

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (REGULATED ACTIVITIES)
(AMENDMENT) ORDER 2017

Tuesday 14 March 2017

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The Committee consisted of the following Members:

Chair: ROBERT FLELLO

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| † Barclay, Stephen (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Mahmood, Shabana (<i>Birmingham, Ladywood</i>) (Lab) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | Mullin, Roger (<i>Kirkcaldy and Cowdenbeath</i>) (SNP) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | Pickles, Sir Eric (<i>Brentwood and Ongar</i>) (Con) |
| Dugher, Michael (<i>Barnsley East</i>) (Lab) | † Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | † Sandbach, Antoinette (<i>Eddisbury</i>) (Con) |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Kerevan, George (<i>East Lothian</i>) (SNP) | † Vickers, Martin (<i>Cleethorpes</i>) (Con) |
| † Kirby, Simon (<i>Economic Secretary to the Treasury</i>) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Lewis, Clive (<i>Norwich South</i>) (Lab) | Gail Bartlett, <i>Committee Clerk</i> |
| † Lilley, Mr Peter (<i>Hitchin and Harpenden</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 14 March 2017

[ROBERT FLELLO *in the Chair*]

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

8.55 am

The Economic Secretary to the Treasury (Simon Kirby): I beg to move,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017.

What a pleasure it is to serve under your chairmanship, Mr Ffello. The draft order will amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This statutory instrument is proposed in the regulatory context of the revised markets in financial instruments directive and the markets in financial instruments regulation. I shall refer to those collectively as MiFID II. They were agreed by the EU in 2014 to strengthen the regulation and transparency of financial and commodity markets—an important commitment by the G20. MiFID II applies from 3 January 2018, and member states are required to transpose the directive into national law by 3 July this year. In the UK, that is being achieved through legislation and regulators' rules.

I am pleased to say that last month we concluded our consultation on the legislation needed to transpose MiFID II, and now this draft order seeks to amend the regulated activities order, which sets the scope of our financial regulation, to give effect to MiFID II. The key changes are as follows. First, the draft order will allow the new investments and activities that are introduced by MiFID II, including, for example, emission allowances and the operation of an organised trading facility. Secondly, it will transfer the regulation of binary options from the Gambling Commission to the Financial Conduct Authority, where they will be regulated as financial instruments. That will allow consumers to benefit from strengthened consumer protection measures. Thirdly, the draft order will make a number of technical amendments, including the updating of definitions and references.

I am keen not to detain the Committee unnecessarily. However, I am happy to take questions and give answers later.

8.57 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): Good morning, Mr Ffello; it is indeed a pleasure to see you in the Chair.

We find ourselves in a slightly unusual position with this procedure today—we do live in unusual times. As we have heard from the Minister, it is the Government's intention to continue with the transposition of elements of the second markets in financial instruments directive into UK law. However, this process takes place while a huge question mark hangs over our future relationship

with the European Union, under whose auspices the directive was drawn up. Although there seems to be an indication of a broad consensus that there will be no bonfire of EU regulation, we have yet to receive any real clarity or guarantees from the Government in that regard.

MiFID II has been the subject of much discussion among market participants since the referendum result. In particular, it has been mooted as potentially providing an answer to the financial services sector's anxiety about securing passporting arrangements for the cross-border trading arrangements on which it depends to function. It is almost a decade since the original MiFID legislation was applied in the UK. It has achieved many of its original goals in creating a more harmonious investment landscape across Europe, and it is important that we preserve the elements of consumer protection that it has embedded in UK markets.

Best execution has played an important role in contributing to better outcomes for consumers and creating a more efficient trading landscape across Europe. Labour supports those efforts and sees the importance of a robust framework in which they can operate. For that reason, we support treating the operations of organised trading facilities as a regulated activity.

Labour supports moving binary options from the supervision of the Gambling Commission to the Financial Conduct Authority. That is not to say that we do not have some concerns about the regulation of binary options and how they are used by consumers, who are potentially vulnerable, but we believe that they have more in common with high-risk financial products than betting activities. We remain in dialogue with the FCA to ensure that those products come with the appropriate caveats. Structured deposits are an entirely different class of product, but the same principle applies: consumers must have full disclosure on the products that they are purchasing. Any further clarity in that regard will be welcome.

Labour also supports the ongoing efforts to transpose MiFID II into national law, which will help to harmonise standards across Europe and provide a higher standard of consumer protection in the UK. As we come to exit the EU, it is essential that we consider the benefits that historic regulation has brought us and how they can be protected in the future. Indeed, if equivalence is to be sought as we enter the negotiations, it is vital that we as policy makers ensure that these obligations continue to be diligently met, regardless of the overall climate of uncertainty.

8.59 am

George Kerevan (East Lothian) (SNP): It is a pleasure to serve under your chairmanship for the first time, Mr Ffello. I will be quite brief.

The principles behind MiFID II are laudable. Europe's trading market is very fractured, which has limited the ability to mobilise capital across the European boundaries. It is particularly of interest therefore in the UK, where much of the capital is centred to operate more freely across Europe. The basic thrust of MiFID II is very acceptable. The obvious question to the Minister is: post-Brexit, can he guarantee that the broadening of the market base we are getting here, and with it acceptable regulation on bond traders, will continue? We need

assurance on that. Given that the market has spent such an effort in time and money to get to this stage of MiFID II, to row back would be a bad thing.

There is, however, much talk in financial circles of a “MiFID III”. The American regulating authorities have been talking for some time about trying to go even further in trading regulation, to take us beyond what would be necessary and to impose costs, which most of the industry across the UK thinks would be invidious. Again, it is for the Government to ensure that, post-Brexit—all things being equal, and leaving aside recent events north of the border—if the UK found itself in a situation where it was negotiating directly with G20 and various international agencies regarding a prospective MiFID III, companies and traders operating in the UK would not be subject to further, more intensive regulation that suited the American market rather than companies here in Europe. Those are the basic points. The detail of the arrangements that have been negotiated is quite acceptable.

The Chair: I remind hon. Members to rise from their seats if they wish to catch my attention; that would be helpful.

9.2 am

Mr Peter Lilley (Hitchin and Harpenden) (Con): It is old age, Mr Ffello. It is a pleasure to serve under your chairmanship, even while standing. I have no objection to the draft order, but as a matter of interest, what would happen if we did amend or reject it? Would it still become law?

9.3 am

Simon Kirby: Let me start by welcoming the contributions made by right hon. and hon. Members. It is right and

proper that we consider the draft order adequate and effective in meeting our important aim to tighten and reform our legislation, as a response to the weakness that has emerged from the financial crisis. We have consulted extensively on how we transpose these provisions effectively into UK law.

I will briefly touch on a few points. The hon. Members for East Lothian and for Stalybridge and Hyde asked what MiFID II means for Brexit. I will say two things. First, until exit negotiations conclude, the UK remains a full member of the EU, and all the rights and obligations of EU membership will remain in force. During that period, the Government will continue to negotiate, implement and apply EU legislation. Secondly, the outcome of the negotiations will determine what arrangements apply in relation to EU legislation in the future, once the UK has left the EU.

I think it fair to say that we have an open mind about MiFID III. It is about getting the correct balance between regulation and consumer protection; that must always be what we look out for. The hon. Member for Stalybridge and Hyde asked about binary options. It is important that consumers receive at least equivalent protection with binary options as with other derivative products.

The answer to whether the statutory instrument would still become law if rejected is no. We are here in our legislating capacity. This is secondary legislation. I urge all members of the Committee to ensure that we have increased transparency and resilience in our financial markets by supporting the draft order.

Question put and agreed to.

9.5 am

Committee rose.

