PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CREDIT TRANSFERS AND DIRECT DEBITS IN EURO (AMENDMENT) (EU EXIT) REGULATIONS 2018

DRAFT ELECTRONIC MONEY, PAYMENT SERVICES AND PAYMENT SYSTEMS (AMENDMENT AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2018

Tuesday 13 November 2018

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Saturday 17 November 2018

The Committee consisted of the following Members:

Chair: David Hanson

† Glen, John *(Economic Secretary to the Treasury)*
† Glindon, Mary *(North Tyneside)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Lammy, Mr David *(Tottenham)* (Lab)
† Lamont, John *(Berwickshire, Roxburgh and Selkirk)* (Con)
† Lucas, Ian C. *(Wrexham)* (Lab)
Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† Mills, Nigel *(Amber Valley)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Dominic Stockbridge, Masrur Ahmed, *Committee Clerks*

† attended the Committee

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[David Hanson *in the Chair*]

Draft Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018

8.55 am

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

That the Committee has considered the draft Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018.

The Chair: With this it will be convenient to consider the draft Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.

John Glen: It is a pleasure to serve under your chairmanship, Mr Hanson.

An essential part of preparing for a potential no-deal scenario in which the UK leaves the EU without a deal or an implementation period is ensuring that there continues to be a functioning legislative and regulatory regime for financial services in the UK. To deliver that, the Treasury is laying statutory instruments before Parliament under the European Union (Withdrawal) Act 2018, several of which have already been debated in this place and in the House of Lords. Both sets of draft regulations before the Committee are part of that comprehensive programme. They will fix deficiencies in UK law relating to the regulation of e-money institutions, payment institutions and account information service providers, as well as making transitional provisions. They align with the approach taken in other SIs laid under the 2018 Act by maintaining existing legislation at the point of exit to provide continuity, but amending it where necessary to ensure that it works effectively in a no-deal context.

The regulatory regime that applies to payment institutions, electronic money institutions and account information service providers, and the rules for facilitating payments and issuing electronic money for those institutions, are created by various pieces of EU legislation: the EU directives on payments and electronic money, which were implemented in the UK through the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 respectively, and the EU's directly applicable regulation on credit transfers and direct debits in euro.

In a no-deal scenario, the UK would be outside the European economic area and outside the EU's legal, supervisory and financial regulatory framework. The existing legislation needs to be updated to reflect that and amended to ensure that its provisions will work properly in such a scenario. Furthermore, in a no-deal scenario, the UK will no longer automatically maintain participation in the single euro payments area, which enables efficient, low-cost euro payments to be made across EEA member states and non-EEA countries that meet the governing body's participation criteria. SEPA is a key enabler of trade between the UK and other EEA member states and non-EEA participants.

To ensure that the legislation continues to operate effectively in the UK once the UK has left the EU, and to maximise the prospects of the UK maintaining participation in SEPA in a no-deal scenario, the draft regulations will make amendments to retained EU law relating to the 2017 and 2011 regulations and to the EU regulation on credit transfers and direct debits in euro. I will set out the approach taken in each set of draft regulations and the interaction between their provisions and the UK's future participation in SEPA.

The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations will make the following principal amendments to the 2017 and 2011 regulations. First, they will create a temporary permissions regime for payment firms. Should the UK leave the EU without a deal, there would be no agreed legal framework under which the passporting system implemented for EEA payment firms under the Payment Services Regulations could continue to function, so firms from the EEA would not legally be able to operate in the UK. The draft regulations will therefore create a temporary permissions regime for such firms that is similar to, but separate from, the regime set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, which applies to firms regulated under the Financial Services and Markets Act 2000 and has already been debated in the House.

Secondly, the draft regulations will make changes to ensure the continued effective safeguarding of consumer funds. To provide consumer protection in the event of an institution becoming insolvent, the Payment Services Regulations require payment institutions and electronic money institutions to safeguard consumer funds to ensure that they are paid out in priority to other creditors. The most common method of safeguarding funds is for the firm to hold them in a segregated account with a credit institution. A considerable number of UK firms hold safeguarding accounts in the rest of the EU. They will still be able to do so once the draft regulations come into force, but they will also have the option of using safeguarding accounts based anywhere else in the world, subject to adequate guarantees of consumer protection. This is in line with existing practice for protecting client assets and investments.

Thirdly, the draft regulations will remove the provisions that currently require supervisory co-operation with EU authorities. In a no-deal scenario, it would not be appropriate for UK supervisors to be unilaterally obliged to share information or co-operate with EU authorities, so the provisions that require co-operation and information sharing with the EU have been removed. However, that will not preclude UK authorities from sharing information with EU authorities if appropriate, which the existing domestic framework for co-operation and information sharing with countries outside the UK allows for on a discretionary basis.

Fourthly, the draft regulations will transfer to the appropriate UK bodies functions currently carried out by EU authorities. Under the payment services directive

implemented by the Payment Services Regulations, responsibility for drafting regulatory technical standards currently sits with the European Banking Authority. In line with the Government's cross-cutting approach to the transfer of functions, the draft regulations will ensure that those functions are transferred to the appropriate UK body, the Financial Conduct Authority.

The draft Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations will make the following principal amendments to the retained EU regulation on credit transfer and direct debits in euro. First, they will introduce the concept of a qualifying area, comprising the UK and the EEA, within which they will apply to UK payment service providers' euro-denominated transactions. The qualifying area is broadly aligned to the geographical scope of SEPA, but it does not include SEPA's existing non-EEA country participants; EU law does not include those countries, so it is not possible to include them in UK law under the European Union (Withdrawal) Act.

Secondly, the draft regulations will transfer to the appropriate UK body functions currently carried out by EU authorities. Under the regulation on credit transfer and direct debits in euro, the European Commission may adopt delegated acts to take account of technical progress and market developments. In line with the Government's cross-cutting approach on the transfer of functions, the draft regulations will ensure that those functions are transferred to the appropriate UK body, Her Majesty's Treasury.

Finally, let me turn to the interaction between the UK's future participation in SEPA and the provisions made in both sets of draft regulations. The UK payments industry is required to make an application to maintain participation in SEPA as a non-EEA country in a no-deal scenario; I understand that UK Finance, which represents UK payment service providers, has made such an application on behalf of the industry. Applications from non-EEA countries are determined by the European Payments Council by reference to its published criteria for non-EEA country participation. Through the draft regulations, the Government intend to retain relevant EU law in a way that maximises the prospects of the UK maintaining participation in SEPA.

Should the UK not maintain participation in SEPA in a no-deal scenario, UK payment service providers would be unable to comply with some of the requirements in UK law that presuppose the existence of euro-denominated transactions within SEPA. To cater for that scenario, the draft Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations will give HM Treasury limited powers to revoke certain requirements to prevent detrimental effects on UK payment service providers.

In summary, the Government believe that the draft regulations are necessary to ensure that the regulatory regime that applies to payment institutions, electronic money institutions and account information service providers works effectively if the UK leaves the EU without a deal or an implementation period, and to maximise the prospects of the UK maintaining participation in SEPA to the benefit of UK consumers, businesses and the wider UK economy. I hope that colleagues from all parts of the House will join me in supporting the regulations. I commend them to the Committee.

9.5 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is a pleasure to see you in the Chair this morning, Mr Hanson.

As we are all aware, the draft regulations are part of a large number of statutory instruments related to preparations for a potential no-deal Brexit, of which about 70 are expected between now and February. The Minister and I have broached the first few of them already, as have some of my Front-Bench colleagues. We have covered matters relating to the temporary permissions regime, building societies and counterparty clearing. We shall return to such Committees frequently over the coming months.

The Opposition have voiced our concerns about the adequacy of the process, and I will state them again for the record: the number of Treasury SIs and the speed at which they are set to unfold are deeply concerning with regard to ensuring that the Government are held fully accountable. As the Opposition, we commit to make every effort to do that, but this is a constitutionally unprecedented and enormously resource-intensive task that leaves room for error, as much as we appreciate the time that the Minister, his staff and the civil service have taken to brief us.

We continue to be alarmed that we have reached a stage whereby such contingency measures for a no-deal scenario, which occupy significant time and resource of both the Government and the Opposition, must be laid before a Committee. Financial services firms need to be able to plan with certainty about the shape of things to come. In the absence of such clarity, they have ended up enacting their own contingency measures, such as moving staff and resources to the continent in preparation.

Everyone hopes that we will never have to use the provisions before the Committee today, but the day of reckoning gets ever closer. We still await details following the news reports last week that a potential Brexit deal has been struck for financial services, but nothing has yet been communicated formally to the House. Chief negotiator Michel Barnier has contradicted those reports publicly. Will the Minister begin by kindly providing some further details about that settlement, as it relates to the draft regulations, and saying whether there is any substance to those reports? At face value, it appears that we are looking for enhanced equivalence, which the industry has articulated will fall short of what we need to prevent our industry becoming a rule taker.

The draft regulations bring us specifically to the issue of payments. Much collaborative work was undertaken to bring about the implementation of the single euro payments area in January 2014, to the benefit of consumers and businesses alike. It is vital, therefore, that any detriment to consumers must be mitigated as far as possible and that we do not lose the efficiencies that have made cross-border payments easier for individuals and companies. The European Payments Council, in its report on possible outcomes published in May 2018, optimistically posited that we might be able to remain a member of SEPA after exit through functional equivalence—that is significant.

The explanatory notes on the draft regulations refer to the fact that no formal consultation has been undertaken, but that some stakeholders have been consulted. Will the Minister please elaborate on which stakeholders

[Jonathan Reynolds]

have been engaged on the issue and how any relevant concerns have been integrated into the statutory instruments?

The notes also acknowledge the benefits of SEPA, as did the Minister in his speech. It sounded as if the Minister was confirming that the Government see maintaining access to SEPA as a priority. Will the Minister confirm beyond question whether that is the case? If we crash out without a deal, what mitigation of detriment is being planned? The Minister explained that the draft regulations will set up the temporary legal regime, but will consumers see any difference in how they go about their business?

Finally, I note that the draft regulations will extend safeguarding of assets to an approved foreign credit institution anywhere in the world. Will the Minister please explain the driver behind that policy decision to expand beyond EU institutions, and what the criteria would be for foreign institutions to be assessed for their suitability? Those are the only questions that I have this morning.

9.9 am

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to join you and everyone else in the Committee today, Mr Hanson.

I reiterate the concerns expressed by the hon. Member for Stalybridge and Hyde about this process and the necessity for it. From the Scottish National party's point of view, whatever processes and procedures we put in place, all of these regulations will fall woefully short of what we have at the moment as a member of the European Union and the customs union. The Government cannot hide from this: regardless of what deal comes back, it will not be as good, effective or efficient as the system we have at the moment as a full member state. However the Government try to dance around that, it is the reality.

I appreciate what the Minister said in his statement this morning, but there is still an awful lot of uncertainty around this issue. Membership of SEPA is not a done deal and we will not know for some time when it will be a done deal. It would be incredibly useful if the Minister elaborated on the timescale, because we do not even fully know what it will look like to be an adjunct or extra member of this scheme. The reality is that we will have to continue to align with the scheme. We will be a rule taker, accepting all that comes as part of being an additional member of SEPA, without having much influence over how its rules work and how they affect us.

That is detrimental not only for financial services, but for consumers, who have seen the huge benefits of being able to make transactions in euros easily and efficiently, almost without thinking about it. We all see that when we go abroad on holiday and use our credit card or whatever else. We no longer have to have travellers cheques and things are no longer difficult when we go away. Financial transactions have become something that we do not need to think about, because they happen so easily and quickly, whether online or in person. That has been a huge benefit of being in the European Union. I do not think we have talked enough in the debate on the EU referendum about the simplicity that this has brought to people. They no longer need to think about these technical matters—these things just happen.

In moving out of the regime, we will have to set things up ourselves. The Minister mentioned that the FCA will take on some of the financial regulatory framework and standards, and that HM Treasury will take on other matters to do with credit transfers. Again, that creates further burdens on Government, such as the costs of setting up the regimes and ensuring, as I have mentioned previously, that we have the necessary staff, expertise and continuing engagement with the SEPA regime to ensure that we are not caught out if something else changes that we are not involved in setting up. We will have to take whatever comes, or we will risk falling out of the system altogether.

The Minister mentioned that we could offer to share our information on a discretionary basis. Is the reverse also true? Will the regimes under SEPA engage with us on the same basis? We do not know that yet. I ask the Minister to clarify that. It is all very well saying, "We will do our bit and we will help," but if there is no reciprocal arrangement, it is pretty much worthless.

Finally, it would be worthwhile if the Minister outlined clearly the full implications of not being in SEPA. Will it mean, in a no-deal scenario, that transactions will cease? That would have a detrimental impact across all industries and areas. We have to know absolutely clearly what the implications are of no deal and not getting some kind of membership arrangement with SEPA, because if we do not have that, the impact on our economy will be hugely detrimental. We need to know what kind of catastrophe we may face.

9.13 am

John Glen: I will respond to the substantive points raised by the hon. Members for Stalybridge and Hyde and for Glasgow Central. First, I remind the Committee that these statutory instruments are needed to ensure that the regulatory regime that applies to payment institutions, electronic money institutions and account information service providers works effectively if the UK leaves the EU without a deal or an implementation period, and to maximise the prospects of the UK maintaining participation in SEPA.

The hon. Member for Stalybridge and Hyde spoke about the undesirability of this process. I acknowledge that going through 30 or so debates in this place is an interesting experience, but we are doing it to ensure that, in the unlikely scenario of no deal, we have a comprehensive regime in place.

On the overall situation with financial services, the negotiations are ongoing. I acknowledge the speculation over whether we have reached a deal. I am not able to confirm anything, but we are seeking to establish a strong bilateral relationship with EU regulators to fully mitigate the risks of being subject to equivalence decisions that are, at the moment, inadequate. I cannot comment further on that, nor on the progress on the deal as a whole. Members will appreciate that, as a relatively junior Minister at the Treasury, I am not privy to that information.

I can comment on some meaningful points. Concerns were raised about changes to consumer safeguarding as a result of the Electronic Money, Payment Services and

Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations. The Payment Services Regulations 2017 require that payment and electronic money institutions safeguard consumer funds to protect consumers in the event of an institution becoming insolvent. The most prevalent method used to safeguard funds is for the firm to hold them in a segregated account with a credit institution. A significant number of UK firms hold safeguarding accounts in the rest of the EU, and they will still be able to do so once the statutory instrument comes into force. They will also have the option of using safeguarding accounts based elsewhere in the world, subject to adequate guarantees of consumer protection. That is in line with existing practices for protecting client assets in investments.

On the consultation undertaken, the hon. Member for Stalybridge and Hyde quite reasonably said that the usual process has been somewhat truncated. None the less, the draft regulations were published on 5 September and laid on 9 October. Consultation took place with key lobby groups in the industry, in particular UK Finance. We held a series of bilateral conversations with banks, FinTechs, payment providers such as PayPal and lawyers to verify the credibility of the statutory instruments. Although we have not undertaken a formal consultation on the statutory instruments, we have submitted them for approval in terms of the impact assessment and we expect that to come through imminently—next week, I hope.

I was asked about the impacts if the UK loses access to SEPA. SEPA enables efficient, low-cost euro payments to be made across participants. If, as expected, the UK secures a withdrawal agreement from the EU, EU law will be applicable in the UK during the implementation period and the UK will automatically remain within the geographical scope of SEPA. The Government's approach to onshoring legislation is designed to maximise the prospects of the UK maintaining participation in SEPA in a no-deal scenario.

On the determination of the application to SEPA, which was raised by the hon. Member for Glasgow Central, UK Finance has made an application. Applications from non-EEA countries are determined by the European Payments Council, which is an international not-for-profit association; it is not part of the EU institutional framework. I cannot give the hon. Lady a categorical assurance over the timetable, because it is a matter for the EPC. UK Finance is in dialogue with it and has made the necessary provisions to do that in a timely way.

The hon. Lady also raised the impact of the UK losing access to SEPA. I think I have covered that.

Alison Thewliss: No, you have said what the impacts are if we stay in.

John Glen: I am sorry: what are the impacts if the UK loses access to SEPA? In the unlikely scenario that the UK does not maintain participation in SEPA, UK consumers could face higher transaction costs and longer transaction times when making euro payments. That is precisely why we are making these provisions and I am happy to concede that. That is what underpins the whole of this legislative effort through statutory instruments.

The hon. Member for Stalybridge and Hyde asked why safeguarding goes beyond the EEA. In order to protect consumer interests, we wanted to make it possible for firms to use as wide a range of safeguarding accounts as possible. Restricting them only to UK accounts could place a burden on firms and restricting them only to EEA accounts would not be legally viable under World Trade Organisation rules on a most favoured nation status.

I hope that I have answered all the questions that were raised. There are two more, possibly. The hon. Member for Glasgow Central asked if the EU will engage with UK authorities on the same information sharing basis. Obviously, that is ultimately a matter for the EU and will be determined by EU law after we leave, but we hope that the UK authorities and the EU authorities maintain a constructive working relationship. Having visited two EU countries last week, I think there is a lot of good will towards the maintenance of that relationship, and that underpins our approach to the negotiations.

We should not assume that in a no-deal scenario there would be outright hostility to the UK; we hope we would be able to manage that. *[Interruption.]* I am seeking to be as constructive and reasonable as possible. I do not mean to be flippant about it. We are doing everything that we can to ensure that those relationships are as strong as possible. Throughout the last 40 years, we have played a leading role in influencing the regulation of financial services and many are uncomfortable with us leaving, but that means that the dialogue can still be very constructive in terms of our influencing future regulation.

Finally, the hon. Member for Stalybridge and Hyde asked about the prioritisation of the SEPA measure. It is a priority, as part of the Government's approach to onshoring legislation. It is designed to maximise the prospects of the UK maintaining participation in SEPA. We are having a complex series of engagements in these Committees, but I am reassured that we have had a full discussion. I hope that the Committee is reassured and has found the sitting informative, and that we will now be able to support the regulations.

Question put and agreed to.

DRAFT ELECTRONIC MONEY, PAYMENT SERVICES AND PAYMENT SYSTEMS (AMENDMENT AND TRANSITIONAL PROVISIONS) (EU EXIT) REGULATIONS 2018

Resolved,

That the Committee has considered the draft Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.—*(John Glen.)*

9.22 am

Committee rose.