PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fourteenth Delegated Legislation Committee

FINANCIAL SERVICES (ELECTRONIC MONEY, PAYMENT SERVICES AND MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

Monday 7 October 2019

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not later than

Friday 11 October 2019

The Committee consisted of the following Members:

Chair: Ms Karen Buck

† Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Blunt, Crispin *(Reigate)* (Con)
† Djanogly, Mr Jonathan *(Huntingdon)* (Con)
Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
Ellman, Dame Louise *(Liverpool, Riverside)* (Lab/Co-op)
† Freer, Mike *(Lord Commissioner of Her Majesty's Treasury)*
† Glen, John *(Economic Secretary to the Treasury)*
† Grant, Bill *(Ayr, Carrick and Cumnock)* (Con)
† Johnson, Dr Caroline *(Sleaford and North Hykeham)* (Con)
† Loughton, Tim *(East Worthing and Shoreham)* (Con)
† Powell, Lucy *(Manchester Central)* (Lab/Co-op)
† Prisk, Mr Mark *(Hertford and Stortford)* (Con)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Rowley, Lee *(North East Derbyshire)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Walker, Thelma *(Colne Valley)* (Lab)

Ben Street, *Committee Clerk*

† attended the Committee

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[MS KAREN BUCK *in the Chair*]

Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019

6.15 pm

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

That the Committee has considered the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019, No. 1212).

It is a pleasure to serve under your chairmanship, Ms Buck. As the Committee will be aware, Parliament has now approved well over 50 exit statutory instruments for financial services. They have included three on miscellaneous provisions, which are sometimes necessary to make isolated deficiency fixes, which do not fit easily into more thematic instruments. Those miscellaneous SIs have sometimes been used to correct minor errors or omissions made in earlier exit legislation. The one before the Committee also makes some minor corrections, as well as updating some earlier exit provisions to account for the article 50 extension.

Some hon. Members have been critical of the SIs, arguing that the correction of errors shows that we are putting rushed, poorly drafted legislation before Parliament. I want to make it clear that that is not the case. Errors have been few and minor and I applaud and thank my colleagues in the Treasury—particularly Lee O'Rourke and his team—for the work that they have undertaken in difficult circumstances over many months.

Financial services onshoring has been an unprecedented legislative challenge and I think we should acknowledge the constructive and effective collaboration that has taken place between the Treasury, our regulators and our industry stakeholders. I can tell the Committee that the regulators and the industry do not think our legislation has been poorly thought through—quite the opposite. In my time as Minister responsible for financial services exit legislation, the message from our regulators and from the industry has been clear: the legislation is essential to ensure that our regime is prepared for exit in any scenario and it is vital to underpin confidence in our regulatory regime.

In contrast to the previous miscellaneous provisions instruments, the SI makes substantive changes to earlier exit legislation in two key areas: the contractual continuity and temporary permissions regimes for payment services; and transitional arrangements for financial benchmarks. Those changes are not to correct errors but to strengthen our readiness for exit, and I make no apology for that. We are continually reviewing our exit arrangements to ensure that they are as robust as they can be. In those two areas, we decided that it is right to do more to protect UK consumers of payment services and to prevent disruption to firms and markets that rely on financial benchmarks.

First, an important part of our onshoring programme is to provide a range of temporary permissions and contractual continuity schemes to minimise disruption to UK consumers and businesses currently serviced by European economic area firms. Part 3 of the instrument supplements provisions for the temporary permissions and contractual continuity regimes for EEA payments and e-money firms. A review of that legislation has identified a limited number of provisions that should be amended to ensure that the temporary regimes are as robust as possible.

The amendments fall into two categories. The first category is to ensure that EEA firms in contractual run-off can continue to carry out various payment-related activities, as intended. That will include provision of payment and e-money services by EEA credit institutions such as banks. The second category of amendments applies to the temporary regimes for EEA payments and e-money firms. Those amendments clarify and make more explicit the full range of permissions and obligations of firms that enter those regimes. For example, the amendments make it explicit that an EEA firm in a run-off regime can legally redeem outstanding electronic money. That clarifies the fact that they can return any balance on an account to UK e-money holders.

Also, in a limited number of areas, the instrument makes Financial Conduct Authority powers more consistent with the powers it has with respect to credit institutions in the run-off regimes, such as by making it explicit that the FCA may publish a register of firms in contractual run-off. Those changes ensure that the FCA has proportionate powers to take action to protect UK consumers.

The second substantive set of provisions in this SI covers changes being made to the onshored benchmarks regulations. As they currently stand, those regulations contain a transitional regime for third-country benchmarks, allowing UK entities to use non- registered third-country benchmarks up until 31 December 2019. However, since the regulations were made it has become clear that there will be a damaging cliff-edge when the transitional regime expires at the end of 2019—a point highlighted by the Secondary Legislation Scrutiny Committee in its report published on 3 October. Very few third-country benchmark administrators have made applications to be registered, and only two equivalence determinations have been made by the European Commission, covering only seven third-country benchmarks.

If we leave the EU without a deal on 31 October, benchmark administrators outside the UK will have insufficient time to make an application under the UK regime by 31 December 2019. That would mean that UK firms would no longer be able to use those benchmarks for new contracts and products, causing considerable market disruption. For example, loss of access to third-country foreign exchange rate benchmarks could prevent firms from carrying out important risk management functions, such as hedging their currency risk. This SI extends the period in which the transitional regime applies by three years, from the end of 2019 to the end of 2022, ensuring that benchmark administrators outside the UK have an appropriate period of time to make an application under the UK's onshored third-country regime.

I also want to explain the amendments that the SI makes to our onshored equivalence framework. Those amendments are purely for legal clarity and do not change the policy approach to equivalence that Parliament has already approved. When making an equivalence determination after exit, the law needs to be clear on the aspects of the UK regime for which a third country has equivalent provisions. If Parliament approves a decision on a third country having equivalent insurance regulation to the Solvency II directive, UK law will be clear that that refers to the UK's implementation of Solvency II as it stands when the equivalence decision is made.

Before I conclude, it is important that I address the procedure under which this statutory instrument has been made. This, along with three other financial services exit SIs, were laid before Parliament on 5 September, under the "made affirmative" procedure provided for in the European Union (Withdrawal) Act 2018. This is an urgent procedure that brings an affirmative instrument into law immediately, before Parliament has considered the legislation. The procedure also requires that Parliament must consider and approve a "made affirmative" SI if it is to remain in law.

The Government have not used that procedure lightly. It must be remembered that, across Departments, we have already laid over 600 exit SIs under the usual secondary legislation procedures. But as we draw near to exit day, it is vital that we have all critical exit legislation in place, including legislation necessary to ensure that our financial services regulatory regime continues to function effectively from exit. It would have been reckless to leave that until the last minute: industry and our financial regulators need legal certainty on the regime that will apply from exit. Without addressing the deficiencies covered by this SI, there would be significant legal uncertainty for firms and our regulators.

To conclude, this statutory instrument makes important additional deficiency fixes that will improve our state of readiness for exit. Regulators and the industry support our approach. This SI will help reinforce the message that 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.

6.23 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is a genuine pleasure to see you in the Chair, Ms Buck. It is good to be with the Minister for the second time today to discuss our contingency plans in the event of a no-deal Brexit. While this statutory instrument appears to address payments primarily, as the Minister said, actually it covers a wide range of financial regulation, including statutory instruments from previous months in which there have been omissions and where there have been subsequent changes to EU law since the exit date was postponed.

I know, and I hope all my colleagues acknowledge, that Treasury civil servants have worked exceptionally hard on the hugely difficult task of drafting the sheer volume of secondary legislation that has been required—often at short notice—by the Government. Given the scale of that task, it is understandable that some degree of corrections has been needed to address previous omissions. Our criticisms relate to the political decisions not taken that have required that process to come about—there were different ways this could have been done. I think it is fair to say that a lot of Government Ministers, although not this Minister, frankly under-estimated Brexit as a process. That has led, at times, to very difficult decisions, including on some of the processes that we have had to do together as statutory instruments, so I think it is reasonable to ask the Minister whether he is now confident that all drafting errors and omissions have been identified and addressed.

To give one example, in one instrument, references to the European market infrastructure regulation and the markets in financial instruments directive were mixed up. That may seem like minor semantics—fair play—and most people do not really appreciate what those regulations do, but they are huge and entirely separate pieces of legislation. We are discussing critical financial regulations, so there is no room for error. This is not legislation that can be rushed through or made without due care. Everybody was aware what using the secondary legislation process would mean if it was to be the mechanism to do this. I reiterate that this is not a criticism at all of the civil service, but rather a reflection of the gargantuan task expected of it, which was bound to bring about errors.

One principal attraction of the UK, particularly in financial services, has been its relatively stable legal and regulatory framework. The fact is that Brexit has cost us some of that reputation, which is one of the most regrettable things of all. During another recent statutory instrument Committee, a gap I identified and highlighted with the Minister was the apparent lack of permission for EEA institutions to make payments in the UK after exit. I am pleased to see that that has been clarified in this statutory instrument, and that such payments will be covered under the temporary permissions regime, given that they will be exempt from the specific Payment Systems Regulator authorisation. That will provide much-needed assurance to EEA institutions seeking to continue to operate in the UK should we crash out with a no-deal Brexit. I always say that the Opposition are always here to help.

I will ask some specific questions about some remaining items in the statutory instrument. I am curious to know why a further stipulation on the capital requirements regulation has been added to this instrument, when we addressed that regulation an hour ago in a separate piece of secondary legislation. I know it is a reference to cross-referencing, but it might have been reasonable to expect that all such references would have been included in that other piece of secondary legislation.

On the issues that the Minister raised relating to the benchmarks regulation, what exactly is causing the delay for third-country benchmark inclusion on the FCA register? Does further work need to be carried out to promote awareness and understanding of the existence of the register in third countries, or is there a resource issue on the UK side that needs addressing?

On a broader, final point, I do not believe that it is conducive to good legislative scrutiny to bundle together such different items of legislation under one SI. I appreciate the time constraints, but each of these items needs separate and thorough consideration. Equally, although some of these items pertain to changing references, due to the altered deadline, some simply relate to errors and

[Jonathan Reynolds]

omissions. Are we to anticipate another raft of changes in six months' time, after these statutory instruments were all rushed through today? Given where we are with the timescale, what assurances can the Minister give us on the viability of the regulatory regime as it stands today, should a no-deal Brexit occur?

6.28 pm

John Glen: I would like to respond to the points made by the hon. Member for Stalybridge and Hyde, and I thank him for the typical courtesy and care in his remarks with respect to this process. He made a number of points around the challenges of this approach, and I think we could both agree that this has not been an ideal process. We have worked through it, as a Committee, on probably nearly 40 occasions over the last 12 months.

The hon. Gentleman raised concerns around, in essence, the mistakes. I reassure him that there is no casualness to our approach. All SIs pass through quality control procedures, and we have engaged extensively with regulators and industry, where appropriate, in drafting them. We publish them in advance of laying them, in order that a degree of familiarity can be gained. However, as with all legislation, drafting errors occur from time to time, and we put them right as soon as they are discovered. When considering the volume and complexity of the financial services legislation made under the European Union (Withdrawal) Act 2018, drafting errors have been minor and small in number. We have grouped them under the miscellaneous provisions and have worked closely with regulators to get them right.

The hon. Gentleman asked me to speculate on the nature of future amendments, should any be needed. Obviously, I cannot give an absolute assurance. He asked about the inclusion of the capital requirements regulation in this particular instrument. That is so because this is a collective, miscellaneous capturing of small and essentially legally significant but inconsequential changes.

The hon. Gentleman asked about the benchmarking issue. Not many firms have gone through the process of applying, which is why so few have gained permission. We have aligned the instrument with what we have done with many of the transitional regimes by making a three-year provision. That will allow greater certainty in the marketplace. I acknowledge his broader concerns about the process, but we have done all that we can to ensure that we are in the best possible position in the undesirable outcome of no deal at the end of October. I think that I have dealt substantively with the hon. Gentleman's points.

I accept that the supplementary measures and provisions included in the instrument will help to ensure that the UK's financial services regulatory regime remains prepared for withdrawal from the EU in any scenario. I recognise that considerable work will need to be done if we leave with no deal, and that we would have to bring that before the House. I hope that the Committee has found the sitting informative and will join me in supporting the regulations.

Question put and agreed to.

6.32 pm

Committee rose.