

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT BANKING ACT 2009 (SERVICE PROVIDERS  
TO PAYMENT SYSTEMS) ORDER 2017

*Tuesday 21 November 2017*

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**not later than**

**Saturday 25 November 2017**

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

*Chair:* MR LAURENCE ROBERTSON

- |  |  |
|--|--|
| † Afolami, Bim ( <i>Hitchin and Harpenden</i> ) (Con)                | † Philp, Chris ( <i>Croydon South</i> ) (Con)                        |
| † Afriyie, Adam ( <i>Windsor</i> ) (Con)                             | † Reynolds, Jonathan ( <i>Stalybridge and Hyde</i> ) (Lab/<br>Co-op) |
| † Barclay, Stephen ( <i>Economic Secretary to the<br/>Treasury</i> ) | Shuker, Mr Gavin ( <i>Luton South</i> ) (Lab/Co-op)                  |
| † Clifton-Brown, Geoffrey ( <i>The Cotswolds</i> ) (Con)             | Slaughter, Andy ( <i>Hammersmith</i> ) (Lab)                         |
| Huq, Dr Rupa ( <i>Ealing Central and Acton</i> ) (Lab)               | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)                |
| † Jones, Darren ( <i>Bristol North West</i> ) (Lab)                  | † Stuart, Graham ( <i>Beverley and Holderness</i> ) (Con)            |
| † Knight, Julian ( <i>Solihull</i> ) (Con)                           | † Thomson, Ross ( <i>Aberdeen South</i> ) (Con)                      |
| † Lee, Ms Karen ( <i>Lincoln</i> ) (Lab)                             | Gail Bartlett, Dominic Stockbridge, <i>Committee Clerks</i>          |
| † Linden, David ( <i>Glasgow East</i> ) (SNP)                        |  |
| † Maclean, Rachel ( <i>Redditch</i> ) (Con)                          | † <b>attended the Committee</b>                                      |

**The following also attended, pursuant to Standing Order No. 118(2):**

Hoare, Simon (*North Dorset*) (Con)

# Fifth Delegated Legislation Committee

Tuesday 21 November 2017

[MR LAURENCE ROBERTSON *in the Chair*]

## Draft Banking Act 2009 (Service Providers to Payment Systems) Order 2017

8.55 am

**The Economic Secretary to the Treasury (Stephen Barclay):** I beg to move,

That the Committee has considered the draft Banking Act 2009 (Service Providers to Payment Systems) Order 2017.

It is a pleasure to serve under your chairmanship, Mr Robertson. The UK payments infrastructure is the plumbing of our financial system. Every year our payment systems process about 21 billion transactions, worth more than £75 trillion, between businesses and consumers. They underpin almost all commercial activity in the UK and are vital to the day-to-day lives of every member of the public. It is, therefore, extremely important that they are secure, stable and reliable.

In the Banking Act 2009, the Government gave the Bank of England formal powers of oversight over certain inter-bank payment systems, with the aim of promoting the robustness and resilience of key UK payment systems. The Act also gave Her Majesty's Treasury powers to specify which inter-bank systems are to be overseen by the Bank. The Bank's supervisory powers enable it to require information directly from the operators of relevant payment systems, and to issue directions or impose requirements on them, when necessary and appropriate.

The order extends the Bank of England's powers to include oversight of service providers. Service providers can include companies that provide infrastructure and technology—the firms that provide the hardware or software—to the payment systems that enable the 21 billion transactions each year. The responsibility for carrying out the oversight lies with the Bank's financial market infrastructure directorate, which reports to the Bank's financial market infrastructure board. The Bank publishes an annual report on the supervision of market infrastructure, which is laid before Parliament. Under the 2009 Act, the Bank has the power to publish principles and codes of practice to be followed by the payment systems operators; require system rule changes; give directions and set standards; and impose penalties for failure to comply. The proposed changes would give the Bank the same powers over service providers. The Bank will publish its approach to oversight of critical service providers shortly, to ensure that it is as transparent as possible.

The legislation will not automatically bring any service providers under Bank oversight. As with payment systems, HM Treasury will specify which service providers to recognised payment systems are to be brought under oversight with an order. HM Treasury can specify only firms that provide services to payment systems that are not already overseen by the Bank for financial stability purposes—that is, systemically important payment systems.

The Act does not require any other criteria to be met for a service provider to be specified. However, when considering a service provider for specification, the Treasury will take into account a number of issues, including the systemic importance of the relevant payment system, the criticality of the service provider to that system and whether the system and the service provider can be substituted. It will also consider representations made by the Bank, the payment systems regulator, the Prudential Regulation Authority, the Financial Conduct Authority, the service provider and the relevant payment systems, as required by the Act.

In summary, the Government believe that oversight should be proportionate to the level of risk presented by a firm. The proposed legislation will give the Government, together with the Bank of England, the tools they need to address any risk and to promote the robustness and resilience of the UK's payments infrastructure. I commend the order to the Committee and hope that colleagues will join me in supporting it.

8.58 am

**Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op):** Thank you for calling me to speak on behalf of the Opposition, Mr Robertson.

As we mark the 10th anniversary of the financial crisis, there still remains work to be done on strengthening and reforming our financial market infrastructure, to ensure that we never see a repeat of the events of 2008. One of the issues we faced at that time was that regulation could not keep pace with the speed at which markets were changing. That is vital in an era when financial innovation continues to surprise us all. Many of the recent developments have been exciting and encouraging, and indeed I spend much of my time in the City seeing at first hand how technology is being harnessed to the benefit of service provision.

It is also important, however, that new initiatives are given proper oversight, to ensure that consumers are protected and that the system is robust enough to withstand unforeseen consequences. The advent of the payment systems regulator under the auspices of the Financial Conduct Authority has been an important part of that. The PSR has already done critical work in the growing and changing market segment and is helping efforts towards better protection of consumers.

The Opposition therefore support the spirit of the order in ensuring that the appropriate supervision is in place. However, I ask the Minister for further clarity on the definitions of which service providers will come under the scope of the new rules. The draft legislation states that HM Treasury will have to specify which service providers are systemically important, in consultation with the Bank of England. It seems opaque that there are no draft guidelines on how that process will be undertaken.

In our consultation with stakeholders we have heard concerns that unintended consequences could arise from the legislation. For example, the proposed extension of part 5 oversight to service providers could distort competition in the market if applied unequally in the future. Will the Minister provide some insight into how that will be prevented and how the Government will ensure that application will be fair and proportionate? Further to the information provided by the explanatory memorandum, why do the Government feel that a shortfall

needs to be met with further regulation, given that individual contracts already exist between payment service providers and system operators?

Our second concern is that the order gives additional supervisory responsibility to the Bank of England. We want to ensure that sufficient thought is given to how that will be resourced. In the previous 10 years, financial market infrastructure has become significantly more complex and systemically important following the financial crisis. It is important, therefore, that the role of the Bank of England is scrutinised in the wider context as its scope broadens.

The Opposition support any moves to make our financial system more robust. However, we believe that the purpose of this legislation and its scope must be crystal clear, with a strong case for its necessity, to ensure that its potential impact on the market can be fully understood in advance.

9.1 am

**Adam Afriye** (Windsor) (Con): Thank you for calling me to speak, Mr Robertson. As chairman of the all-party parliamentary group on financial technology, I was excited to be selected to serve on this Committee. It is one of the most exciting Committees that I have sat on.

I welcome these measures, not least because they are part of a tidying up exercise that recognises that the modern landscape for financial technology and services and for payment services and operators has changed dramatically. We are the world's No. 1 city for financial services and we are also in the No. 1 slot for financial technology services. With 21 billion transactions worth £75 trillion, and considering the content of Paul Krugman's book on systemic risks, we need to take into account the new payment service providers and the new way in which the market operates. Our lead in financial services can be maintained—particularly as we leave the European Union—only if we are constantly vigilant in ensuring that our systemic risks are minimised.

My question is along the lines of those asked by the Opposition Front Bencher, the hon. Member for Stalybridge and Hyde. Given that the scope for supervision and regulation may broaden across various sectors, how many and what type of telecommunications and IT firms may be affected? I am concerned that that effect should not be too deep or onerous, given that they are the organisations that are fleet of foot and that deliver our competitive advantage.

9.3 am

**Stephen Barclay**: If I may first turn to the question posed by my hon. Friend the Member for Windsor about how many service providers would be designated. We do not intend to set a specific number, as this is about the Treasury's ability to react to risk where that is perceived. It is a question of what is seen as proportionate

from an oversight perspective, with regards to the services that those providers pay to those critical infrastructure systems.

On the question asked by the hon. Member for Stalybridge and Hyde about transparency and how we will specify a service provider, a number of factors will be taken into consideration, including the systemic importance of the payment service to which the service provider is providing services; the service provider's criticality to that payments service; and the extent to which another provider could be substituted in due course. On the issue of transparency, the decision will be taken in consultation with, and on the basis of representations from, the Bank, the payment systems regulator, the PRA and the FCA.

**Geoffrey Clifton-Brown** (The Cotswolds) (Con): I thank the Minister for giving way and I apologise for being late. This small business commissioner will employ fewer than 50 staff. Will that organisation really be capable of taking on the big multinationals that are likely to be the main miscreants in late payments to small businesses?

**Stephen Barclay**: This is about having oversight to set requirements on what information is needed, and being able to react to risk in a quick and proportionate way. This is a piece of enabling legislation that will allow the Bank to ask those questions of service providers rather than simply rely, as is currently the case, on the payment systems themselves to manage that risk. That is why this is a proportionate response. The order simply switches on a provision that is already in the existing legislation, but it allows the Bank to give force to it. The Banking Act already enables that; the issue is what it does once it is switched on. The order gives the Bank that power, facilitated by the Treasury.

Coming back to the point raised by the hon. Member for Stalybridge and Hyde about transparency, the decision will be taken in consultation with the relevant regulators, including the PRA and FCA, and following representations from the payments systems operators themselves. That reflects our proportionate approach.

In conclusion, the order will enable the Bank of England to oversee service providers to specify payment systems. In some cases those services are critical to the smooth running of our payment systems. The order will support the Bank's supervision of systemically important payment systems and promote the robustness and resilience of the UK's financial system.

I hope that the Committee has found this morning's sitting informative and that it will join me in supporting the order.

*Question put and agreed to.*

9.7 am

*Committee rose.*

