PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT BANK RECOVERY AND RESOLUTION (AMENDMENT) (EU EXIT) REGULATIONS 2020

DRAFT SECURITIES FINANCING TRANSACTIONS, SECURITISATION AND MISCELLANEOUS AMENDMENTS (EU EXIT) REGULATIONS 2020

DRAFT FINANCIAL HOLDING COMPANIES (APPROVAL ETC.) AND CAPITAL REQUIREMENTS (CAPITAL BUFFERS AND MACRO-PRUDENTIAL MEASURES) (AMENDMENT) (EU EXIT) REGULATIONS 2020

DRAFT BEARER CERTIFICATES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2020

Wednesday 18 November 2020

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not later than

Sunday 22 November 2020

The Committee consisted of the following Members:

Chair: Sir David Amess

Ali, Tahir *(Birmingham, Hall Green)* (Lab)
† Bacon, Gareth *(Orpington)* (Con)
† Coutinho, Claire *(East Surrey)* (Con)
† Davison, Dehenna *(Bishop Auckland)* (Con)
Eagle, Maria *(Garston and Halewood)* (Lab)
† Glen, John *(Economic Secretary to the Treasury)*
Grady, Patrick *(Glasgow North)* (SNP)
† Howell, Paul *(Sedgefield)* (Con)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
Nichols, Charlotte *(Warrington North)* (Lab)
Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Randall, Tom *(Gedling)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Sambrook, Gary *(Birmingham, Northfield)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Williams, Craig *(Montgomeryshire)* (Con)

Chloe Freeman, Bradley Albrow, *Committee Clerks*

† attended the Committee

Tenth Delegated Legislation Committee

Wednesday 18 November 2020

[Sir David Amess *in the Chair*]

Draft Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020

2.30 pm

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

That the Committee has considered the draft Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, the draft Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, and the draft Bearer Certificates (Collective Investment Schemes) Regulations 2020.

John Glen: Thank you, Sir David. It is a pleasure to serve under your chairmanship yet again. The second bank recovery and resolution directive updates the EU's bank resolution regime, which provides financial authorities with powers to manage the failure of financial institutions in a way that protects depositors and maintains financial stability while limiting the risks to public funds. Under the terms of the withdrawal agreement, the UK has a legal obligation to transpose the directive by 28 December 2020, and the first statutory instrument satisfies that obligation.

In transposing the BRRD II directive, the Government have been directed by the commitment to maintain prudential soundness alongside other important regulatory outcomes, such as consumer protection and proportionality, when leaving the EU. We have also taken account of concerns raised by industry on elements of the directive that could pose potential risks to financial stability and consumers by tailoring the approach for the UK market.

Subsequently, we are not transposing the provisions in the directive that firms do not need to comply with until after the end of the transition period. We are also sunsetting specific provisions so that they cease to have effect in the UK after the end of the transition period, as well as inserting provisions to ensure that the elements that remain in effect after the end of the transition period continue to operate effectively. The sunsetted provisions will cease to have effect in the UK from 11 pm on 31 December 2020. Our approach meets our legal obligations and ensures that the UK's resolution regime remains robust and in line with international standards. We have interacted with industry and stakeholders to help explain exactly what the change means for them.

Turning to the content of the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, the SI is vital in ensuring that the UK has a fully effective legal and regulatory financial services regime at the end of the transition period. The approach taken aligns with the general approach established by the European Union (Withdrawal) Act 2018, providing continuity by retaining existing legislation at the end of the transition period, but amending where necessary to ensure effectiveness in a UK-only context. Specifically, this SI amends and revokes aspects of retained EU law and related UK domestic law, makes a small number of necessary clarifications and a minor correction to earlier financial services EU exit instruments, and provides sufficient supervisory powers for the financial services regulators to effectively supervise firms during and after the end of the transition period.

Moving on to the draft Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, the fifth capital requirements directive—known as CRD V—continues the EU's implementation of the internationally agreed Basel standards, which further enhance international prudential standards and regulation and aim to help ensure the safety and soundness of financial institutions. This instrument will allow for the transposition of CRD V into UK law, as is legally required under the terms of the withdrawal agreement. It will also ensure that the legislation that transposes CRD V continues to operate effectively in the UK after the end of the transition period. As with previous capital requirement directives, the Government will delegate the majority of the responsibility for implementation to the independent Prudential Regulation Authority, which has the requisite technical knowledge and expertise to ensure an effective and proportionate implementation. This instrument therefore only includes provisions that are legislatively necessary to ensure that the PRA can effectively implement CRD V.

The instrument makes changes to the macroprudential toolkit to preserve the current level of macroprudential flexibility. The most important of these is enabling the PRA to apply an "other systemically important institutions" buffer and a systemic risk buffer to relevant institutions to address particular financial stability risks. In line with requirements of article 21a of CRD V, the instrument also allows holding companies in scope to apply for supervisory approval. The framework and scope of the approval regime will be administered by the PRA and the instrument will also ensure that the PRA has the appropriate tools to ensure compliance with it.

Although the capital requirement directives were created with banks in mind, they also extend to investment firms. However, the risks faced and posed by investment firms are substantially different to those of banks. The instrument therefore excludes non-systemic investment firms from the scope of CRD V. Until the Financial Conduct Authority introduces a prudential regime for investment firms, about which I have spoken to the chief executive just today, following Royal Assent to the Financial Services Bill, investment firms will remain subject to the existing prudential framework.

Finally, let me turn to the content of the draft Bearer Certificates (Collective Investment Schemes) Regulations 2020. The UK has played a leading role in transforming tax authorities' ability to work across borders to tackle emerging international tax risks. Maintaining the UK's position and driving forward this agenda is a central pillar of the Government's no safe havens strategy, which aims to improve offshore tax compliance so that everyone pays what they owe. Bearer certificates are

anonymous and infinitely transferable, making them an easy means of facilitating illicit activity such as tax evasion or money laundering. It is for this reason that UK companies have been prohibited from issuing them since 2015.

A 2018 report from the OECD's global forum noted that although the UK had mostly addressed its 2013 recommendations on the prohibition of bearer shares,

"a small cohort of entities and arrangements…are still able to issue bearer shares or equivalent instruments."

The report went on to recommend that the UK abolish bearer shares. This instrument implements that recommendation and prohibits the remaining entities capable of issuing bearer shares or certificates, which include certain types of collective investment schemes, from doing so. It also makes arrangements for the conversion or cancellation of any existing bearer shares. It brings those remaining collective investment schemes, including open-ended investment companies formed before 26 June 2017 and all unit trusts not authorised by the Financial Conduct Authority, in line with companies formed under the Companies Act 2006, which are already prohibited from using bearer shares by the Small Business, Enterprise and Employment Act 2015. Complying with the global forum's recommendation will help ensure that the UK maintains its position at the forefront of the international community, continuing to set standards that help improve offshore tax compliance and fund our vital public services.

In summary and in conclusion, the Government believe that these four instruments are necessary and vital for the UK's financial services regulatory architecture, and I sincerely hope that the Committee will join me in supporting the regulations this afternoon.

2.39 pm

Mr Pat McFadden (Wolverhampton South East) (Lab): It is a pleasure to serve under your chairmanship, Sir David.

We have a lot before us this afternoon. These statutory instruments are the latest in a large-scale exercise on the part of the Treasury, and indeed other Departments, to onshore various parts of EU legislation. I make no criticism of the Minister personally; I am sure it was not his decision that that should all be done in this way, and he has been very straight with me in everything we have debated in the six months or so that we have been opposite each other. However, the volume of the provisions before us, which on a quick count amount to around 130 pages of complex legislation, and which we have to go through in a 90-minute process, creates the impression of a Department shovelling legislation out the door before the end of the year. If we are honest, it certainly does not make for a sensible scrutiny process, given that we are expected to debate and scrutinise all these instruments, relating to complex issues such as bank recovery and resolution, capital requirements, holding companies and securitisation, within a short time.

We have four instruments before us, although the bearer one is perhaps a bit different. However, we could almost pose the question: if we are going to do it like this, why not 40 or 400? It would make as much sense as doing these four together. The truth is that there may be items in these instruments that prove to be significant further down the line, but the manner in which they have been presented for debate makes that difficult to judge. If we are honest, this is the appearance of proper parliamentary scrutiny; it is not the reality. Presenting a volume of legislation such as this is Potemkin scrutiny. I repeat: I make no criticism of the Minister personally, and I am not having a go at him, but this is not the best way to debate and handle things, and doing so does not reflect well on Parliament. However, I have a few questions for him on the content.

Bank resolution and recovery became very important after the financial crisis. When banks failed, there was no adequate living will; there was no means of recovery that did not involve either desperate mergers and shotgun weddings between institutions or the state stepping in to bail institutions out. Where they were allowed to fail, the long tail of consequences often proved disastrous for the rest of the financial system, for contracts that had previously been agreed and so on. That experience produced this debate and this legislation about capital levels, leverage ratios and bail-in debt, which could be transferrable into equity if a bank got into trouble. The question really is: to what degree do the instruments before us herald any change from the approach that has been developed over the past decade or so since the financial crisis?

The same question applies to the capital requirements instruments. Over-leveraging was at the heart of the financial crisis. The esteemed former Governor of the Federal Reserve, Paul Volcker, gave evidence to a Committee in this House some years ago. He quoted a leading banker as saying that his bank did not need any capital at all—money could always be borrowed on the wholesale markets. When times are good and markets are very liquid, there may be circumstances where that is true, but we discovered to our cost that, when times are not good, taking the view that a bank does not need any capital can have horrendous consequences. To quote perhaps the most obvious UK example, RBS was leveraged to a ratio of around 50:1 just before the financial crash. Again, I ask the Minister: in what way will this capital buffers instrument make any difference to how we approach the crucial issue of what is, in the end, public insurance against bearing the costs of failure? That is really the question we could ask about all these instruments: do they make any difference one way or the other to the degree of public security against the failure of financial institutions?

My third question for the Minister relates to the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, and I refer him to regulation 72 on cross-border payments. He will be aware of the long-standing problem of hidden charges in remittances, which can end up costing people a lot of money and depriving those to whom the money is intended of the full value of the transfer. This is a multibillion-pound industry, and many people living in the UK send remittances home to families in other countries every year. Will the Minister clarify that this instrument does what he said was the Government's intention in a written answer released on 3 July to a question from the hon. Member for Altrincham and Sale West (Sir Graham Brady)? The Minister said that

"the full cost of any fees and charges"

must now be explicit and cannot be hidden in interest rates that are obscure to the person purchasing the service.

[Mr Pat McFadden]

My final question is, again, more about the process. What is the relationship between this onshoring process through these statutory instruments and what we are doing in the Financial Services Bill, which is currently in Committee? That, too, contains a lot of onshoring, so why are some things being onshored through statutory instruments, which are debated in this forum with all its constraints and lack of amendments, yet the ones in the Bill are going through the full legislative process, with a Committee stage at which amendments can be tabled and matters can be dived into more deeply and a Report stage and so on? I know the difference between the two processes, but why are there different approaches to some types of onshoring?

2.46 pm

John Glen: I listened carefully to what the right hon. Gentleman had to say, and he is, as always, the model of courtesy and constructive opposition. The substantive challenge that he offered was about the value, legitimacy and appropriateness of a four-in-one SI debate. It is vital that we deliver each of these financial instruments before the end of the transition period both to ensure continuity and a fully functioning and effective legal and regulatory regime from 1 January 2021 and, in the case of the draft Bearer Certificates (Collective Investment Schemes) Regulations 2020, to ensure that the UK meets its international obligations.

Given the links across each of the financial services instruments and the importance of them coming into force before the end of the year, it is appropriate for the Committee to consider them together, and it is the most effective use of parliamentary time. It is also the case that the SIs could not have been brought forward sooner. Several of the provisions in the instruments fix deficiencies in changes to EU regulations that have only recently become applicable during the transition period.

The right hon. Gentleman asked three specific questions about the SIs and then one about the process. He first asked about the extent of the changes from the BRDD II resolution regime. Under the terms of the withdrawal agreement, the Government will implement EU legislation, such as this regime, that evolved during the transition period. In our transposition of BRDD II, we have considered which provisions would not be suitable for the UK resolution regime after leaving the EU, while still maintaining that prudential soundness and the other important regulatory outcomes, such as consumer protection and proportionality. We have also taken into account concerns raised in consultation responses about the potential risk to financial stability and consumers. Given the complexity of those considerations, I am happy to write to the right hon. Gentleman to set things out more clearly.

The right hon. Gentleman asked about the extent to which CRD V changes the capital requirements regime. The capital buffers instrument is being introduced partly to ensure that the current macroprudential flexibility is maintained. The purpose of the buffers is to allow the regulators to continue to be able to address financial stability risks, including those posed by large institutions.

The right hon. Gentleman asked about hidden charges in remittances and referenced an answer I gave on 3 July about their cost. I am sorry, but I will have to write to him on that matter as well. I am sorry that I cannot offer him a clear answer now. I do not want to busk it.

Mr McFadden: Will the Minister give way?

John Glen: I am happy to give way. Perhaps the right hon. Gentleman will say that that makes the point that he made earlier.

Mr McFadden: No, I am grateful to the Minister for giving way. I would be grateful if he clarified the point. Let me be clear why. A clarification from him that the intention is to make transparent the full cost of fees and charges will help the regulators to police the charging of the instruments. If the Minister clarifies the matter in that way, that might help stop some of the practices that we have seen in the past whereby charges are hidden, to consumers' cost. Clarification would therefore be helpful.

John Glen: I respect that point and I am happy to give that clarification at the earliest opportunity.

The final process point that the right hon. Gentleman set out is the relationship between the onshoring programme and the Financial Services Bill that is now in Committee. The EU exit legislative programme, known as the onshoring programme—I seem to have been engaged with it all my life—is about ensuring a fully functioning legal and regulatory financial services framework at the end of the transition period.

The Financial Services Bill is an important step in taking responsibility for our financial services regulation, ensuring that we maintain the highest regulatory standard and remain an open and dynamic global and financial centre now that we have left the EU. It will deliver several existing Government commitments and ensure that the UK maintains that world-leading standard. It goes beyond the simple process of onshoring what we have had to date and what has gone live this year. It looks forward and sets out, with a new accountability framework, how the regulators will act. It also enacts a number of other smaller measures. However, I concede that it is a complex process—I do not mean that to sound patronising—whereby we have been trying to onshore and then look forward. The Bill, which we will hopefully take through Parliament, is the first in a series of steps that will involve legislation in subsequent Sessions.

I hope that I have substantively, if not exhaustively, addressed the points that have been made. As ever, I thank the right hon. Gentleman for the constructive way that he has brought his points to the Committee. I hope that the Committee is sufficiently satisfied to support the regulations.

Question put and agreed to.

DRAFT SECURITIES FINANCING TRANSACTIONS, SECURITISATION AND MISCELLANEOUS AMENDMENTS (EU EXIT) REGULATIONS 2020

Resolved,

That the Cttee has considered the draft Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020.—*(John Glen.)*

DRAFT FINANCIAL HOLDING COMPANIES (APPROVAL ETC.) AND CAPITAL REQUIREMENTS (CAPITAL BUFFERS AND MARCRO-PRUDENTIAL MEASURES) (AMENDMENT) (EU EXIT) REGULATIONS 2020

Resolved,

That the Committee has considered the draft Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020.—*(John Glen.)*

DRAFT BEARER CERTIFICATES (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 2020

Resolved,

That the Cttee has considered the draft Bearer Certificates (Collective Investment Schemes) Regulations 2020.—*(John Glen.)*

2.54 pm

Committee rose.