# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# FINANCIAL SERVICES (IMPLEMENTATION OF LEGISLATION) BILL [*LORDS*]

*First Sitting*

*Tuesday 26 February 2019*

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**not later than**

**Saturday 2 March 2019**

**The Committee consisted of the following Members:**

*Chairs:* † Sir Edward Leigh, Ian Austin

† Crawley, Angela *(Lanark and Hamilton East)* (SNP)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Ford, Vicky *(Chelmsford)* (Con)
† Foster, Kevin *(Torbay)* (Con)
† Glen, John *(Economic Secretary to the Treasury)*
† Harrison, Trudy *(Copeland)* (Con)
† Heappey, James *(Wells)* (Con)
† Kerr, Stephen *(Stirling)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Prentis, Victoria *(Banbury)* (Con)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Rowley, Danielle *(Midlothian)* (Lab)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Smith, Laura *(Crewe and Nantwich)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Twist, Liz *(Blaydon)* (Lab)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Gail Poulton, Kenneth Fox, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Tuesday 26 February 2019*

[Sir Edward Leigh *in the Chair*]

## Financial Services (Implementation of Legislation) Bill [*Lords*]

9.25 am

**The Chair:** Welcome to our Committee, which I am sure will be enlightening and good natured on this lovely sunny morning. Obviously, we have to ensure that electronic devices are silent, that no banned substances are being consumed—such as tea and coffee—and all that sort of thing.

We will now begin line-by-line consideration of the Bill. The selection list for today's sittings is available in the room. Please note that the decisions on amendments do not take place in the order in which they are debated but in the order in which they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause that it affects.

I first call the Minister to move the programme motion standing in his name.

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

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 26 February) meet—

(a) at 2.00 pm on Tuesday 26 February;

(b) at 11.30 am and 2.00 pm on Thursday 28 February;

(2) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 28 February.

It is a pleasure to serve under your chairmanship, Sir Edward, and I am sure that of Mr Austin too. I look forward to the scrutiny of the Bill and to our debate in Committee.

*Question put and agreed to.*

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(John Glen.)*

### Clause 1

Power in respect of EU financial services legislation with pre-exit origins

**Alison Thewliss** (Glasgow Central) (SNP): I beg to move amendment 2, in clause 1, page 1, line 2, leave out "may" and insert—

", in respect of a piece of specified EU financial services legislation, within six months of that legislation being implemented in the European Union, or immediately if more than six months has passed before this section coming into force, must".

*This amendment would require regulations to be made to apply specified EU financial services legislation in domestic law within six months of that legislation being implemented in the European Union.*

**The Chair:** With this it will be convenient to discuss amendment 3, in clause 1, page 1, line 3, leave out ", or similar, ".

*This amendment would only allow for corresponding provision to EU financial services legislation, not similar provision, to be made.*

**Alison Thewliss:** It is a pleasure to see you in the Chair, Sir Edward. I shall keep this relatively brief. I am pretty sure that the Government know the concerns of the Scottish National party and other Opposition Members about the scope and powers of the Bill.

The amendment would require the UK Government to change regulations in line with European Union standards, as opposed to merely allowing them to make such changes. The UK is reliant on the EU for trade in services, and has become increasingly so since the referendum, according to Office for National Statistics figures for trade, which show that the EU makes up almost half of the UK's service exports. Brexit risks displacing thousands of jobs in the vital financial services industry, despite institutions drawing up and triggering contingency plans to prepare for the UK's exit from the EU.

The more that UK regulations differ from those of the EU single market for services, the harder it will be to continue to work alongside our friends in Europe. The UK Government are consistently trying to remove democratic control over the Brexit process—they had to be taken to court to give Parliament a role, they introduce statutory instruments at the last minute before adequate scrutiny can take place and they threaten us all with a no-deal Brexit in a dangerous game of Brexit Russian roulette. The amendment would therefore limit the powers given to the Treasury under the legislation to diverge from EU standards.

**John Glen:** I thank the hon. Member for Glasgow Central for that contribution. I will respond to amendments 2 and 3 together. As she pointed out, they relate to the Treasury's discretion to domesticate specified EU financial services legislation and the limitations on implementing said provisions.

Amendment 2 was tabled by the hon. Lady and by the hon. Member for Lanark and Hamilton East and would require the relevant EU legislation to be implemented in the UK within six months of that legislation being implemented in the European Union. The amendment would limit the Government's discretion unnecessarily and in a way that might have an adverse impact on the UK's financial services sector.

As the Committee will appreciate, the purpose of the Bill is to give the Government the necessary powers to implement certain pieces of in-flight EU legislation in a timely manner. Mandating implementation within a certain time limit, however, is simply an unnecessary constraint. That is particularly the case given the uncertainty about a no-deal scenario. There might be files that, as it unfolds, are no longer suitable for UK markets, so mandating the UK to implement legislation that in its final form may be unsuitable for or damaging to the UK financial services is inappropriate, in particular as we will not be able to influence the final form of the files in the schedule, which are still in negotiation.

The power to adjust under the Bill is limited; it will not allow the Treasury to alter substantially the intent of files. I do not think it appropriate for the Bill to

compel the implementation of legislation that has not yet been drafted and will not have UK input in its final stages.

Amendment 3 seeks to restrict the Government to implementing only corresponding EU provisions, as opposed to corresponding or similar provisions. As was discussed at length in the Lords Bill Committee, "corresponding" is taken to mean

"'identical in all essentials or respects'. The term 'similar' means 'having a resemblance in appearance, character, or quantity without being identical'. In practice, of course, the legal interpretation of the two terms can vary, with some judging that 'corresponding' affords a wider latitude…on the basis of the current drafting…it will be possible to exercise the power only to achieve the aim of the original EU legislation, with an option to make adjustments to account for the specificities of UK markets, rightly reflecting the fact that we will no longer be a member of the EU. It will not, therefore, allow for wholesale changes to the character and intent of the current legislation."—[*Official Report, House of Lords,* 8 January 2019; Vol. 794, c. 2138.]

I reassure the Committee that the formulation "corresponding, or similar" is well established and has been used, to provide recent examples, in the Pension Schemes Act 2015 and the Recall of MPs Act 2015. I hope that that will reassure the Committee regarding the limitations that will apply in the formulation "corresponding, or similar", for which there are precedents. In short, the current wording is already intended to ensure that the powers under the Bill cannot be used to create substantively new policy outside the bounds of the original EU legislation. Without that discretion to implement files in a corresponding or similar way to original EU legislation, the Bill's power is essentially unworkable. I hope that, in light of those reassurances, hon. Members will withdraw amendments 2 and 3.

**Alison Thewliss:** I would like to press the amendment to a vote.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

**Division No. 1]**

**AYES**

| | |
|---|---|
| Dodds, Anneliese | Smith, Laura |
| Reynolds, Jonathan | Thewliss, Alison |
| Rowley, Danielle | Twist, Liz |
| Smith, Jeff | Walker, Thelma |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

**Alison Thewliss:** I beg to move amendment 4, in clause 1, page 1, line 9, leave out "the Treasury consider appropriate" and insert

"the Treasury and the House of Commons consider appropriate as defined in sub-paragraphs (i) and (ii)—

(i) any proposed adjustments must be approved by a motion of the House of Commons prior to regulations being laid in draft in accordance with subsection (8)(a), and

(ii) if the House of Commons agrees a motion that certain adjustments be made, the Treasury shall consider that to be an expression of agreement by the House that those adjustments are appropriate."

*This amendment would only permit adjustments to be made that have been pre-approved by the House of Commons.*

This amendment also addresses the extra powers that the Bill gives to the Treasury. Clause 1(1)(b) talks about the Treasury considering things "appropriate". We think that a wider definition of "appropriate" is needed, because the drafting gives the Treasury a good deal more power. The amendment asks for a bit more information on that and for more powers to be given to the House of Commons, with a motion being needed for any adjustments to be made.

**John Glen:** I thank the hon. Lady for the amendment. It requires adjustments to files under the Bill to be pre-approved by the House of Commons before the Government introduce the relevant statutory instrument. The Government recognise the importance of parliamentary scrutiny surrounding any adjustments that might be made to the relevant EU legislation covered by the powers within the Bill, but any proposed adjustment to files under the Bill will undergo robust parliamentary scrutiny.

First, each statutory instrument will need to be approved by both Houses under the affirmative procedure. That would require laying the relevant statutory instrument before Parliament and then an accompanying explanatory memorandum, setting out the policy intent, before the debate on the SI, and well ahead of implementation. This is the established process for scrutinising such statutory instruments and that is why it is the model we have chosen to follow.

Secondly, the Government have made a clear commitment to consult on each of the SIs laid under the Bill, as appropriate, as stated by the Cabinet Office guide to consultation. Thirdly, the Government publish impact assessments for statutory instruments as a matter of course, and those tabled under the provisions in this Bill will be no different. That will include analysis of economic impacts and equalities considerations, where relevant.

Finally, the additional reporting mechanisms in the Bill will require the Treasury to publish a report at least one month ahead of laying any SI, outlining any adjustments or omissions and the reasons that any adjustments are considered to be appropriate, alongside a draft of the SI. That will allow Parliament, including any interested Select Committees, to scrutinise and report on the proposed content.

In the Government's view these reporting requirements, alongside the use of the affirmative procedure with each SI laid, afford sufficient and appropriate parliamentary scrutiny for the proposed adjustments to files in the Bill. I remind the Committee that the Joint Committee on Statutory Instruments will be scrutinising all SIs produced under this Bill, as part of the usual procedure. The JCSI's role is to ensure that a Minister's powers are being used in accordance with the provisions of the enabling Act. It reports to the House any instance where the authority of the Act has been exceeded or any that reveal unusual or unexpected use of the powers, where the instrument might require further explanation, or where it has been drafted defectively. It is vital that

*[John Glen]*

the Government retain the latitude to make these adjustments to files in a timely way, given that without this power the utility of the Bill is seriously compromised.

In consideration of the strengthened reporting requirements and scrutiny procedures in the Bill and the importance of making adjustments to files in a timely way, I hope that the hon. Lady will feel able to withdraw her amendment.

**Alison Thewliss:** I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): I beg to move amendment 11, in clause 1, page 1, line 14, leave out from "(g)" to "does" in line 16.

*This amendment would amend the definition of "adjustments" to restore its natural meaning, while retaining the prohibition on major changes.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 12, in clause 1, page 1, line 17, leave out "major" and insert "material".

*This amendment would prevent material changes to EU financial services legislation being made through adjustments under subsection (2).*

Amendment 13, in clause 1, page 1, line 18, at end insert—

"(2A) But 'adjustments' may not include any changes that, in the Treasury's view, lighten or remove the regulatory burden in comparison to the legislation as it would have operated had the United Kingdom not withdrawn from the EU."

*This amendment would prevent adjustments to EU legislation under this Bill from lightening or removing regulatory burdens on financial services.*

**Jonathan Reynolds:** It is a pleasure to serve under your chairmanship, Sir Edward, and to open the debate for the Opposition. I would now like to speak to amendments 11, 12 and 13, which aim to address some of our wider concerns about the powers being given to the Treasury in this Bill. In the Opposition's view, the Bill lacks the necessary checks and balances that would prevent it being subject to the potential exploitation of its stated objectives. I express my gratitude to my colleagues in the Lords who began this process and achieved some important initial restrictions on those powers. However, we believe that further controls can be added to ensure that the powers cannot be abused.

I will address this group in two parts. Amendments 11 and 12 would alter the language in the Bill to prevent material changes taking place and restrict the nature of the adjustments that can be made. Amendment 13 explicitly prevents any deregulation under the Bill. Those changes of language are significant and important, because they specify in the Bill clear limits on what alterations and adjustments fall within acceptable realms. We must exercise such caution because included within the Bill, as specified in the in-flight list, are fundamental pillars of the post-financial crisis regulatory regime. That list includes critical rules which are designed to strengthen our financial markets and infrastructure, to prevent a repeat of the disastrous events of 2008, of which we still feel the consequences today. Those include the capital requirements directive V, the bank recovery and resolution directive II, and the central counterparty recovery and resolution regulation. Those regulations have played a central role in promoting integrity in financial markets.

The capital requirements directive, for example, sets out the asset buffers that systemically important financial institutions must hold, and in what ratios. That is to prevent a repeat of the events of 2008, so that banks do not enter a downward spiral at times of market stress and put the public purse at unacceptable risk again. Given the costs involved for banks, the regulations often involve significant negotiation and lobbying to find an agreeable level of capitalisation with which banks feel they can reasonably comply. Last year, for example, the Basel Committee on Banking Supervision granted concessions to United States banks after a long process of lobbying by those banks, which resulted in flexibility in how the rules were ultimately applied.

I will not comment on whether that was the right or wrong decision, but that is a clear example of the interests that will need to be managed in such a process. It does not seem right to the Opposition that the Treasury could be lobbied on such a matter with fairly limited public transparency and that the subsequent changes could then be channelled directly into an SI for which the Treasury is responsible for drafting. In truth, although the current Treasury can reassure us in good faith that that will not be the case, we simply do not know how things might change or who the Government or Ministers might be in future.

Since the referendum result, we have heard noises about deregulation—faint, though they may be—and in our view, the Bill must be built to withstand the pressure that may come. That is why we have explicitly specified in amendment 13 that deregulation cannot be enabled as part of the Bill. That builds in vital protections for a regulatory framework to which we have already signed up at a European level. There will no doubt be reasonable disagreement about what constitutes a weakening or a lightening of the regulatory framework, but we are inserting an important direction to lawmakers and a clear signal to consumers that their interests will continue to be protected.

In truth, we simply do not know how things might change if we crash out of the EU without a deal. I and my Front-Bench colleagues have highlighted in Delegated Legislation Committees the complications that could be associated with capital requirements in such a situation. Capital requirements could be susceptible to problems with the removal of preferential treatment of Euro sovereign debt. At present, EU Government debt is treated with the same risk weighting as UK Government debt. If we crash out without a deal, the preferential treatment of EU sovereign debt will instantly change—it will no longer receive preferential treatment. The reverse would apply for UK sovereign debt.

Evidently, that could be highly disruptive and one would expect big institutions to recalculate their capital ratios and recapitalise when there has been no real change in the risk that they hold. Such a change would inevitably have an impact on how we ultimately implement the capital requirements directive V, as the status quo will have changed so dramatically from when it was first agreed. There must however be safeguards on the underlying process so that that dialogue can be publicly assessed.

I feel therefore that the amendments are reasonable, proportionate and would command public confidence. We might press them to a vote, subject to the Minister's response.

**John Glen:** I start by thanking the hon. Gentleman for his explanation of the intent of the three amendments, which I shall address in turn.

I must confess that I was surprised to see amendment 11. The language that it seeks to remove was inserted as a concession to the Labour Front Bench on Report in the Lords. Indeed, the language was directly inspired by an amendment to the Bill tabled by Lord Tunnicliffe and Lord Davies of Oldham in Committee in the other place. Our original drafting reflected the Government's position that the word "adjustment" is inherently limiting. Following concern in the other place, however, we agreed to insert this language—along with a further limitation, to which we will turn in amendment 13—to clarify what was meant by the term.

Under this wording, as agreed in the other place, the Government will be able to make only adjustments that reflect or facilitate the transition to the United Kingdom's new position outside the EU, but that does not include changes that result in provisions whose effect is different in a major way to that of the legislation. The new wording clarifies limitations on the power to make adjustments, while, crucially, still allowing for some changes that may be needed, as the UK will have been neither at the negotiating table when the files were finalised nor advocating on behalf of the UK financial services industry during that process. Lord Davies's position on Report was that he and Lord Tunnicliffe were content with the amended drafting. In light of that, I ask the hon. Gentleman to withdraw amendment 11.

On amendment 12, I am reminded of another debate that took place during the Bill's passage through the Lords. That debate centred around the Opposition amendment that sought to replace "major" with "significant", which was later withdrawn. Lord Sharkey, who spoke to that amendment, noted that subsequent to its tabling, he had realised that his dictionary defined "major" as "significant". I note that the *Oxford English Dictionary* in turn defines "material" as "significant". It is therefore clearly possible to interpret all three words as in essence meaning the same thing, in which case the amendment does not have the effect desired by those who tabled it.

9.45 am

The *Oxford English Dictionary* further defines "material" as important, leaving the definition of "adjustments" open to being construed as meaning any change of any importance. In that event, the powers in the Bill become ineffective, as any change that the UK seeks to make, however minor, would be important in some way or we would not make it. Where adjustments are needed to ensure the appropriate regulation of the UK's financial sector companies, protect the UK's financial stability or meet international commitments, they will necessarily have an effect of some importance, even without any major departure from the effect of the original legislation.

The Bill's existing drafting therefore provides greater clarity, since "major" cannot be given the same range of interpretations. It will enable necessary adjustments to be made while ensuring that they do not result in a major change from the effect of the original legislation. As my colleague Lord Bates noted in response to the amendment in the Lords, the intent behind the insertion of "major" is to make it

"clear that, when domesticating the files in question, such adjustments would only be possible to better achieve a similar outcome to the original file",

and, following our exit from the EU, simply facilitate

"a better fit for UK-specific circumstances."—[*Official Report, House of Lords,* 29 January 2019; Vol. 795, c. 1007.]

In that light, given the lengthy explanation of why the Government settled on "major", rather than "material" or "significant", I hope that the hon. Member for Stalybridge and Hyde will not press amendment 12.

Amendment 13 seeks in essence to forbid any adjustments that make deregulatory changes that go further than the original legislation. This Government have repeatedly made clear a commitment to robust international standards in financial regulation and to drive forward the global race to the top. We have been a force for that in the EU. Indeed, the central force behind the introduction of the Bill is to ensure that the UK is not left unable to introduce important financial services regulations in a timely way.

We are opposed to amendment 13 for two principal reasons. First, an argument that I have already rehearsed, and that has been rehearsed throughout the passage of the Bill is that the files in the schedule to the Bill will not be finalised before the UK's withdrawal from the European Union—we will not be able to influence their final form, nor will we be able to advocate for the interests of the UK financial services sector. It is therefore only right that the UK is not bound to accept wholesale EU legislation that might have the effect of stifling our financial services industry in the crucial period following no deal.

Secondly, in any event, any adjustments that the Treasury seeks to make to the legislation must—thanks to the wording agreed in the other place—not differ "in a major way" from the original legislation. That necessarily forbids substantial deregulatory changes that depart in a major way from the original EU legislation. In the light of that, I hope that the hon. Gentleman will not press amendment 13.

**Jonathan Reynolds:** I appreciate the Minister's response to our three amendments. On amendment 11, my understanding in good faith of the position of my colleagues in the Lords is that it is not quite as he believes it to be. Their concession was on the prohibition on major changes, rather than on the language on adjustments.

On amendment 12, we could have a semantic discussion of the differences between "major" and "material" for some time. In statutory instruments, for example, on a substantial number of occasions legislation has simply changed European regulatory bodies to UK ones, and I would consider that a fairly minor change. However, I would consider something that resulted in a substantial change to the status quo to be material, and so I make a distinction between what is material and what is major.

On amendment 13, I genuinely believe and trust the Minister when he says that he has no interest in leading a race to the bottom on financial regulation. I know that, like me, he believes that the quality of UK regulation in financial services is a key part of our competitive

*[Jonathan Reynolds]*

advantage. However, none of us in this room can guarantee who the Ministers in this country will be in a relatively short space of time—they could be the same, or different, no one is entirely sure—*[Interruption.]* I am sure that the Whips Office will remain, as ever, a bastion of consistency. These are volatile times, and when legislation is assessed, discussions in Committee about the intent of parliamentarians are taken into consideration and are important. Both sides must be fairly united in believing that we should avoid the illusory race to the bottom as if that would somehow help UK competitiveness, and I simply feel that amendment 13 establishes that clearly. I intend to press all three of my amendments to a vote.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 2]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

*Amendment proposed*: 12, in clause 1, page 1, line 17, leave out "major" and insert "material".—*(Jonathan Reynolds.)*

*This amendment would prevent material changes to EU financial services legislation being made through adjustments under subsection (2).*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 3]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

*Amendment proposed*: 13, in clause 1, page 1, line 18, at end insert—

"(2A) But 'adjustments' may not include any changes that, in the Treasury's view, lighten or remove the regulatory burden in comparison to the legislation as it would have operated had the United Kingdom not withdrawn from the EU."—*(Jonathan Reynolds.)*

*This amendment would prevent adjustments to EU legislation under this Bill from lightening or removing regulatory burdens on financial services.*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 4]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

**Alison Thewliss:** I beg to move amendment 5, in clause 1, page 2, line 10, leave out subsection (4).

*This amendment would disapply section 8(5) and 8(7) of the European Union (Withdrawal) Act, which allow regulations to do anything, with some exceptions, that can be done by an Act of Parliament.*

**The Chair:** With this it will be convenient to discuss amendment 14, in clause 1, page 2, line 12, at end insert

"as though section 8(5) of that Act read 'Regulations under subsection (1) may make any provision that could be made by an Act of Parliament apart from amending any primary legislation.'"

*This amendment would prevent regulations under this Act amending any primary legislation.*

**Alison Thewliss:** Again, amendment 5 seeks to limit some of the sweeping Henry VIII powers that the Government are taking under this Bill, as they did with the European Union (Withdrawal) Act 2018. We seek to disapply sections 8(5) and 8(7) of the withdrawal Act, which allow regulations to do anything, with some exceptions, that can be done by an Act of Parliament. We would very much like to see the Government bringing back some proper, primary legislation as part of a wider strategy on financial services, rather than putting all these out in the way that they are. As I have argued at different stages—and I do not seek to repeat all the arguments here—the Government are giving themselves a huge amount of power under this Bill. We would like to pull that back somewhat, which is what this amendment seeks to do.

**Anneliese Dodds** (Oxford East) (Lab/Co-op): I rise to speak in support of amendment 14. It is a pleasure to serve under your chairmanship, Sir Edward, and to follow the hon. Member for Glasgow Central. I very much agree with the sentiments she has expressed. Labour's amendment 14 is similar in intent to the SNP's amendment 5, albeit that it would achieve its outcome through a different route; but we will support the SNP's amendment if it is pushed to a vote, as well as our own.

As members of this Committee will be aware, we have consistently expressed our concerns about the proliferation of Henry VIII powers created through secondary legislation during the process of preparations for no deal. Indeed, that was one of many reasons why we voted against this Bill on Second Reading. The transposition of EU regulations, as mentioned by my hon. Friend the Member for Stalybridge and Hyde, is not an apolitical technical process, necessarily.

During the process of debating the different no-deal SIs that have already been passed through the House, there has been contention on a wide range of issues, including the resourcing and capacity of our regulators to carry out the tasks that heretofore have been carried out by EU bodies; the regulators' capacity and accountability when levying fines as provided via the new legislation; the ability of Government to alter criminal convictions, which has been provided by part of this process; the setting of thresholds at UK level that previously were set at EU level involving complex sets of calculations; the discretion provided to regulators to apply or disapply EU-level decisions, with reference not to onshored EU legislation but instead to the objectives of those regulators; and many more. We have talked about all of those within the Delegated Legislation Committees and they are significant. It is our contention that they should not have been dealt with through secondary legislation.

**Thelma Walker** (Colne Valley) (Lab): I wanted to speak to the amendments and new clauses in the names of my hon. Friends the Members for Oxford East and for Stalybridge and Hyde. The global financial crisis has shown us all—

**The Chair:** Is this a speech or an intervention?

**Thelma Walker:** It is quite long.

**The Chair:** The hon. Lady can speak as often as she likes, but she must let the hon. Member for Oxford East finish her speech first.

**Anneliese Dodds:** I look forward to hearing my hon. Friend's speech very soon. Indeed, she started to talk about the financial crisis. This Bill covers many of the issues that were germane during that financial crisis, for example, capital requirement setting and surcharging. The Bill also covers decisions that could be made on consumer safeguards and protections. It is our contention that this process should be accountable and where decisions are made that alter primary legislation, that should not be through secondary legislation, but through the normal process with proper recourse to Parliament. Anything else, frankly, is to allocate power to Whitehall and not to Parliament.

The process of restricting decision making to secondary legislation causes problems not only for Parliament but for the public and for industry. I am sure this has been the experience of other Committee members when they have talked to people outside this place about how secondary legislation works. There is very little understanding. The processes for challenging secondary legislation are highly opaque and—we have discussed this in other Committees—the process for making decisions on it within the UK is quite different to that at EU level, where there is negotiation between the different institutions, including the European Parliament. In the case of the Westminster Parliament, it is simply presented, often even without debate in Committee, let alone on the Floor of the House.

Amendment 14 would prevent the Bill from being able to amend primary legislation. This is sensible to ensure there is proper democratic scrutiny of changes to significant elements of our financial regulatory architecture. My hon. Friend the Member for Stalybridge and Hyde set out the different regulations covered by the Bill, which include the central securities depositories regulation, the delegated cash penalties regulation, the markets in financial instruments regulation, the prospectus regulation and the securities financing transactions regulation. They collectively ensure appropriate levels of transparency in financial markets and instruments and ensure that critical institutions for financial stability hold the appropriate margin. We cannot underestimate their significance within the global financial system.

As Members will know, Henry VIII powers derive their name from the Statute of Proclamations in 1539, in which Henry VIII gained the right to pass laws, directly bypassing Parliament. The reasons for reducing their use to the bare minimum are clear. Not only do Henry VIII powers place a huge amount of control in the hands of the Executive; they also starve the scrutiny process of oxygen. I realise the Minister may well state at this point that he believes there has been sufficient scrutiny of the new measures, which may be introduced if there is no deal. In fact, I believe he stated that in his opening comments. I have only praise for him for appearing in front of many statutory instrument Committees and for taking that burden entirely on his own shoulders. He has been willing to take on board the Opposition's concerns, and I thank him for that, but let us be honest about the impact of this process. As the Opposition have made clear in every one of those SI Committees, this process is unprecedented in its scale and scope, so there may be areas that have received insufficient scrutiny.

The potential for problems to be discovered only after the fact is real. In fact, just yesterday, the Minister rightly acknowledged—I praised him for being open about this—that there had been mistakes in the draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, and I mentioned that I had highlighted a drafting error in another SI. There may well be more examples of such anomalies, which are far more likely to be picked up when there is a proper debate on the Floor of the House rather than a brief discussion in an SI Committee—most of the time, let's face it, just between Opposition spokespeople and the Government. Of course, not every SI is even discussed in Committee. In that context, I hope Committee members will support our amendment 14, which would halt the inappropriate use of Henry VIII powers.

10 am

**Thelma Walker:** Thank you for calling me, Sir Edward. Who would know that this is my first Bill Committee?

I rise again to speak on the amendment and the new clause in the names of my hon. Friends the Members for Oxford East and for Stalybridge and Hyde. The global financial crisis showed us all the devastating

*[Thelma Walker]*

human cost of inadequate regulation and excessive risk taking in the banking system. We need a clear demonstration from the Government that they have learned from past mistakes, are serious about financial reform and will do everything in their power to ensure that financial stability is placed at the heart of our regulatory agenda. I fear that the Bill represents the exact opposite of such sentiments.

The Government are undertaking a series of far-reaching Brexit-related changes through statutory instruments. Secondary legislation is something that only lawyers, parliamentarians, policy makers and a handful of others are familiar with. For that reason, it is important that that sort of legislation is used only for technical, non-partisan, uncontroversial matters, such as to fill in details, but that is not what has happened in the past few weeks, as the Government have realised they have not planned properly for Brexit.

As a relatively new MP—who would guess?—I have sat on numerous Delegated Legislation Committees and been profoundly shocked as the Government have forced through complex and opaque EU financial regulation, adapting it, adjusting it and transferring powers to financial institutions in the UK. My constituents expect there to be proper time to call for evidence, to consider the different bodies that might be given powers to take forward EU regulations, and to ensure that definitions in the regulatory regime are appropriate.

When financial regulation goes wrong, we all suffer the consequences, so we all should have the right to have a say. That is the cornerstone of our democracy. Our communities have been made to pay these past painful years for a crisis they did not cause. Nine long years of Tory failure have left our economy weak and unprepared for the future. People across the UK are suffering as a result of this Government's failed austerity programme, which has undermined the very fabric of our society and left public services at breaking point. Can the Minister give an absolute and firm guarantee that my constituents will not be worse off as a result of the Bill, and that the powers in it will not be used for the purpose of deregulation?

**John Glen:** I thank the Opposition spokespeople for their contributions. I also thank the hon. Member for Colne Valley for her maiden Bill Committee speech. I did not agree with much of what she said, but I will address the substantive points that were made.

Amendment 5 seeks to remove the ability under the Bill for regulations to make any provision that could be made by an Act of Parliament. Amendment 14 is more targeted, seeking to remove only the power to effect changes to primary legislation when implementing the EU files in question. An amendment with a similar effect to amendment 5 was moved and then withdrawn by those on the Labour Front Bench in Committee in the Lords.

I appreciate that there are many concerns across the House about Henry VIII powers, as the hon. Member for Oxford East set out. It is clear that, where they are proposed, their necessity must be well evidenced. In the case of the financial services legislation to which the power in the Bill will apply, I feel that such a power is necessary.

An inability to amend existing primary legislation—the Financial Services and Markets Act 2000, for example—would make it impossible for the UK to implement the relevant EU legislation. Therefore, both these amendments would render the Bill completely ineffective. Furthermore, as Committee members will be aware, the exercise of many functions under financial services legislation is carried out by the independent regulators, the Financial Conduct Authority and the Bank of England. That was always intended. The capacity and expertise of the financial regulators will be crucial in the effective implementation, where appropriate, of that legislation.

Amendment 5 would remove the ability to delegate to the regulators, because as a general rule, a power to make secondary legislation does not include a power to sub-delegate. An inability effectively to delegate powers to the regulators would completely undermine the value of transposing the relevant EU legislation into UK law.

I acknowledge the wider points made about the undesirability of no deal, but this is a contingency arrangement and I believe that the Government have set out clearly the rationale for use of these powers and how they will be used in the circumstance of no deal, which would be wholly different from anything that we are familiar with. Given this context, I hope that the hon. Members will feel able to withdraw their amendments.

**Alison Thewliss:** I would like to press my amendment to a vote.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 5]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

*Amendment proposed*: 14, in clause 1, page 2, line 12, at end insert

"as though section 8(5) of that Act read 'Regulations under subsection (1) may make any provision that could be made by an Act of Parliament apart from amending any primary legislation.'"—*(Anneliese Dodds.)*

*This amendment would prevent regulations under this Act amending any primary legislation.*

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 6]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

**Jonathan Reynolds:** I beg to move amendment 15, in clause 1, page 2, line 35, at end insert—

"(c) that draft was laid more than 1 month after the Treasury conducted a public consultation that was promoted to trade unions, regulatory institutions, service users, and any other stakeholders the Chancellor of the Exchequer considers appropriate."

*This amendment obliges HM Treasury to undertake wide-ranging consultation on their proposed implementation of EU legislation, to ensure appropriate public scrutiny on any regulatory divergence.*

We have already discussed in Committee today the Opposition's concerns about the transparency and suitability of the process that we are legislating for in the Bill; clearly, the concerns are quite widely shared across all Opposition parties. That is why we also propose amendment 15, which would mandate the Treasury to undertake full consultation before each regulation is transposed. That would provide an opportunity for better public scrutiny than the statutory instrument process normally affords. It would allow consumer groups, trade unions and academics, alongside a wide range of stakeholders, to give their input and identify where there might have been regulatory divergence that was not immediately apparent. The mandatory consultation would allow any adjustments to be openly debated and scrutinised. Such consultation is essential to maintaining a transparent process where the Treasury is being given powers in this manner.

Consultation and proper impact assessments have become major issues in the process so far of transposing existing EU legislation. I therefore urge hon. Members to support the amendment. It would empower the public and consumer institutions with an essential layer of scrutiny on a set of unprecedented powers being assumed by the Treasury.

**John Glen:** I thank the hon. Gentleman for his comments. The Government have committed to following Cabinet Office principles on consultation, and they have made clear their commitment to consult on each SI laid, as appropriate. As a matter of course, the Government publish impact assessments for statutory instruments, and that will be no different for those brought forward under powers in the Bill. Those assessments will include an analysis of economic impacts, and equalities considerations where relevant. In line with duties under the Equality Act 2010 and with Cabinet Office guidance, regulations will be made with that equality duty in mind, and any impacts identified will be included in the relevant impact assessments in the usual way.

The Government are already required by legislation to produce reports ahead of, and looking back at, the publication of SIs under the Bill, and those reports will include any inspected and realised impacts of the legislation. That commitment to rigorous reporting and transparency about the Bill's powers, and the potential adjustments to files and proposed SIs, is evidence that the current Bill contains appropriate provisions for proper scrutiny. I hope that that provides reassurance about the Government's commitment to transparency in the public and parliamentary spheres, and in that light I ask the hon. Gentleman to withdraw his amendment.

**Jonathan Reynolds:** I appreciate the Minister's acceptance and reassurance that the levels of consultation and impact assessments are crucial to this process, and I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Alison Thewliss:** I beg to move amendment 6, in clause 1, page 2, line 37, leave out "4" and insert "8".

**The Chair:** With this it will be convenient to discuss the following:

Amendment 7, page 2, line 38, leave out "6" and insert "3".

Amendment 8, page 2, line 40, leave out "6" and insert "3".

Amendment 9, page 2, line 42, leave out "1 month" and insert "2 weeks".

**Alison Thewliss:** The amendment would increase the frequency with which the UK Government must report on the use of these powers, which would be a step forward for transparency about the new powers taken by the Treasury. The Lords raised various issues in Committee, and the Government took those on board on Report by accepting amendments that require more detailed and frequent reporting from the Treasury about its proposals and use of powers, and on extending those reports and requirements to financial regulators, the Bank of England, the Prudential Regulation Authority, and the Financial Conduct Authority, where powers are sub-delegated to them. Our amendment seeks to build on work done by the Lords to try to hold this centralising Government to account for the Henry VIII powers that they are taking.

The timeline for when these pieces of EU legislation will be introduced and how they will be implemented is not clear. Regular reporting will enhance that transparency, allowing us to keep track of the measures as they come through, and an eye on the implications of the legislation for financial services in the UK.

**John Glen:** I am grateful to the hon. Lady for her explanation of amendment 6. The Government clearly recognise the importance of parliamentary scrutiny and our reporting obligations under the Bill, as evidenced through concessionary amendments made in the other place. The Bill commits the Treasury to the following reporting and scrutiny obligations, which include obligations to,

"publish a report at least one month ahead of laying any SI, outlining any adjustments or omissions and the reasons any adjustments are considered appropriate, alongside a draft of the SI…to publish six-monthly reports on the exercise of the powers provided by the Bill".

That will reflect on how powers have been exercised in the previous reporting period. We will also state how the Treasury intends to use those powers in the upcoming reporting period, and

*[John Glen]*

"require the regulators (the Bank of England and the Financial Conduct Authority) to report on their use of any powers sub-delegated to them using the powers in this Bill".

That will be every 12 months.

The significant bolstering of reporting requirements in the other place reflects the Government's commitment to the transparent use of the powers in the Bill. To intensify further the reporting requirements as requested by the amendment would result in the Treasury's being required to produce up to 25 separate reports in two years, in order to domesticate up to 17 pieces of EU legislation. The Government believe that that is completely unnecessary.

The six-month reporting period for the Bill has been accepted in the Lords, and it would bring no real benefit to add further unnecessary reporting requirements. I appreciate the commitment to proper scrutiny across the Committee, but given the strengthening of the Bill's reporting requirements that has already taken place, I suggest that the hon. Lady withdraw her amendment.

**Alison Thewliss:** On the basis of what the Minister has said, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

10.15 am

**Alison Thewliss:** I beg to move amendment 10, in clause 1, page 3, line 7, at end insert—

"(d) making an assessment of the economic impact of any adjustments made by the regulations in reliance on subsection (1)(b) to the specified EU financial services legislation to which the regulations relate."

*This amendment would require, in each reporting period, an assessment to be made of any adjustments made in reliance on subsection (1)(b).*

**The Chair:** With this it will be convenient to discuss new clause 2—*Report on the provisions of regulations under this Act*—

"(1) Prior to making any regulations under this Act, the Treasury must publish a report on the impact of the provisions of those regulations.

(2) A report under this section must consider, in respect of the regulations proposed to be made—

(a) the impact of those provisions on households at different levels of income,

(b) the impact of those provisions on people with protected characteristics (within the meaning of the Equality Act 2010),

(c) the impact of those provisions on the Treasury's compliance with the public sector equality duty under section 149 of the Equality Act 2010, and

(d) the impact of those provisions on equality in different parts of the United Kingdom and different regions of England."

*This new clause would require a report to be made on the impact of any regulations under this Bill before any such regulations are made.*

**Alison Thewliss:** The amendment would require the Government to prepare a report outlining the impact of any regulatory divergence from the EU as its regulations under this Bill are introduced. It has been accepted that the majority of this Bill's impact will only be known after the Brexit date of 29 March, if indeed that is still the date. I have not checked my phone; who knows what has happened in the interim? All kinds of things may happen while we are in this room. Who knows?

The Minister spoke earlier about some of the in-flight legislation not being suitable or appropriate, because the UK will no longer be part of the process of making that legislation. He accepts that this is putting a lot of power in the Government's hands in deciding what fits and does not fit, what we need to take on, and what we do not need to take on. The appropriateness of whether it will have significance to different industries, and whether we think they are appropriate, is all in the Government's hands.

As the hon. Member for Oxford East has often said on this, it really does amount to a political decision. It is a political choice to decide which of those things are appropriate to different financial services organisations. The amendment would give a bit more clarity on the impact assessment of those decisions—political choices—that the Government intend to make. If we are going to diverge, that has an impact on how we are then able to conduct business with the EU. We need to have a better understanding, for each of those regulations, of how that will have an impact, financial and otherwise. We need a bit more clarity on what that impact will be.

This amendment gives us more opportunity to do that—to hold the Government to account on a continuing basis, and to make sure that we have a full understanding as a parliament on what the impact of the Government's political decisions will be.

**Anneliese Dodds:** I rise to support the Opposition's new clause 2, which is similar in intent to the SNP's amendment 10. I would like to associate myself with many of the comments by the hon. Member for Glasgow Central. It is a pleasure to follow her in this debate. Labour's new clause 2 is broader in scope than amendment 10, but it pushes in the same direction.

Our new clause would require the Treasury, prior to making any regulations under this Bill, to publish a report on the impact of the provisions of those regulations. In particular, we specify that the report should cover the following aspects: first, the impact of the provisions on households at different levels of income; secondly, the impact of provisions on people with protected characteristics as defined in the Equality Act 2010, with which I am sure we are all familiar; thirdly, the impact of the provisions on the Treasury's compliance with the public sector equality duty with which I am sure, again, Members are familiar; and finally, the impact of the provisions on equality in different parts of the UK and different regions of England. The new clause underlines the pressing need for a greater understanding of the impact of legislation such as this on the real economy and on the people who work within it and are impacted by it.

Throughout this process, the Opposition have been concerned about the lack of impact assessments being provided for different pieces of legislation, yet even when they have been provided to us, they have often been highly restricted in scope as well as often arriving late in the day. Often, the main element receiving consideration within the impact assessments has been the familiarisation costs to business of the different measures. That has rightly been criticised by my hon. Friend the Member for Wallasey (Ms Eagle), and indeed last night by the Chair of the Treasury Committee. They both pointed out that the formula for calculating even familiarisation costs is highly mechanistic, relying solely on an assessment of the time spent reading each

word of the new regulations, rather than a proper consideration of the level of impact of new regulations on different business practices, for example. Indeed, the Chair of the Treasury Committee has suggested that a better approach might be to ask firms for an assessment of what their adjustment costs will be, then produce a proxy based on that assessment. That could be a sensible way forward. I appreciate that the formula is currently set across Government, rather than just by the Treasury, but surely the area needs to be considered in a much broader context. We have tried to broaden the debate by specifying the elements that need to be taken into account in assessing the Bill's impact, in line with our general approach to economic decision making.

Financial regulations often come across as a very rarefied area, but we all know that, as my hon. Friend the Member for Colne Valley pointed out, the consequences of getting them wrong can be enormous, especially for specific groups. Whether or not we agree—personally I do not—that cuts to social security were necessary to reduce the deficit that had been created by measures that followed the financial crisis, the burden of those cuts has clearly had an uneven impact on different groups.

The areas of regulation covered in the Bill could have highly disparate impacts. Arguably, the process of financialisation and the intensification of investment banking compared with relationship banking—boring banking, as we might call it—have helped to fuel the imbalance in lending. Over recent years, there has been an enormous move in the UK banking system away from loans to small and medium-sized enterprises and towards loans for real estate. That process has been much more marked outside London and the south-east—it has had a regional impact. The Bill covers some of the instruments that were involved in that process. Capital requirements also have an impact on the structure of banking and its regional distribution, so it is very important that we consider the issues properly.

Finally, I have a question for the Minister about his understanding of the impact of the better regulation provisions. I had assumed all along, as I am sure many other hon. Members did, that those provisions would not apply to this process, given the Government's stated intention not to water down regulations. As hon. Members will be aware, the better regulation approach specifies "one in, three out": for every new regulation introduced, three regulations must go. The same issue came up in a debate last night on a very different subject, albeit one that also related to no deal: the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, the no-deal provisions on the registration, evaluation, authorisation and restriction of chemicals—another incredibly complex body of legislation.

We do not have a clear answer from the Minister on the matter, so I would appreciate his assurance that the better regulation provisions will not apply to the process. If they did, it would counteract any claims made in this Committee or elsewhere that there would be no watering down. The issue is particularly relevant to new clause 2, because the better regulation process focuses only on the costs to business; it does not consider the costs, from a regional perspective, of not regulating, or the potential countervailing benefits to other groups. I have been informed that the better regulation provisions will not be applied to Grenfell-related fire safety regulations. Will the Minister confirm that they will not apply to this process, either?

If we suddenly find that the "one in, three out" provisions apply in this case, we will be in very different territory. There will be even more need for a proper impact assessment, because to an extent it will counteract some of the mechanistic impacts of the "one in, three out" process.

**John Glen:** I thank the hon. Members for Glasgow Central and for Oxford East for speaking to amendment 10 and new clause 2. I shall discuss them together, because although they differ in key aspects—the former looks backwards at the impact of regulations, while the latter looks forward—we have a similar response to both. The intentions behind them are sound, because it is only right that the Government make regulations with an understanding of their expected impact, but I suggest that they are both unnecessary in the context of the Bill.

As hon. Members know, the Government publish impact assessments for statutory instruments as a matter of course, and it will be no different for those introduced under the powers in the Bill. The impact assessments will include analyses of economic impacts and equalities considerations where relevant.

I acknowledge the challenges of publishing impact assessments for the SIs closely associated with the Bill. I have explained on several occasions in Delegated Legislation Committees, and I reiterate now, that we have done this in a compressed timeframe. Every SI that has gone through the Regulatory Policy Committee—I think there have been five of them—has been registered green. I note the concerns raised by the hon. Member for Oxford East and last night by my right hon. Friend the Member for Loughborough (Nicky Morgan) about the mechanism for evaluating the familiarisation costs. I am pleased that the hon. Member for Oxford East today acknowledged that this is a cross-Whitehall provision.

I will reflect on the points that the hon. Lady has made about the application of the better regulation "one in, three out" rule in respect of this process. I confess that I am not able to give her a definitive statement this morning; I will need to write to her. We have done what we can, and the Treasury is committed to meeting our obligations on impact assessments to enable parliamentary scrutiny. In line with the duties under the Equality Act 2010, and with Cabinet Office guidance, regulations will be made with the equality duty in mind, and any impacts identified will be included in the relevant impact assessments in the usual way.

I remind the Committee that the Government are required in legislation to produce reports ahead of and looking back at the publication of SIs under the Bill. Such reports will of course include, where relevant, the expected and realised impacts of the legislation that is introduced. I hope that, in the light of those assurances, the amendment will be withdrawn and the new clause will not be pressed.

**Alison Thewliss:** I would still like to press amendment 10 to a vote, because we need to understand better the impact that divergence will have. It is one thing to say,

*[Alison Thewliss]*

"This is the impact of this bit of legislation," but we need to know the wider impact of divergence for particular industries.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 7]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to consider new clause 1—Draft consolidated financial services legislation.

**Jonathan Reynolds:** New clause 1 aims to address what the Opposition consider to be one of the central issues with the Bill. As we stated earlier, the Government's chosen approach, which is to combine statutory instruments to transpose existing legislation with this Bill to transpose future legislation, risks creating a patchwork of legislation. Within that patchwork, it will be very difficult to identify areas of overlap, omission and inconsistency. That is an extremely precarious position in which to put a sector that is of such high value to the British economy—particularly one that is so reliant on regulatory certainty and clarity.

Equally, a variety of new powers is being bestowed on institutions such as the Financial Conduct Authority, the Bank of England and the Treasury, as the Opposition have previously highlighted in Delegated Legislation Committees. We believe that there is a clear need to have a central, transparent picture of which institutions will be carrying out which functions, so that we can assess the new balance of powers holistically. A huge shift in powers is being proposed. It is essential that those powers are debated openly and transparently, so that all Members are clear about what is being put forward. Our alternative approach, which is achieved by new clause 1, differs by putting the power to properly scrutinise financial legislation back into the hands of Parliament. To borrow a phrase, it would take back control.

10.30 am

The new clause would oblige the Chancellor to propose a motion to the House of Commons prior to beginning the statutory instrument process, which would give the House the opportunity to debate and discuss the proposed change, as on Second Reading. As we have seen with the existing process of no-deal regulation transposition, the secondary legislation protocol was simply not designed to accommodate rules of that magnitude. All hon. Members, including the Minister, have done their best to make it work, but we recognise that it is a less than satisfactory process.

It remains within the Government's gift to grant time for further debate on instruments when the Opposition request it, which I acknowledge the Minister did recently for several important pieces of legislation in response to requests from us and the Treasury Committee. The new clause proposes an alternative that would help to address the democratic deficit by providing an important step for scrutiny of the Government's proposals.

As we have said several times today, Bills such as this are often perceived to be quite technical, but the content is hugely significant for all our constituents, so scrutiny of them is important. When I speak to people in the finance sector, I do not hear any appetite for a bonfire of EU regulation once we have left the European Union, but those siren voices are out there. We need to stand vigilant against efforts from any quarter to relax or tighten regulations.

Without the change, we risk enabling the Treasury to make wholesale changes when Parliament has little recourse other than through the secondary legislation process, which, as we have seen, can severely limit the chances for scrutiny. I therefore urge hon. Members to support the new clause, to build an essential layer of democratic protection into the Bill. The role of Parliament must be paramount in our future rule-making, so we should all welcome the new clause.

**Alison Thewliss:** We support new clause 1, which helps us hugely to move forward to a point of clarity. It makes sure that when we take on new pieces of legislation for the different regulatory bodies, we try to get rid of any loopholes and inconsistencies, and that everybody knows exactly what the landscape looks like. It is important that the Government lay out where they intend to go with it. A draft consolidated financial services piece of legislation would be useful, to give everyone the clarity that they require.

**John Glen:** Clause 1 comprises the core substantive content of the Bill. In a no-deal scenario, the Bill gives the Government the power to implement, in whole or in part, a specified list of EU legislative proposals or in-flight files. In many cases, the UK has strongly supported the proposals throughout their negotiations and has played a leading role in shaping them over a number of years.

The files fall into two categories. The first relates to the pieces of legislation that have been agreed while we have been a member of the European Union, but that will not have come into force prior to the UK's exit from the EU on 29 March. Those files are listed in clause 1(3)(a), (b), (c), (d) and (f). In a no-deal scenario, there would be no way to implement them in a timely manner, as each would require primary legislation. Clause 1 gives the Government the power to domesticate those files, in whole or in part, via affirmative statutory instruments. Furthermore, as was clarified following concerns expressed in the House of Lords about the breadth of powers, the Government have the power to fix deficiencies.

The second category of files relates to those still in negotiation. The UK has played a leading role in shaping them so far and they could bring significant benefits to

UK consumers and businesses when they are implemented. Those files are set out in subsections (3)(e) and (g), incorporating the schedule. Clause 1 also gives the Government the power to domesticate those files, in whole or in part, via affirmative statutory instruments. The UK will not be at the negotiating table when the files are finalised, however, so we will not be able to advocate for the interests of the specific nature of the UK's financial services sector as negotiations are concluded. The Bill, therefore, provides the Government with the ability to fix deficiencies within the files and to make adjustments to them that go beyond the deficiency-fixing power.

Again, following concerns raised in the other place, the Government have clarified the nature of those adjustments and have stated that they cannot depart in a major way from the original EU legislation. However, the Government will have some flexibility to make adjustments to take account of the UK's new position outside of the EU. It is only right that the UK retains the latitude to ensure that pieces of legislation finalised after we have left the EU reflect the interests of the UK's financial services industry, and this Bill must tread the line between giving sufficient powers to enable the Government to effectively implement the legislation and imposing appropriate restraints to reassure Members that safeguards are sufficient.

I put on record my thanks for the collegiate way in which Opposition Front Benchers in the Lords worked with us to arrive at the present drafting and set of safeguards without division. Those safeguards are set out in subsections (7) to (10) of clause 1, and include a two-year sunset clause; a requirement for the affirmative procedure in every instance in which the power is used; strong reporting requirements on Government, including a requirement to publish a draft SI alongside a report detailing omissions and adjustments at least one month before laying it before the House; and a further requirement to publish a report twice a year setting out how the power has been exercised in the previous six months, and how the Treasury intends to exercise it in future.

I should note at this stage one issue to which we may return on Report. Members will note that subsection (3)(e) is not included among those files deemed settled. The Commission was required under the prospectus regulation to adopt delegated acts in January of this year; that has not yet happened, and as such, we do not yet know the content of that delegated legislation. Should the Commission adopt those acts prior to Report, we will seek to amend the Bill accordingly, limiting any adjustments that may be made to the fixing of deficiencies.

Clause 1 is the heart of this short Bill. It is the duty of responsible Government to prepare for all outcomes, and the Bill will provide us with the critical ability to implement legislation that maintains the functionality, reputation and international competitiveness of our financial sector. It is a key part of our no-deal preparations, and without this clause, I am afraid that there would be no Bill to take forward. I recommend that the clause stand part of the Bill.

I will now turn to new clause 1, which is suggested, essentially, as an alternative. The Government believe that the new version of clause 1 tabled by the Opposition is inappropriate as an alternative to the current version, as it does not as drafted provide the Government with any means of domesticating legislation through the Bill. As has been set out a number of times over the course of this and other debates on the Bill, there exists a body of in-flight EU legislation that the UK will want the ability to implement in a timely manner in the period following EU exit, in order to maintain the functionality, reputation and international competitiveness of our financial sector.

New clause 1 does not include any powers to domesticate EU legislation. It compels the Treasury to bring a motion before the House to debate a document stating what EU legislation it proposes to domesticate, but it does not include the necessary mechanism through which those measures can be implemented subsequent to the House's approval. As such, the Bill would become a hindrance rather than a help—a means for debate without the necessary powers—and the Treasury would be left, having sought the approval of the House of Commons on those pieces of EU legislation it wishes to domesticate, needing to again seek approval by introducing primary legislation or, indeed, another version of this Bill. That would undermine the purpose of the Bill by not enabling the UK to implement important EU legislation in a timely manner when necessary. It would leave the UK lagging behind international counterparts on the issue of financial services regulation—something that I am sure Opposition Front Benchers would not wish to happen—and our financial services industry would then be at a competitive disadvantage at a crucial period in our country's history.

Even if new clause 1 were amended to include a power to implement the legislation, I suggest that it is an unsuitable alternative to the current procedure. It requires the Treasury to collate into a single document the legislation it wishes to implement, alongside any adjustments it wishes to make and explanations of why those adjustments are necessary. That document would then be debated by the House through the aforementioned motion.

My objections to that extra layer of procedure are, in part, identical to those rehearsed earlier in my objections to amendment 4. Under the Bill as drafted, there will be extensive opportunity for scrutiny of the legislation before it is implemented. During the Bill's passage through the Lords, we inserted the requirement to publish a draft SI alongside a report detailing any adjustments and the justification for those adjustments one month prior to laying it before the House. The publication of those draft SIs will allow Members to seek a debate on the proposed content, should they so wish. Indeed, the draft SI and the accompanying report seem essentially similar in function to the document that this new clause would require the Treasury to produce. I should also note that publication of those draft SIs will allow Parliament, including any interested Select Committees, to scrutinise the proposed content.

I sympathise with what I suspect is the intention behind the new clause. I imagine, and perhaps the hon. Member for Stalybridge and Hyde will confirm this, that the consolidated document is an attempt to make sense of all the pieces of financial legislation that form part of this essential Brexit planning for a no deal. This Bill addresses a specific issue; it is vital for the UK's financial services industry that these 17 key pieces of legislation can be domesticated in a timely manner in a no-deal scenario. It will not be possible for the Treasury

*[John Glen]*

to set out in a single consolidated document its intentions for all these pieces of legislation prior to their final publication.

We simply do not know what the final version of each file will look like. It would mean the Treasury's having to wait until all legislation in the Bill was finalised at EU level before producing this document. That would potentially lead to intolerable delays and to the UK financial services sector's lagging behind its international competitors during this crucial period.

That is why, in the current draft of the Bill, the Treasury has committed to six-monthly reports that will set out how we have used the powers under this Bill in the preceding six months, as well as how we intend to use them in the subsequent six months. That should provide a clear and timely overview of how the Government are using the powers provided for in this Bill. In light of that, I ask that the hon. Members refrain from pressing the new clause as an alternative.

**Jonathan Reynolds:** I appreciate the Minister's point that clause 1 is essentially the whole of the Bill that we are discussing, but we do intend to press new clause 1 to a vote as an alternative, for the reasons that I outlined. If I can explain to hon. Members who have not been on a Bill Committee before, under advice from the Chair I understand that if existing clause 1 were accepted then he could not then offer us a vote on new clause 1, because we would have accepted that entirely. Therefore, we will vote against clause 1 stand part in order to move new clause 1.

*Question put,* That the clause stand part of the Bill.

*The Committee divided:* Ayes 10, Noes 9.

**Division No. 8]**

**AYES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

**NOES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

*Question accordingly agreed to.*

*Clause 1 ordered to stand part of the Bill.*

**The Chair:** As the Opposition spokesman made clear, new clause 1 is an alternative, so we now proceed to clause 2.

## Clause 2

EXTENT, COMMENCEMENT AND SHORT TITLE

**John Glen:** I beg to move amendment 1, in clause 2, page 3, line 42, leave out subsection (4).

*This amendment removes the privilege amendment inserted by the Lords.*

I shall speak only briefly on this amendment, as it is a standard form amendment removing the privilege amendment inserted by convention into all Bills that begin life in the House of Lords and have consequences for the public purse. The privilege amendment, as I am sure members of the Committee are aware, recognises that it is the constitutional right of the Commons to initiate legislation that relates to revenue raising or expenditure, and so forbids Acts that are introduced in the Lords from engaging in these activities.

As stated in the explanatory notes accompanying the Bill, regulations made under clause 1(1) could result in money flowing into, or out of, central Government funds. Further, regulations made by virtue of clause 1(4) could lead to provision for the charging of fees. Such financial matters are among those in respect of which the Commons claims the privilege to initiate legislation, and so the privilege amendment was inserted in the Lords. This amendment simply clears it away to enable regulations under, or by virtue of, the Bill to make provisions having consequences for public finances.

**Jonathan Reynolds:** We were interested, having never been on a Committee for a Bill that has been to the Lords already, in exactly how this worked. We were slightly worried at one point that the Minister was seeking to usurp the Bill of Rights 1689 by trying to make Treasury regulations without recourse to primary legislation; I am relieved to see that he is not seizing power in such an inappropriate way. I understand now that it is a pro forma amendment and I understand why such a process works in the Lords before it comes back to us. We therefore have no objection to this amendment.

*Amendment 1 agreed to.*

*Question proposed,* That the clause, as amended, stand part of the Bill.

**John Glen:** Clause 2 is simply a technical clause that extends the powers granted in clause 1 across England, Wales, Scotland and Northern Ireland. Financial services policy covered in the Bill relates entirely to reserved matters. It also enables the Act to come into force on the day on which it is passed, as we know of at least one file—the prospectus regulation—that will likely need to be implemented soon after EU exit. I therefore recommend that the clause, as amended, stand part of the Bill.

*Question put and agreed to.*

*Clause 2, as amended, accordingly ordered to stand part of the Bill.*

## New Clause 2

REPORT ON THE PROVISIONS OF REGULATIONS UNDER THIS ACT

"(1) Prior to making any regulations under this Act, the Treasury must publish a report on the impact of the provisions of those regulations.

(2) A report under this section must consider, in respect of the regulations proposed to be made—

(a) the impact of those provisions on households at different levels of income,

(b) the impact of those provisions on people with protected characteristics (within the meaning of the Equality Act 2010),

(c) the impact of those provisions on the Treasury's compliance with the public sector equality duty under section 149 of the Equality Act 2010, and

(d) the impact of those provisions on equality in different parts of the United Kingdom and different regions of England." .—*(Jonathan Reynolds.)*

*This new clause would require a report to be made on the impact of any regulations under this Bill before any such regulations are made*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 9, Noes 10.

**Division No. 9]**

**AYES**

| | |
|---|---|
| Crawley, Angela | Smith, Laura |
| Dodds, Anneliese | Thewliss, Alison |
| Reynolds, Jonathan | Twist, Liz |
| Rowley, Danielle | Walker, Thelma |
| Smith, Jeff | |

**NOES**

| | |
|---|---|
| Ford, Vicky | Kerr, Stephen |
| Foster, Kevin | Knight, Julian |
| Glen, John | Merriman, Huw |
| Harrison, Trudy | Prentis, Victoria |
| Heappey, James | Whittaker, Craig |

*Question accordingly negatived.*

**Schedule**

List of proposals for the purposes of section 1

*Question proposed,* That the schedule be the schedule to the Bill.

**John Glen:** The schedule contains a list of financial services files that are essential for ensuring the continued competitiveness and functionality of UK markets. Those files consist of 13 EU legislative proposals that are currently in negotiation and may enter into the EU *Official Journal* up to two years post EU-exit.

It is not an exhaustive list of all in-flight EU financial services legislation. In order to bring before both Houses a Bill that was as narrow in scope as possible, a triage process was undertaken to settle on files deemed essential to the ongoing functionality, reputation and international competitiveness of our financial sector in the crucial period following a no deal. Some in-flight legislation, for example, relates solely to the eurozone, so it would be inappropriate to include it in the Bill. I extend my thanks once more to the Lords, who suggested expanding the list to include the remaining two sustainable finance files, which was a suggestion that we were happy to accept.

In short, the files in the schedule are those that we believe will be most important for market functioning and UK competitiveness in a no-deal scenario. I recommend that the schedule be the schedule to the Bill.

*Question put and agreed to.*

*Schedule accordingly agreed to.*

**Anneliese Dodds:** I beg your pardon, Sir Edward, but I would like to ask for the Chair's clarification if I may. We wish to clarify whether it is the case that as clause 1 was ordered to stand part of the Bill, new clause 1 falls, and that that is why we have not had a vote on it. Is that the case?

**The Chair:** That is correct. All that remains is for me to thank you very much. That was a very expeditious and efficient Committee. I said to Thelma Walker that during the first Committee that I attended, we spent 100 hours filibustering on the Cromwell statue, so I thank you for your efficient scrutiny and wish you a very good morning.

*Bill, as amended, to be reported.*

10.49 am

*Committee rose.*