislative and regulatory regime for financial services continues. To deliver that, the Treasury is laying statutory instruments before Parliament under the European Union (Withdrawal) Act 2018. There have already been debates on many such statutory instruments in this place and in the House of Lords. The draft statutory instrument that we are debating is part of that programme. It has already been debated and approved by the House of Lords.

In December 2017, the Treasury announced that we would legislate to establish a temporary permissions regime enabling European economic area firms operating in the UK to continue their activities in the UK for a time-limited period after withdrawal without seeking full UK authorisation. At the same time, it was announced that we would legislate to ensure that contractual obligations not covered by that regime could continue to be met. That will help to protect the interests of UK customers of EEA financial services firms.

The legislation setting out the temporary permissions regime for firms that passport under the Financial Services and Markets Act 2000 was debated and passed by this House last autumn in the form of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018. Legislation for other temporary regimes covering non-UK central counterparties, EEA payments and e-money institutions, and trade repositories has similarly been debated and passed by this House.

The draft regulations before us deliver on the second commitment that we made: to ensure that those financial services contracts not captured by the temporary permissions regime can continue to be serviced. They also ensure continuity for UK-based customers of financial services providers that do not enter other temporary regimes, or that exit such regimes without having obtained the full UK authorisation, recognition and registration that they would otherwise need to continue carrying out their activities in the UK.

Specifically, this draft instrument makes provision for passporting EEA firms, non-UK central counterparties, EEA payment and e-money institutions, and trade repositories to wind down their UK operations in an orderly manner. It will apply to firms and service providers that no longer wish to operate in the UK, and those that exit a temporary regime without permission from the UK authorities to carry on a new business here. The approach taken in the draft regulations aligns with that taken in other statutory instruments laid before Parliament under the European Union (Withdrawal) Act. The regulations deliver on the Treasury's commitments and are vital to the financial services sector and all UK consumers.

Turning to the substance of the regulations, those familiar with EU law will know that it allows EEA firms, non-UK central counterparties and trade repositories to provide regulated services in the UK by virtue of being authorised in another member state, or recognised and registered by the relevant EU authority. In a no-deal scenario, the UK would be outside the EEA and the EU's legal, supervisory and financial regulatory framework. Once the EEA frameworks providing for passporting rights, recognition of central counterparties and registration of trade repositories fall away, as they would in a no-deal scenario, we need to act to avoid widespread disruption to the provision of financial services, which would clearly be detrimental to UK businesses and consumers.

The draft regulations insert provisions into existing temporary regimes to enable the orderly wind-down of contractual obligations or services, and so will provide continuity and certainty for UK customers of those firms that do not enter the temporary regimes, or that exit them without full UK authorisation, as I have said. Specifically, the regulations will establish four distinct run-off regimes relating to four different temporary regimes. The regimes will cover: first, EEA firms passporting under the Financial Services and Markets Act; secondly, non-UK central counterparties; thirdly, EEA payments and e-money institutions; and, last, trade repositories.

The temporary regimes already established go a long way in mitigating risks of disruption and uncertainty. Without these additional wind-down provisions, however, UK businesses and consumers could see some disruption to their contracts or services. The instrument is necessary to minimise that disruption to users and providers in a no-deal scenario. For example, if an EEA insurance provider with customers in the UK does not enter the temporary permissions regime, the instrument will allow the insurer to pay out on a claim to its UK customers where it could otherwise be illegal for it to do so. The instrument will allow firms with pre-existing contractual obligations to continue to meet them, providing certainty and fairness to both the providers and users of financial services, and demonstrating that the UK remains open for business and takes legal certainty and business continuity seriously.

The Treasury worked closely with the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority in drafting the instrument. It has also engaged widely across the financial services sector, which has supported the measure and continues to do so. On 17 December, the Treasury published the instrument in draft, along with an explanatory note to maximise transparency to Parliament and the industry.

In conclusion, the instrument is a pragmatic response to the need to ensure service continuity if the UK leaves the EU without a deal. The importance of the provisions is reflected in the announcement of December 2017, which made it very clear to the industry that well in advance of exit day, the Treasury would put forward legislation to deliver these regimes. The legislation is necessary to ensure that contractual obligations can continue to be met, thus avoiding disruption and losses for UK business and consumers. I hope all colleagues will join me in supporting the regulations, which I commend to the Committee.

2.37 pm

Christian Matheson (City of Chester) (Lab): What a great pleasure it is to see you in the Chair, Mr Pritchard. I thank the Minister for his explanation of quite a complicated measure, but I cannot help but wonder at the amount of time—both his and his officials', here and elsewhere—being sucked up by such measures. It is yet another consequence of the madness that is Brexit, and particularly the madness of no-deal Brexit—a prospect that the Government should have taken off the table weeks, if not months, ago, given the opportunity to do so.

The Minister made a genuine attempt to explain as clearly as possible this important, complicated matter. I do not doubt the sincerity of his speech, but I utterly despair at the fact that we are being sucked further into the morass of chaos that is Brexit at a time when the country faces so many major problems. I greatly and deeply regret the situation.

2.38 pm

Peter Dowd (Bootle) (Lab): It is a delight to see you in the Chair, Mr Pritchard. Once again, the Minister and I are here to discuss a statutory instrument that would set up a regulatory framework after Brexit in the event of us leaving in a disorderly fashion without a deal. On each of these occasions, my Labour Front-Bench colleagues and I have explained our objections to the Government's approach to secondary legislation.

The volume and the flow of EU exit secondary legislation give rise to deep concern, from the point of view of accountability and proper scrutiny. The Government say that no policy decisions are being taken, but establishing a regulatory framework, for example, inevitably involves policy, and raises the questions about resourcing and capacity referred to by my hon. Friend the Member for City of Chester.

Secondary legislation should be used when the Government want to do things that are technical, non-partisan and uncontroversial. This Government continue to push through contentious legislation with high policy content using secondary legislation. As legislators, we have to get it right. These regulations could represent major changes to the statute book, so they need proper, in-depth scrutiny. In light of that, the Opposition would like to put on record our deepest concern about the fact that the process for these regulations is not as accessible and transparent as it should be, or as the Minister suggests it is.

Unfortunately, the regulations seem to have three statutory instruments within them: one amending the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; one amending the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; and one amending the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018. The way they have been pasted together causes concern, to say the least, and the result is that they are extremely difficult to follow, let alone scrutinise. I would be grateful if the Minister responded to a number of concerns.

Part 2 sets up a temporary permissions regime that says that if someone is carrying out an activity that is authorised in their home state, and several conditions are met, for a temporary period that person can carry on with that activity in the UK. The activity had to have been allowed under the Financial Services and Markets Act prior to exit day, and the person had to have had an establishment in the UK. Several further criteria must be fulfilled; in particular, the regulations seem to say that if the activity was part of performing a pre-existing contract or, more tenuously, part of "reducing the financial risk" to a party to a contract or a third party affected, a temporary permission should apply.

In other words, it seems that these regulations are trying to avoid cutting across existing contracts. They might have in mind, among others, private equity funders on one side of a contract when referring to parties involved with reducing the risk of a contract. I would like the Minister to explain more about that. What is meant by "reducing the financial risk", and how far does that go?

Chapter 3 of part 2 sets the period for the temporary permissions regime. It seems to say that the period is 15 years for a contract of insurance and five years for other purposes. Does that mean that EU law continues to apply for 15 years for the purposes of insurance contracts, and for five years for other contracts? Clarity on that would be helpful. There is not much detail, and a period 15 or even five years is stretching the limits of "temporary". We are concerned that in trying to avoid chaos for contractors, the Government might be creating even more uncertainty. I would be grateful if the Minister commented on that and clarified it.

Proposed new part 6, chapter 4 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 appears to modify the Financial Services and Markets Act. This is the application of a Henry VIII clause—something that is much criticised by lawyers and judges, as we all know. Chapter 4 also gives the Financial Conduct Authority power to receive applications for permission to vary. That seems to be a significant amount of power going to the FCA, and there is seemingly little power here for Parliament to review or hold accountable.

Proposed new chapter 4 allows the FCA to cancel the temporary permissions based on:

"(a) the person's conduct,

(b) the practicality of supervision by a regulator,

(c) the size of the person's undertaking, and

(d) the nature or extent of the regulated activity".

Can the Minister clarify what conduct would or might justify cancellation, and what

"the nature or extent of the regulated activity"

means? Are we correct in understanding that there does not appear to be a right of appeal on this determination? I would be grateful if the Minister clarified. Obviously,

[Peter Dowd]

just process and natural justice should be upheld. We are concerned about the implications of making the FCA into a judge in individual cases, and a lawmaker.

Proposed new part 9 of the EEA passport rights regulations appears to give the Treasury the power to extend the temporary regime, as the FCA has to submit to the Treasury an assessment of the need to extend the regime. That, again, leaves doubt about how temporary this all is. I would be grateful for assurances on that.

Other parts of the regulations deal with transitional arrangements relating to central counterparties and trade repositories. On central counterparties, for certain activities a one-year transition period appears to apply, and for others,

"the Bank may direct that the central counterparty be subject to such transitional arrangements as it considers necessary or expedient".

Again, I would like to know more about the thinking behind issuing such power and discretion to the Bank of England.

We are becoming increasingly alarmed at the Government's unfolding approach to regulating financial services. There does not appear to be an overall plan; there is no indication of how different pieces of legislation fit together; and, above all, there is no clarity. I looked at legislation across the world that appears to be clearer than this, but is ridiculous. For example, in Fairbanks, Alaska, it is illegal to sell alcohol to a moose.

Christian Matheson: It is also illegal to sell antifreeze to the Indians of Quebec.

Peter Dowd: That seems a much clearer position than the Government's. In Quitman, Georgia, it is illegal to change the clothes on a storefront mannequin unless the shades are down. That seems perfectly sensible. In South Bend, Indiana it is illegal for monkeys to smoke cigarettes. Apparently, cigars are okay, but only if the monkey goes outside. I am sure that monkeys could understand that legislation, but some of the regulations coming to us are quite ridiculous. We have to be clear.

As Members will know, earlier this week, Labour opposed the Financial Services (Implementation of Legislation) Bill on Second Reading, because it represented a worrying transfer of powers of significant scope to the Executive. We have all been deeply concerned about this, as we have said time after time. Today, colleagues will debate in the Chamber the Securitisation Regulations 2018, which Labour prayed against for similar—or at least related—reasons.

I believe that when we voted to leave the EU, the aim was to empower Parliament to debate and make those decisions, not to concentrate them in the hands of civil servants or Ministers, yet the Government continue to put our economy at risk through their chaotic and opaque approach to lawmaking and the handling of Brexit. It is clear that rather than the Government pushing through such a large volume of piecemeal legislation, we need consolidated pieces of primary legislation, scrutinised in the proper and correct way, as opposed to regulations being brought to Committees in which no one from the Government Benches tries to challenge them.

Ultimately, we legislators have to get this right. This is not just about the principle of democracy and accountability, but about robust lawmaking that is clear, comprehensive, coherent and enforceable. That is our duty as parliamentarians. As far as the public are concerned, we are paid to do that, and we should do it, but the Government are not allowing us to. It is precisely because the stakes are so high, and because the Opposition view their responsibilities to the British public with the utmost intensity and severity, that we will be voting against the regulations.

2.48 pm

Robert Jenrick: I am grateful for the opportunity to respond to the questions put by the hon. Members for Bootle, and for City of Chester.

I disagree with the hon. Member for City of Chester. Leaving without a deal is clearly not our preference—there are sectors of the economy, including financial services, for which that would be a very difficult situation indeed—but it is not responsible to take no deal off the table at this stage, and to diminish our leverage in the crucial final stages of the negotiations. In fact, it is not possible to take it off the table, because there is the matter of the primary legislation that is already in place. Until such time as the House of Commons passes a law to the contrary, we have to act on the basis that no deal is a potential scenario.

Any responsible Government would be taking the steps that we are today. The regulations have been welcomed by the industry, which has described them as the final piece in the puzzle, and an important piece of legislation that we need to pass to ensure that UK financial services institutions and consumers are protected.

By approving the regulations, we are making a fair, unilateral regime available to our friends and partners across the EEA—a regime that will give firms temporary access allow them to run off their businesses in an orderly manner. That is what people would expect us to do.

The hon. Member for Bootle asked why we were using secondary rather than primary legislation. We have had that debate on numerous occasions during this process. The European Union (Withdrawal) Act does not allow the Treasury to make major changes to policy or legal frameworks, and does not give the Government the power to make changes beyond what is needed to correct deficiencies that will arise solely as a result of exit. That is all we are attempting to do today.

The hon. Gentleman asked about scrutiny. As I said in my opening remarks, we published the instrument in draft form on 17 December, along with an explanatory memorandum that sets out how it will operate, maximising transparency to Parliament and the industry. We have had numerous meetings with stakeholders across the financial services sector; they welcome the instrument and believe it is absolutely essential. I am therefore disappointed to hear that any Member would choose to vote against it, because the consequences of doing so would be significant in the event of no deal.

The hon. Gentleman asked why there is a contractual run-off period, and whether that would mean that consumers would not be safeguarded—I think that was one of the implications. The period is precisely to ensure that consumers are protected. The example I

gave was of a consumer with a long-duration insurance product that lasted for 10 or 15 years. We would want to ensure that the product could be used and the consumer could make a claim if necessary, and that the provider of that service—for example, an EEA insurance company—could not renege on that by virtue of it being illegal. The regulations protect consumers, and enable us to make a fair, unilateral offer to our partners elsewhere in the EEA.

Contracts and businesses will not be unregulated during that period. They will not be permitted to carry out new business in the UK. The FCA and the PRA will have additional powers over firms, including the power to move firms into the supervised run-off period, in which they would be subject to the full UK regulatory regime, and the power to cancel their exemption altogether. Consumers will not be exposed during that period.

The hon. Gentleman asked for further information on cancellation. The regulators' powers in respect of a person under the temporary regime are the same as under part 4A of the Financial Services and Markets Act 2000, so there will be no change to the powers available to the regulator to take action.

On our ability to extend the duration of the regime, Lord Bates in the House of Lords made clear that to do that, we would submit a written ministerial statement. That followed the expression of similar concerns in the other place in the consideration of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018. That clarification has satisfied stakeholders. It is not our intention that extensions will happen in perpetuity; the powers are purely to give greater clarity and certainty to the industry that in extreme circumstances there is an ability to extend, and to ensure that there is no detriment to consumers or business.

Peter Dowd: On the point that the Minister just raised about exceptional circumstances, that is the problem with the totality of the legislation. The Government seem unable to set us on the track to ensuring that we or organisations will eventually have clarity. They seem to be kicking the can down the road all the time. They put things off. They say, "If there is a problem, we will look at it then." It goes on and on. There is absolutely no clarity for organisations, and the Minister should take that into account.

Robert Jenrick: The legislation has precisely the opposite purpose; its purpose is to provide clarity and certainty to industry. Voting against the regulations will do precisely the opposite of what the hon. Gentleman purports to want to achieve. Of course, the way to provide the greatest certainty to consumers, users of financial services, and the 1.1 million people who work in the sector in all parts of the United Kingdom is to vote for the Prime Minister's deal—or a deal—before exit day and avoid a no-deal Brexit.

Peter Dowd: The Minister says that organisations welcome the regulations, but at the end of the day, they welcome them because they are the only thing on the table. Would I welcome them, if I were them? I most probably would, because this instrument is the only document I have that gives me any certainty at all—but it is still not good enough.

Robert Jenrick: It is not the view of the industry that this document is not good enough. The industry thinks that this is the final piece in the puzzle; it provides them with the certainty that they require in the event of a no-deal Brexit. There will now be a temporary regime into which financial institutions can pass, should they wish to. If they do not want to do so, or if they do and then ultimately fail to gain the authorisation that they require, the measures before us provide a further safety net to ensure that consumers and those businesses are protected and safeguarded for a period of time as they run off their business in the UK.

With that, unless any other right hon. or hon. Members wish to comment, I commend these regulations to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 8.

Division No. 1]

AYES

Dunne, rh Mr Philip	Metcalfe, Stephen
Jenrick, Robert	Trevelyan, Anne-Marie
Johnson, Gareth	Whittaker, Craig
Kawczynski, Daniel	Whittingdale, rh Mr John
Merriman, Huw	

NOES

Burden, Richard	Matheson, Christian
Cowan, Ronnie	Murray, Ian
Dowd, Peter	Smith, Jeff
Jones, Darren	Walker, Thelma

Question accordingly agreed to.

2.57 pm

Committee rose.