

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT FINANCIAL SERVICES (MISCELLANEOUS)  
(AMENDMENT) (EU EXIT) (NO. 3)  
REGULATIONS 2019

*Monday 9 September 2019*

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**Friday 13 September 2019**

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

*Chair:* SIR EDWARD LEIGH

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|--|--|
| † Blackman, Bob ( <i>Harrow East</i> ) (Con)                         | † Reynolds, Jonathan ( <i>Stalybridge and Hyde</i> ) (Lab/Co-op) |
| † Burden, Richard ( <i>Birmingham, Northfield</i> ) (Lab)            | † Rowley, Lee ( <i>North East Derbyshire</i> ) (Con)             |
| † Cunningham, Mr Jim ( <i>Coventry South</i> ) (Lab)                 | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)            |
| † Freer, Mike ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) | † Smith, Royston ( <i>Southampton, Itchen</i> ) (Con)            |
| † Glen, John ( <i>Economic Secretary to the Treasury</i> )           | † Syms, Sir Robert ( <i>Poole</i> ) (Con)                        |
| † Grant, Bill ( <i>Ayr, Carrick and Cumnock</i> ) (Con)              | † Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)              |
| † Jones, Mr David ( <i>Clwyd West</i> ) (Con)                        | † Walker, Thelma ( <i>Colne Valley</i> ) (Lab)                   |
| † McGovern, Alison ( <i>Wirral South</i> ) (Lab)                     | Dominic Stockbridge, <i>Committee Clerk</i>                      |
| † Peacock, Stephanie ( <i>Barnsley East</i> ) (Lab)                  | † <b>attended the Committee</b>                                  |
| † Penning, Sir Mike ( <i>Hemel Hempstead</i> ) (Con)                 |  |

## Second Delegated Legislation Committee

Monday 9 September 2019

[SIR EDWARD LEIGH *in the Chair*]

### Draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019

6 pm

#### The Economic Secretary to the Treasury (John Glen):

I beg to move,

That the Committee has considered the draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019.

It is a pleasure to serve under your chairmanship once again, Sir Edward. The Government previously made all the necessary legislation under the European Union (Withdrawal) Act 2018 to ensure that, in the event of a no-deal exit on 29 March 2019, there would have been a functioning legal and regulatory regime for financial services from exit day. Following the extension to the article 50 process, the Treasury has used the additional time to review existing EU legislation, in line with the Government's commitment to take all necessary steps to ensure our regime remains prepared for exit.

The statutory instrument fixes deficiencies in new EU legislation that will become part of UK law at exit on 31 October and amends some EU exit provisions that have been made already to account for the extension. The review identified a number of minor errors in earlier EU exit instruments, which are corrected in this SI. I note that the Secondary Legislation Scrutiny Committee's report on 25 July highlighted this SI as an "instrument of interest" for what it called the "range and magnitude" of changes it makes. The Committee also expressed concern about the scale of the challenge facing financial services firms in adjusting to the changes being made to financial services legislation generally.

Although the SI amends 15 pieces of legislation, the number of amendments is modest and the nature of the amendments is minor. They follow the same approach to fixing deficiencies in EU legislation as approved by Parliament in previous financial services EU exit SIs. They do not change policy or alter requirements on firms. The SLSC is right to raise the challenge that financial services firms will face in adjusting to changes introduced by exit legislation, but I can reassure the Committee that minimising this challenge for industry has been central to the onshoring project from the beginning.

Under other SIs approved by Parliament, the Treasury has introduced a variety of measures to smooth the transition for businesses in adjusting to changes in EU exit legislation, and to changed circumstances generally. Those measures include a range of temporary permissions and transitional regimes for European economic area firms and funds. Parliament has also granted the UK financial services regulators powers to phase in requirements that change as a result of EU exit legislation, giving

firms the time they need to adjust in an orderly way. The regulators have consulted on their approach to phasing in these requirements, which involves broad use of their transitional powers, and have received a very positive response from the industry. We have also engaged with the industry on the development of all our SIs, to give it as much time as possible to become familiar with the legislation. Given the minor and technical nature of the amendments in this SI, I will not cover every provision in my opening remarks, but I am happy to take questions on any of the individual provisions.

The provisions in the SI cover three broad areas. First, the instrument amends a number of pieces of EU legislation that have become applicable in the period since the article 50 extension and will therefore form part of UK law on exit day, but that are not substantive enough to warrant separate additional instruments. For example, the European Commission recently introduced measures to further promote the use of small and medium-sized enterprise growth markets. Those trading platforms are subject to more proportionate regulation, making it easier for SMEs to raise finance. The SI makes minor amendments to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, to fix deficiencies in the new EU legislation and ensure it continues to function in UK law after exit. Following the approach approved by Parliament in previous financial services exit SIs, this SI gives UK regulators the job of fixing deficiencies in the new technical standards that have been adopted by the EU since 29 March.

Secondly, the SI amends existing EU exit legislation that is required to take account of the article 50 extension process. For example, the instrument makes a change to the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 by amending the date from which the Prudential Regulation Authority will be obliged to publish certain technical information that insurance and reinsurance firms must use to value their liabilities. Previously, the PRA had been required to begin publishing this information from 10 April 2019. The SI amends that date, so that the obligation on the PRA does not commence until an appropriate date after the UK has left the EU.

Finally, I will address the corrections that this instrument makes to earlier EU exit SIs. All the legislation laid under the European Union (Withdrawal) Act 2018 has gone through the normal rigorous checking procedures. However, as with any legislation, errors are made from time to time and it is important that they are corrected. Previously, when we found errors in financial services onshoring SIs, we sought Parliament's approval to correct them as soon as possible, and we are doing the same now.

Although it is always regrettable when errors in legislation are made, it is important to keep them in perspective. The financial services onshoring effort has been an unprecedented legislative challenge for the Treasury, involving 53 SIs that make amendments to more than 500 pieces of EU and UK financial services legislation. These SIs have been positively received—indeed welcomed—by the regulators and industry, and they have provided reassurance that the UK financial services regime will continue to operate effectively from day one after exit day. In that context, the errors that we are seeking to correct are extremely minor and very small in number.

For example, the SI makes an amendment to the Criminal Justice Act 1993 to ensure that UK individuals trading financial instruments in the European economic area or Gibraltar are not guilty of insider dealing, which is a criminal offence, if they are compliant with the market abuse regime as it applies in those territories. This is not changing the criminal offence of insider dealing, but ensuring that the scope of the offence remains the same and operates effectively in UK law after exit.

As I explained in my opening remarks, the Treasury and Parliament have already completed the vast bulk of the legislative work that is necessary to ensure that our financial services regulatory regime is ready for exit. However, in line with this Government's commitment, we continue to do all we can to ensure that our regime remains prepared. This SI makes additional fixes that will improve our state of readiness.

I know that regulators and the industry support our effort to address every legislative deficiency, and the SI helps to reinforce the message that the Government and Parliament will not take any chances with the safe and effective operation of the UK's regulatory regime. I hope that colleagues will join me in supporting these regulations, which I commend to the Committee.

6.7 pm

**Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): It is always a pleasure, Sir Edward, to see you in the Chair.

We now know that this is one of the last chances the Opposition will have to be heard on the matter of a no-deal Brexit, given the Government's decision to prorogue Parliament this evening. The Opposition's concerns about our crashing out without a deal are well known. That is why we have spent the small amount of time available to us since the summer recess working hard across parties to prevent the Government from imposing that outcome on the UK.

What will also be well known to those who have served on such Committees before are the Opposition's objections to the use of statutory instruments to prepare us for no deal through an opaque and rushed process. The Minister and I stood opposite each other in Committees considering dozens of instruments in the run-up to the original exit date in March 2019. Today, we stand closer to the cliff edge than ever before, with a Prime Minister who is seemingly prepared to sacrifice our economic stability and perhaps even the rule of law.

I believe that the instrument in front of us tonight, which is a patchwork of tidy-ups and corrections, shows that we were vindicated in our criticism of the Government's approach. I am sorry to say that I do not believe the Government have always treated this process with the care and respect it demands. That is in no way a personal criticism of the Minister, who I think is one of the relatively few members of the Government who understands what is at stake, but it is a criticism of the Government as a whole. I say that because we now stand here looking at this legislation in a different way; we stand here on the cusp of no deal occurring, which the Government now believe is a perfectly acceptable outcome.

I just look at this SI and reflect that our country's economy is 80% services and that our financial sector is the envy of much of the world. We are about to lose market access to all EU member states and, crucially,

under no deal we will lose the good faith required to overcome that. That is 10% of the revenue from our most important sector. Although we all acknowledge that the single market in services is not what it could be, as Sir Ivan Rogers has repeatedly pointed out it is more integrated in the single market than it is, for instance, between different US states or between different Canadian provinces. Crucially, no deal will put us years away from correcting those problems in a trade deal.

However, the in-flight Bill was pulled at the last minute in March and has never returned to the Chamber. The then Financial Secretary to the Treasury even addressed the House that evening without addressing why. Does this statutory instrument correct that? I do not think it does. Now that the House is being prorogued, that Bill will surely fall, so how can the Government possibly argue that we are in a position to leave without a deal when there are such significant legislative gaps in our contingency plans?

It is not just the Opposition who have outlined these concerns. The House of Lords Secondary Legislation Scrutiny Committee—I think the Minister mentioned it, but he perhaps undersold its criticism—said:

“These Regulations are the third time HM Treasury...has made changes to existing financial services legislation, and the Committee hopes that HM Treasury has not under-estimated the challenge which is posed to financial services firms in taking on board so many amendments to the core legislation for the sector...the range and magnitude of the changes are significant: the Regulations make changes to 15 items of legislation and include a sub-delegation of powers to UK regulators and extend a ministerial power of direction. The Committee reiterates its concern about the scale of the challenge facing financial services firms in adjusting to these changes.”

If this statutory instrument is being discussed tonight, with mere hours to go before Parliament is suspended, how can the proper consultation have taken place with the financial services sector? As the Lords Committee noted, there is a significant extension of ministerial power, which bestows on the Treasury the power to grant MiFIR—markets in financial instruments regulation—exemptions to EEA central banks. It has to be alarming that this is suddenly being swept in at the last moment. Why, Minister, has it not been addressed before now?

What other omissions will there be? One stakeholder has already raised with us the fact that neither the statutory instrument that establishes the temporary permissions regime in relation to the Financial Services and Markets Act 2000, nor the statutory instrument in relation to the Electronic Money Regulations 2011 and the Payment Services Regulations 2017 appears to apply to payment services provided by an EEA bank in the UK. “Regulated activities”, as referred to in the EEA passport rights regulations, do not include payment services. It therefore seems that there is no authorisation for that to continue, which will be enormously disruptive—unless the Minister can provide some assurances to the contrary today or perhaps in correspondence.

There is in this statutory instrument a whole list of items of retained EU law that are now irrelevant or surplus to requirements. My question remains: how are we only identifying those items now?

Therefore, the Opposition cannot support this statutory instrument today and will vote against it. We have argued against using secondary legislation in this manner since the no-deal process began, and this instrument

[Jonathan Reynolds]

serves to validate our criticism. The Opposition refuse to use the Government's final few hours of parliamentary time before the undemocratic Prorogation of Parliament to further enable any no-deal scenario. We will do everything in our power to prevent such a disastrous outcome, which we believe would be so damaging to the UK's core national interests.

6.13 pm

**Alison Thewliss** (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Sir Edward.

I agree very much with the hon. Member for Stalybridge and Hyde. This is chaos. It should not be happening that we are in this room again, with hours to go before Parliament is prorogued, to correct mistakes that we were assured would already have been picked up. The last time that we were in this room discussing similar business, the Minister said, "Oh, these things happen. Errors happen when drafting legislation," yet here we are again, closer and closer still to another Brexit deadline, with a raft of things that the Government have not got quite right. How were these errors identified? Is it just that the Treasury had slightly more time to mark its own homework, so it was able to go through the measures and find what it had previously missed, or were the errors brought to the Department's attention by some other means? It would be interesting to know if they were picked up by external organisations, which realised that what had been put in front of them would not actually work or was not fit for purpose.

It is interesting to look at all these things. I am still not quite sure that we have seen the end of all the statutory instruments, with Prorogation coming up tonight. Hon. Members may not have been here for business questions on Thursday, when the hon. Member for Walsall South (Valerie Vaz) asked what would happen about statutory instruments, because they do not fall in the same way as legislation falls with Prorogation. The Leader of the House said:

"On the ability to leave on 31 October, all the legislation that is needed is in place. We have 580 statutory instruments to make sure it will all happen smoothly. That is all done. It is ready. It is prepared. Her Majesty's Government have been a model of efficiency and efficacy in preparing this. My right hon. Friend the Chancellor of the Duchy of Lancaster is perhaps one of the most impressive administrative Ministers this country has ever seen."—*[Official Report, 5 September 2019; Vol. 664, c. 394.]*

But we have all these corrections—pages and pages of corrections to statutory instruments that the Minister has already laid and the House approved in good faith because we were told that it was the right and appropriate thing to do. Despite the Opposition's protestations that we needed to look at them in greater detail, that we needed more time and that the process needed to be better, this is what we have. The Government cannot say that they were not warned.

To pick up just one concern, relating to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, this instrument would appear to suggest that the UK share trading obligations can be met through trades of UK systemic internalisers but not of EU systemic internalisers. Is there a risk of reduced regulation? My concern has always been that we cannot have less regulation as we come out of the EU. Since the financial

crash, more regulation and more safety has been put in place in the system. We cannot end up with less robust systems in place in any of these areas.

The Minister talked about fixing deficiencies in new technical standards as they come from the EU. Perhaps he can tell us in a bit more detail what that process will look like. Will we forever be scrambling to catch up with the EU as we make regulations and become rule takers? I am sure all the Brexiteers in the room would rail against that. We will be trying to fix all these deficiencies in the desperate attempt to continue to have a functioning financial services industry in this country. We will continually be trailing behind the EU and trying to patch up our systems, rather than being the integral part of building the systems that we once were. That looks to me like how this will be.

Will the Minister give further detail about the PRA and an appropriate date? Does he have an appropriate date in mind. April was suggested in earlier drafts of the legislation, when we thought we would leave in March. What will the date be if there is a no-deal Brexit at the end of next month?

This whole process has been, as I think the Minister said previously, sub-optimal. It continues to be sub-optimal. We will rue some of the decisions we have come to. There is a huge financial services sector in Scotland—in Glasgow—that does a huge amount of skilled work and gives people good, high-quality jobs. If it is harder for those people in those jobs in Glasgow, Edinburgh and everywhere else to do the work they have so diligently been doing, it will be to the cost of all of us. I will do all I can to see that that does not happen.

6.18 pm

**Sir Robert Syms** (Poole) (Con): I have sat on many of these Committees. It is not unusual to have civil servants come forward because minor mistakes have been made, and the normal procedure in this type of Committee is to put them right, rather than to reject and vote against the instrument. The Treasury civil servants have done a really good job in difficult circumstances to onshore these regulations. They have used the opportunity of the extension, which I was against, to go back through the regulations to see whether they could be improved further. What we have today is the civil service acting in a sensible manner to see whether it can get things as right as possible.

It is highly irresponsible to vote against the instrument today. We may well end up with no deal at the end of October. I was under the impression that the financial services industry in Edinburgh is quite important to the Scottish economy, so I am surprised that the hon. Member for Glasgow Central is happy to vote against, leaving defective regulations in place. I support what the Government are doing. I think it is perfectly sensible, and I commend the Minister's statement.

6.19 pm

**John Glen:** I acknowledge the dissatisfaction of the hon. Members for Stalybridge and Hyde and for Glasgow Central with this process. As I have always stated when I bring these statutory instruments to the Committee, we have tried throughout to ensure that we are in the best possible state in the outcome of no deal. As my hon. Friend the Member for Poole rightly set out, my colleagues in the Treasury have used the time during the extension to address the elements that were deemed to be defective.

We have worked with the regulators and industry and we are continually testing our exit preparations. Both industry and the regulators are reassured that only minor errors have come to light, and this process is about correcting those errors.

I will address the specific points raised by Opposition spokesmen. On the principle of amending so many pieces of legislation in one instrument, although the SI amends 15 pieces of legislation, the number of amendments is not high and their nature is minor. I have set out the categories, and the amendments are routine and minor deficiency fixes, which are required to ensure that the UK regulatory regime for financial services continues to be ready for exit. For that reason we brought them together in this single SI this afternoon.

The hon. Member for Stalybridge and Hyde raised the issue of legislative gaps in the contingency plans: for example, in the in-flight files. I assure him that the Government have ensured that all cliff-edge risks are addressed in exit legislation. There is now no immediate need for further in-flight files legislation. He also asked about the extension of ministerial direction and power. European central banks are exempt from EU regulations under the markets in financial instruments directive—MiFID. In the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, Parliament approved a power for Treasury Ministers to determine that the EU would be equivalent or exempt under the equivalence regimes that will form part of EU law at exit, including equivalence or exemption under MiFID. Because the agreement between the EU and the European economic area on the implementing of MiFID has not been fully ratified, any UK decision would not cover EEA central banks or Norway and Iceland, so this SI also ensures that the new EU MiFID equivalence decision for Singapore made by the Commission in April works as intended in UK law after exit.

The hon. Gentleman talked about the impact on and substantive challenge for industry. As I tried to outline in my opening remarks, minimising the challenge of adjustments to industry to the changes brought by these SIs has been central to the onshoring project. We engaged extremely closely with industry representatives, particularly CityUK as the convening body, and the regulators on the development of the SIs. We published on the website numerous SIs in advance of laying them, to give as much opportunity as possible for feedback and so that firms could become familiar with them. We also introduced a variety of measures to smooth the transition for business, including a range of temporary permissions and transitional regimes for EEA firms and funds; those measures have been approved by the House. Parliament also granted powers to the regulators to phase in requirements on firms, again to minimise disruption and to ensure that any adjustments would be carried out in an orderly way, and that has been hugely welcomed by industry.

The hon. Member for Glasgow Central raised the issue of longer term challenges. I recognise that there is urgent work to do to optimise the competitive positioning of financial services, which, as she rightly said, is a hugely important industry across the United Kingdom, but this SI is not concerned with that. The hon. Gentleman made a point about the authorisation of payment services firms. Firms that enter the temporary permissions regime will be able to continue to provide the full range of services that they do now. That is the purpose of the scheme. On the hon. Lady's point about how we will update legislation in the future, the aim of the onshoring legislation has always been to ensure that we have a functioning regime in all scenarios. Onshoring is designed to provide continuity and minimise disruption at exit, as well as to provide for Government and Parliament to design a regulatory framework fit for the future, and that remains the case. The Treasury introduced a call for evidence document on 19 July. It set out the context for a long-term review of the regulatory framework and the key issues that we will need to consider for a regime that operates outside the EU. The call for evidence closes on 18 October, and we will report back on that.

On the PRA and the appropriate date, I sought to make the point that we moved the date from 10 April because that related to the previous exit point. The PRA will publish the dates in due course, based on the date on which we leave the EU, which is yet to be determined.

I hope that the additional measures and corrections in the instrument will ensure that the UK's financial services regulatory regime remains prepared for withdrawal from the EU in any scenario. I hope that I have responded adequately to the points raised and that the Committee will support the regulations.

*Question put.*

*The Committee divided: Ayes 9, Noes 8.*

#### **Division No. 1]**

#### **AYES**

Blackman, Bob	Penning, rh Sir Mike
Freer, Mike	Rowley, Lee
Glen, John	Smith, Royston
Grant, Bill	Syms, Sir Robert
Jones, rh Mr David	

#### **NOES**

Burden, Richard	Reynolds, Jonathan
Cunningham, Mr Jim	Smith, Jeff
McGovern, Alison	Thewliss, Alison
Peacock, Stephanie	Walker, Thelma

*Question accordingly agreed to.*

6.27 pm

*Committee rose.*

