PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (AMENDMENT)(EU EXIT)REGULATIONS2019

Wednesday 20 February 2019

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Sunday 24 February 2019

The Committee consisted of the following Members:

Chair: Sir Henry Bellingham

† Caulfield, Maria *(Lewes)* (Con)
† Clifton-Brown, Sir Geoffrey *(The Cotswolds)* (Con)
† Duffield, Rosie *(Canterbury)* (Lab)
† Foster, Kevin *(Torbay)* (Con)
† Glen, John *(Economic Secretary to the Treasury)*
† Hepburn, Mr Stephen *(Jarrow)* (Lab)
Hoey, Kate *(Vauxhall)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Smith, Jeff *(Manchester, Withington)* (Lab)
Sobel, Alex *(Leeds North West)* (Lab/Co-op)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Wragg, Mr William *(Hazel Grove)* (Con)

Harriet Deane, *Committee Clerk*

† attended the Committee

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[Sir Henry Bellingham *in the Chair*]

Draft Packaged Retail and Insurance-based Investment Products (Amendment) (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 Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Sir Henry. As the Committee will be aware, the Treasury has been undertaking a programme of legislation to ensure that if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying statutory instruments under the European Union (Withdrawal) Act 2018 to deliver that, and a number of debates on those SIs have already been undertaken in this place and the House of Lords. This SI is part of that programme.

The SI will fix deficiencies in UK law related to the EU packaged retail and insurance-based investment products—PRIIPs—regulation to ensure that it continues to operate effectively post exit. The approach taken in the legislation aligns with that taken in other SIs laid under the EU withdrawal Act, providing continuity by maintaining existing legislation at the point of exit but amending where necessary to ensure that it works effectively in a no-deal context.

Many Committee members will be familiar with PRIIPs. PRIIPs are investment products offered to retail investors, such as investment funds, life insurance policies with an investment element, and structured investment products. Retail investors may invest in PRIIPs as an alternative to depositing cash in a savings account, and PRIIPs are sold primarily by asset managers, banks and insurers.

The EU PRIIPs regulation, which came into force on 1 January 2018, aims to make it easier for retail investors to compare similar financial products through the introduction of a standardised disclosure document called a key information document, or KID. The KID must display important information about the financial product, such as performance scenarios, risks and costs, in a standardised way. Any firm selling or advising on a PRIIP to a retail investor in the EU must provide them with a KID.

Before I go into detail about the functions of the SI, let me say that the Government recognise that industry has raised several issues with the underlying PRIIPs regulation. However, the Government are not able to use the powers of the EU withdrawal Act to make any policy changes. That illustrates the constraints of the withdrawal Act in this regard. Nevertheless, the Financial Conduct Authority has taken action in relation to issues with the PRIIPs regulation. As I set out in a letter to the hon. Member for Oxford East (Anneliese Dodds) in January, the FCA launched a call in July 2018 to seek industry and consumer input on the new requirements introduced by the PRIIPs regulation. That call for input closed for responses on 28 September 2018, and the FCA is in the process of reviewing all the responses. It expects to publish its feedback statement in the next five weeks—in the first quarter of this year—and Treasury officials are engaging closely with it on these issues.

I turn to the substance of the SI. In a no-deal scenario, the UK will be outside the EU and outside the EU's legal, supervisory and financial regulatory framework. The retained PRIIPs regulation therefore needs to be updated to reflect that and to ensure that the provisions work properly in a no-deal scenario. The draft regulations make a number of changes.

First, the SI will amend the territorial scope of the retained PRIIPs regulation to reflect the UK's position outside the EU. The EU PRIIPs regulation applies to any firm that manufactures, advises on or sells PRIIPs to retail investors in the EU. The SI amends the territorial scope of the retained regulation so that, following exit, it will apply only to firms that manufacture, sell or advise on PRIIPs to retail investors in the UK.

Secondly, the SI transfers functions currently in the remit of EU authorities to the relevant UK authorities. Following exit, EU authorities will have no mandate to carry out such functions in the UK. The SI corrects that deficiency by transferring the functions of the European Commission to the Treasury and the functions of the European supervisory authorities, or ESAs, to the FCA. European Commission powers to make delegated Acts are transferred to the Treasury, and powers to make and correct deficiencies in binding technical standards are transferred from the ESAs to the FCA. That is in line with the approach we have taken across the financial services legislation that has been laid in recent weeks.

Moreover, the SI expands an exemption from the requirements of the PRIIPs regulation for certain securities issued by public sector bodies in the European economic area so that it covers public sector bodies in the UK and all third countries. This will ensure that no such securities fall into the scope of the regulation in the UK on exit day, and that the UK treats EEA countries in the same way as other third countries, as it is obliged to.

Furthermore, the EU PRIIPs regulation contains an exemption from its requirements for all undertakings for collecting investment in transferable securities—UCITS—funds until 31 December 2019. UCITS funds are a common type of retail investor fund and must be domiciled in an EEA state. Both UK and EEA-domiciled UCITS are sold widely in the UK. They are subject to a disclosure framework set out in the UCITS directive, separate from the PRIIPs disclosure framework, until the exemption ends. The draft instrument maintains that exemption in the UK for all UCITS funds, including EEA UCITS, ensuring that both UK and EEA funds can continue to adhere to the existing UCITS disclosure framework until this exemption ends.

Finally, the draft instrument deletes provisions in the retained PRIIPs regulation that will become redundant once the UK leaves the EU. The draft instrument deletes references to EU regulators and to administrative sanctions powers for national regulators, which have already been brought into UK law and granted to the FCA through

UK implementing legislation. The draft instrument also deletes obligations in the PRIIPs regulation for the FCA to co-operate with EU counterparts. UK authorities will instead be able to share information with EU counterparts through existing domestic provisions for co-operation and information sharing under the Financial Services and Markets Act 2000.

The Treasury worked closely with the FCA in drafting the instrument and also engaged the financial services industry on the draft instrument's approach to correcting deficiencies. On 22 November 2018, the Treasury published the draft instrument, along with an explanatory policy note, to maximise transparency to Parliament and industry ahead of the draft instrument's being laid. As mentioned, the draft instrument is only able to fix deficiencies in the PRIIPs regulation arising from the UK's exit from the EU. Any change to the underlying policy cannot be considered as part of this onshoring process.

In summary, the Government believe that the proposed legislation is necessary to ensure that the disclosure framework for PRIIPs sold in the UK can operate effectively, and that legislation can continue to function appropriately, if the UK leaves the EU without a deal or implementation period. I hope that Committee members will join me in supporting the draft regulations. I commend the draft regulations to the Committee.

2.37 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Sir Henry. For the second time today, the Minister and I are discussing a draft instrument that makes provision for a regulatory framework after Brexit in the event that we crash out of the EU without a deal. On each occasion this happens, my Front-Bench colleagues and I have spelled out our objections to the Government's approach to this process. It is fair to say that those concerns have not changed since this morning.

As the Minister said, the draft instrument relates to the packaged retail and insurance-based investment products regulations, known as PRIIPs. The discussion on regulating such products began a decade ago, and we believe that the legislation introduced subsequently has played an important role in consumer protection. The biggest part of that is the key investor information document, known as the KID, which was an important step forward as it obliged providers to provide retail investors with a succinct, easily understandable summary of no more than three pages telling investors of the main risks involved. The Opposition are therefore supportive of transposing this regulation and ensuring that there is no relaxation of applicable standards should we leave the EU without a deal.

However, we believe that an ongoing review of this area of regulation is needed, to ensure that the regulation is sufficiently robust. As the original EU regulatory background note stated, these areas are often complicated and lacking in transparency and the information provided can be overly complex and difficult to use for comparisons between different investment products. It also said that institutions selling these products advise investors, and therefore that conflicts of interest may arise. However, I note the Minister's saying that a wider review is not possible under this process, which is a fair point. I look forward to the Government's future proposals in that regard.

I particularly note the exemption applied to UCITS funds that the Minister just described, which I attribute to the fact that a KID is now an integrated obligation of the latest version of UCITS. I would be grateful if the Minister could confirm—perhaps in writing if it is not possible to do so now—whether that is the case, or whether it is simply a technical deficiency in the draft instrument? How will that affect the onshoring plans and the statutory instruments relating to UCITS that we have already passed?

I put on the record the Opposition's objection to the decision to transfer functions to the FCA from the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, and from the European Commission to the Treasury, with little consultation or transparent explanation. We would appreciate greater consultation. As I have said in such Committees before, the Opposition believe that an implicit policy judgment is being made by allocating powers to both institutions without parliamentary consultation on future resourcing and the balance of powers.

I also highlight that regulation 2(4) amends the Financial Services and Markets Act 2000, essentially to require that policy statements by the FCA and others are more detailed. This is a rather general amendment that should be in primary legislation and for which we would like to ensure that the FCA is adequately resourced into the future.

I conclude by reiterating my comments from last week's financial services Bill debate, when I questioned how much consultation there had been with the asset management sector on these issues. It seems from a couple of stakeholders that have contacted me that there is some confusion about process, given their lack of familiarity with the secondary legislation process, and subsequent concerns about how their businesses will be able to function in the long term. I would like the Minister to provide some clarity on these points.

2.41 pm

Alison Thewliss (Glasgow Central) (SNP): It is nice to see you in the Chair, Sir Henry, and to be with all my colleagues again as we hurtle towards Brexit. It is a joy.

I will pick up where my colleague on the Labour Front Bench, the hon. Member for Stalybridge and Hyde, left off: the consultation process is not clear. The draft explanatory memorandum to the draft instrument says:

"HM Treasury has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the EUWA—

EU withdrawal Act—

"including on this instrument".

Does the Minister have a list of those he has consulted, and is he able to share it with the Committee? It would be useful to get an idea of just how broadly the Government have consulted, to see if anything has been missed or if there are other organisations that would have liked to contribute to the drafting of the instrument. Without a formal way for the Government to tell us those things, we have to take their word for it that it has been done as thoroughly as it could have been, as I have said before.

As the Minister probably expects—it is my usual refrain when more powers are moved to the FCA and the Treasury—it will be useful if he can tell us how

[Alison Thewliss]

many staff are involved in this and what the scrutiny mechanisms for MPs will be as we go forward. It is not really taking back control if we take powers back from ESMA and from the EU and hive them off to the FCA and to the Treasury, with MPs losing any kind of control over the process. That is not adequate at all.

According to the explanatory memorandum, first, changes for firms resulting from the UK PRIIPs KID regulation are expected to be minimal, and secondly, the UK regime will be operationally equivalent to the EU regime, so that firms manufacturing or advising on PRIIPS for sale to UK investors will continue to be subject to the same obligations as currently. The Government propose to achieve that by making minor, technical amendments to UK PRIIPs KID regulation to make it effective in the UK and to limit its scope to PRIIPs made available to UK retail investors.

However, there will be minor differences in the content of the KID between the two regimes. For example, the UK regulation specifies that references to the "competent authority" of the PRIIP manufacturer in the KID is deleted, and that the mandatory statement on the impact of tax legislation on the investor's pay-out must specifically refer to UK legislation, as opposed to a more generic reference to the retail investor's home member state. It also seems likely that the difference between the two regimes will widen with the passage of time after exit day. How does the Minister intend to continue alignment in the years ahead? Maybe there will be more clarity on that when the consultation comes back.

For that reason, it appears that, after Brexit, PRIIP manufacturers will need to prepare two KIDs for the same PRIIP where there that PRIIP is made available to retail investors in both the UK and the EU, which seems to me to be additional red tape. The Brexiteers railed against all this terrible red tape, but here we are tangling ourselves up in yet more of it. In some ways, it seems an overly onerous requirement for businesses. I am also worried about any dilution of measures designed to improve fair competition and consumer welfare.

It is ridiculous that the Government continue to play Brexit out and move us closer to the cliff edge, with the Prime Minister unable to give a date for when she will bring anything—in whatever form—back to the House. Meanwhile, we continue to plan for a no-deal Brexit, which seems to get closer to reality by the day. I urge the Minister to use what I am sure is his considerable influence in Government to act in the national interest and extend article 50 until more robust plans are in place.

2.45 pm

John Glen: I thank the hon. Members for Stalybridge and Hyde and for Glasgow Central for their thorough examination of the matters. I will endeavour to give them a thorough response.

I acknowledge the concerns that both hon. Members expressed about the consultation or engagement process with industry. I cannot fortify the Committee with a list of individual companies that have been consulted, but it is worth explaining that engagement process.

Although we did not formally consult on the measures, we established a cross-sectoral working group with representatives from the financial services sector to discuss the European Union (Withdrawal) Act 2018 and financial services onshoring issues. That group is chaired by TheCityUK and has representation from several trade associations that cover different parts of the financial services sector across the United Kingdom. It also includes a number of law firms.

In the time I have been doing this job, my strong determination has been that TheCityUK is a highly respected trade association—it is really a trade association of trade associations—so is well placed to co-ordinate the group, given that its remit covers all sectors of the financial services and related professional services industry, including banking, insurance, asset management, legal services, advisory, market infrastructure, private equity and wealth management. We are confident that through that engagement through TheCityUK, we have reached all the major sectors of the financial services sector.

Alison Thewliss: The Government's impact assessment says that

"between 3,000 and 4,000 PRIIP manufacturers (UK, EU and third country) operate in the UK on a regular basis".

That is a considerable number. Is the Minister certain that they are well covered in the organisations that he mentioned?

John Glen: Yes I am. The green impact assessment, which was issued on 8 February, also identifies that the familiarisation costs will be £150 per firm and that there will be a range of costs between £510,000 and £680,000.

I concede that this is an unique exercise in preparation for an outcome that the Government do not wish to have, and I hope that it will not need to be used. We had to take a view, however, about how to do it efficiently in a relatively compressed time period and I am convinced that we have done the best that we could have done in the circumstances.

We have shared working drafts of the legislation as it has progressed to identify any unintended consequences and to help industry to understand how the sector would need to respond. We have published almost all our statutory instruments before they have been laid on a dedicated section of our website with contact details for stakeholders to contact us. I am not saying that it is perfect, but I draw the Committee's attention to the remarks of Miles Celic from TheCityUK, who noted that there is an industry-wide recognition that all parties—industry, Government and regulators—are operating in an uncertain and time-constrained environment where doing nothing is simply not a feasible option, and that these are exceptional circumstances that require a unique response.

On some of the other points, there was sensitivity about the transfer of functions to the FCA. As the national competent authority, the FCA has been instrumental in making strong representations on PRIIPs. It formally rejected the early iterations and delayed the implementation of the first draft that came out in 2016, so it was implemented on 1 January 2018. I set that out in detail to the Front-Bench colleague of the hon. Member for Stalybridge and Hyde. Frankly, the FCA is capable, as it is now doing, of responding to last year's call for evidence, looking into the key concern of the industry around the methodology for calculating the information displayed in a KID—particularly relating

to performance information and risk estimation, as well as transaction costs—and coming forward with suggested changes.

On the hon. Gentleman's point on equivalence and the appropriateness of the changes to the Financial Services and Markets Act, in a situation in which we leave the EU without a deal, we cannot favour EEA countries of the basis of our close proximity. We will have to treat all third countries the same way. The hon. Lady's point on the need to resist duplicate but different regulatory requirements is wise. Whatever happens, it is my determination to try to avoid that, because the common framework that exists in this area holds a lot of value for the industry.

I also point out that EU national competent authorities collaborated fully in the construction of these regulations, and the FCA was one of the leaders in that. Any amendments to fix the exit deficiencies would have to be made known to the Treasury, and any new binding technical standards derived from this ongoing review will also have to come from the Treasury and will have to be laid under the affirmative procedure.[1]

I think I have covered most of the other points made. The FCA's resources have been covered in previous Committees, but for the record the FCA set out in its 2018-19 business plan the proportion of its resources to be used for forthcoming exit work. As of December 2018, it has 158 full-time employees working on Brexit. I cannot break that down, because I do not think that the FCA has, but that is a significant increase from 28 nine months earlier. It will bring forward a new plan in 2019-20.

Jonathan Reynolds: We have addressed this in lots of similar Committees. Part of our contribution to the EU budget covers, among many things, a contribution towards the EU regulatory bodies that affect our economy. On those people working on the Brexit withdrawal process, it is surely reasonable, as we re-domicile that remit, to put some of the money currently spent through our contribution to the EU budget into our own regulators, which will have so much more to do.

John Glen: The hon. Gentleman, as always, makes a reasonable point. The challenge is to understand on what terms we will leave. Clearly, if we secure a deal, we will enter an implementation period and so will have 20 months to determine the dynamic with European regulators and how we will discern equivalence decisions going forward. In a no-deal scenario, we obviously face a very different world, which will necessitate considerable legislative intervention in the next parliamentary Session. The disruption and uncertainty of that, and the uncertainty about the level of disruption, cannot be fully examined through this SI onshoring process.

The hon. Member for Glasgow Central asked me to provide a list of companies. I cannot, but I will examine what more granularity I can offer on that TheCityUK-convened work. The hon. Member for Stalybridge and Hyde asked about UCITS funds. PRIIPs can be products other than UCITS funds, such as insurance policies with an investment element. UCITS funds qualify as a PRIIP but are currently exempt from PRIIPs regulation.

The hon. Gentleman also asked about how the legislation will be affected by changes to PRIIPs regulation in the future. Any changes beyond what we are doing here today, which is simply onshoring, will be a matter for another day and will depend to some extent on our future relationship with the EU. I offer the reassurance that the FCA handbook gives us an enduring insurance policy, if you like, with its insistence that information on financial products must be sufficient, clear and not misleading.

I think I have covered the points raised. I conclude by saying that the draft instrument is needed to ensure that the PRIIPs disclosure framework can operate effectively in the circumstances of a no deal. I hope that Committee members have found this sitting informative and will join me in supporting the draft regulations.

Question put and agreed to.

2.55 pm

Committee rose.

1. *[Official Report, 18 March 2019, vol. 656, c. 4MC.]*