

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT MARKETS IN FINANCIAL INSTRUMENTS  
(AMENDMENT) (EU EXIT) REGULATIONS 2018

*Monday 17 December 2018*

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**Friday 21 December 2018**

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

*Chair:* MR VIRENDRA SHARMA

- |  |   |
|--|---|
| † Abrahams, Debbie ( <i>Oldham East and Saddleworth</i> ) (Lab)    | † Reynolds, Jonathan ( <i>Stalybridge and Hyde</i> ) (Lab/Co-op)          |
| † Djanogly, Mr Jonathan ( <i>Huntingdon</i> ) (Con)                | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)                     |
| † Ellman, Dame Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op)  | † Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)                       |
| † Glen, John ( <i>Economic Secretary to the Treasury</i> )         | † Turley, Anna ( <i>Redcar</i> ) (Lab/Co-op)                              |
| † Gyimah, Mr Sam ( <i>East Surrey</i> ) (Con)                      | † Walker, Thelma ( <i>Colne Valley</i> ) (Lab)                            |
| † Knight, Sir Greg ( <i>East Yorkshire</i> ) (Con)                 | † Whately, Helen ( <i>Faversham and Mid Kent</i> ) (Con)                  |
| † Lammy, Mr David ( <i>Tottenham</i> ) (Lab)                       | † Whittaker, Craig ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Lamont, John ( <i>Berwickshire, Roxburgh and Selkirk</i> ) (Con) | † Whittingdale, Mr John ( <i>Maldon</i> ) (Con)                           |
| † Merriman, Huw ( <i>Bexhill and Battle</i> ) (Con)                | Jeanne Delebarre, <i>Committee Clerk</i>                                  |
|  | † <b>attended the Committee</b>   |

# First Delegated Legislation Committee

Monday 17 December 2018

[MR VIRENDRA SHARMA *in the Chair*]

## Draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

4.30 pm

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

That the Committee has considered the draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

May I say what a pleasure it is to serve under your chairmanship, Mr Sharma? The Treasury has been undertaking a programme of legislation to ensure that if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying before Parliament statutory instruments under the European Union (Withdrawal) Act 2018 to deliver that, and several of them have already been debated in this place, and in the House of Lords. The SI being debated today is part of that programme. It was debated in the House of Lords on 28 November.

The regulations address legal deficiencies in the EU markets in financial instruments regulation and its accompanying directive; in the UK legislation implementing the directive; in other related domestic financial services legislation; and in EU delegated regulations. I will refer to those collectively as MiFID II. The instrument is extremely important for the financial services sector, as without it, essential components of financial services legislation would become inoperable, should the UK leave the EU without a deal. The approach taken in the legislation aligns with that of other SIs being laid before Parliament under the European Union (Withdrawal) Act 2018: it provides continuity by maintaining existing legislation at the point of exit, but amending deficiencies where necessary and introducing transitional provisions to ensure that it works effectively in a no-deal context.

MiFID II is a significant set of EU legislation that regulates the buying, selling and organised trading of shares, bonds and more complex financial instruments. It governs the practices of investment firms, exchanges and portfolio managers among others, and came into effect across the EU on 3 January 2018. One feature of MiFID II is that it requires buyers and sellers on financial markets to disclose data, such as price and volume information for their trades, to bring transparency to the process of price formation in financial markets.

Exemptions from those requirements are available in several cases, and formulae are used to calculate whether a trade may fall under an exemption. They are generally specified by reference to a proportion of pan-EU trading data. However, in a no-deal scenario, the UK may no longer have access to the pan-EU data that the European Securities and Markets Authority uses to calculate the appropriate thresholds. Calculating those thresholds at

a UK-only level may create different thresholds in the UK and the EU. That may create opportunities for regulatory arbitrage and market disruption.

The instrument therefore grants the Financial Conduct Authority new flexibilities and a set of temporary powers, which will last for a period of up to a maximum of four years from exit day, to address certain operational difficulties that the FCA may face after exit. The powers will allow the FCA some controlled flexibility over how the MiFID II transparency regime is operated. The FCA's temporary powers are required because the FCA will not be immediately ready on exit day to operate the transparency regime independently. One challenge facing the FCA is that it does not at present collect all the data that it will require to operate the transparency system on exit day. The FCA will need time to build appropriate IT systems to collect the data required to operate the transparency regime.

The FCA will also need to consider market movements in the immediate aftermath of the UK's exit from the EU before it can estimate an equilibrium on which to base certain adjustments to the UK's transparency regime. Accordingly, the FCA's powers will include the ability to freeze certain pre-exit-day transparency calibrations, so that they have continued binding effect on exit day and for a period thereafter, until such time as the FCA can collect and produce its own data.

The FCA will also have temporary powers to suspend certain transparency provisions during the transitional period. For instance, it will have the power to stop the dark trading of shares, to ensure that such dark trading does not unduly harm price formation in UK markets. To be clear, the intention in granting the temporary powers is to enable the FCA to operate the transparency regime in the UK from exit day and beyond.

**Debbie Abrahams** (Oldham East and Saddleworth) (Lab): I am sorry, but I have not read the regulations, so the Minister may be able to help me. Do they also provide the FCA with the additional skills and resources it will need to undertake that rigorous and important role?

**John Glen:** The hon. Lady is absolutely right to draw attention to the significant resources that will be required. The FCA has been in conversation with my officials in the Treasury, and we are reassured that it is in a position to do the work, and that it can do so under the provisions of the levy that it has.

**Sir Greg Knight** (East Yorkshire) (Con): Will the Minister confirm, for the avoidance of all doubt, that all the powers in the regulations are temporary and time-limited, and that the powers do not give rise to the right to increase taxation?

**John Glen:** I can absolutely give my right hon. Friend that assurance. I will go on to set out some of the additional safeguards.

**Mr Sam Gyimah** (East Surrey) (Con): If the powers are temporary, it would be helpful to know what kind of regime we would have in the long term in the event of a no deal, and whether that would still make us competitive in this area.

**John Glen:** This SI onshores the existing MiFID II regime under the terms of the European Union (Withdrawal) Act 2018. Circumstances that the Government

do not wish for—no deal—would clearly necessitate additional legislation in the next Session. I am working with officials to develop that legislation, so that we would maintain the most competitive regime possible in a no-deal situation, but that falls without the scope of this statutory instrument.

**Mr Gyimah:** Let me make sure that I fully understand. The no-deal context that we are talking about is the emergency of no deal, rather than a long-term settlement for a situation in which the UK does not have a deal with the EU.

**John Glen:** In a no-deal situation, there will be a variety of scenarios with respect to the nature of our relationship with the EU; the calibration of our long-term competitive regime for financial services would depend on the calibration of that relationship, and legislation would be brought forward in the light of that.

I will make progress. To be clear, the intention in granting these temporary powers is to enable the FCA to operate the transparency regime in the UK from exit day and beyond, and to maintain existing outcomes, as far as that is reasonably possible. The 2018 Act does not empower the Government to make non-deficiency-related policy changes to EU legislation. If the Treasury is satisfied that the FCA is ready to undertake its transparency functions, the four-year transitional period may be ended earlier by the Treasury by the issue of a direction that must be laid before both Houses and published.

Some longer-term flexibility will also be given to the FCA to reflect the fact that it may not have access to pan-EU trading data after exit, and therefore may need to use reliable trading data from other countries when calculating certain transparency thresholds.

**Mr David Lammy** (Tottenham) (Lab): Given the extensive nature of the measure, could the Minister outline what further resources he has made available to the FCA to deal with this? Is there some sort of impact assessment of the FCA's capability?

**John Glen:** We have been working closely with the FCA for several months since the SI was published on 5 October. The FCA has discretion to increase its levy if it needs additional resources. That is not something it has communicated to us up to this point, but we have an active, ongoing weekly dialogue. That is a matter for it to bring forward in due course if necessary.

The report of the Secondary Legislation Scrutiny Committee, Sub-Committee B, which was published on 1 November, focused primarily on the transparency regime. It mentioned the adequacy of resourcing for the FCA to carry out its new responsibilities—an issue that has already been raised. The Treasury has been working closely with the FCA to deliver the programme of legislation. It is clearly important that the regulators be adequately resourced to deal with the impact of the UK's withdrawal from the EU. I reiterate that I have full confidence that the FCA has the expertise required to run an effective transparency regime in the UK, irrespective of the outcome of the negotiations with the EU.

The FCA will also publish a statement of policy about how the temporary powers will be used before exit day. That statement of policy and any subsequent changes to it will come into effect only if the Treasury does not raise an objection to it on specified grounds. The Treasury may object to an FCA statement if it

would potentially prejudice an international agreement that the UK hoped to reach, or if the Treasury believes that it may lead to a breach in international obligations. In a no-deal scenario, it is important that the Treasury is able to manage negotiations with international partners effectively. This objection mechanism is a sensible way of ensuring that.

Parliament will, of course, be able to scrutinise and question Treasury Ministers and the FCA further on their approach to the temporary powers—for example, through the Select Committee system—as Parliament does now. The SLSC report also noted that it would have been helpful if the FCA's policy statement on the use of these powers had been made available to the House before this debate. That has not been possible, given the time the FCA needs to consider the drafting of such a statement. However, the FCA has provided assurance that a statement of policy will be ready at least four weeks before exit if the UK leaves the EU without a deal.

I turn to the other issues in this instrument. Currently, certain regulatory functions under MiFID II are carried out by EU authorities—principally, the European Commission and the European Securities and Markets Authority. The Commission and ESMA will, naturally, have no mandate to carry out these functions once the UK leaves the EU. Therefore, this instrument transfers the functions of the Commission to the Treasury and ESMA's functions to the FCA and the Bank of England. It also transfers responsibility for making binding technical standards that specify the detailed regulations that firms must abide by from ESMA to the FCA, the Bank of England or the Prudential Regulation Authority. That is consistent with the approach set out in the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, which were debated in this House on 10 October 2018.

This instrument also deletes provisions in retained EU law that would become redundant when the UK leaves the EU, such as requirements regarding automatic recognition of an action by an EU body, and other references to EU bodies and EU member states. In line with the Government's overall approach, this instrument removes obligations on UK authorities to co-operate and share information with European economic area authorities, although this does not preclude UK authorities from co-operating and sharing information with EEA authorities on a discretionary basis.

Another important set of revisions concerns the treatment of third-country regimes. Under MiFID II, certain elements of a third country's regulatory and supervisory regime may be deemed by the European Commission to be equivalent to the requirements of MiFID. For example, under MiFID II, trading in certain instruments must take place on recognised markets. If a third country is deemed equivalent for that purpose, MiFID II allows trading to take place on those third-country markets. To ensure that the MiFID II equivalence regimes can continue to operate effectively in the UK after exit, the Treasury will take on the European Commission's function of making equivalence decisions for third country regimes. Existing Commission equivalence decisions are also incorporated into UK law so they will continue to apply to those third countries.

**Debbie Abrahams:** I extend my earlier question to the capability in the Treasury. Are there sufficient skills and resources in the Treasury to undertake its new and additional roles?

**John Glen:** Absolutely. I can confirm that those skills exist. New equivalence decisions issued by the Treasury will be laid before Parliament and will be scrutinisable.

To provide as much certainty to business as possible, the Government have introduced a temporary permissions regime, as set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, which were made on 6 November. That will enable relevant EEA firms operating in the UK through a passport to continue their activities in the UK for a limited period after exit day, and will allow them to apply for UK authorisation, or transfer business to a UK entity, as necessary.

This instrument makes special provisions for EEA firms that intend to operate in the UK under the temporary permissions regime by ensuring that they will not be deemed in breach of the UK's MiFID II rules if they can demonstrate that they comply with corresponding provisions in the EU's MiFID II rules. This is necessary because, in the absence of such provisions, legal conflicts could arise that may impede the activities of firms operating under the temporary permissions regime in the UK in certain areas, and that may require them to comply with duplicative regulations.

This provision will apply only to certain provisions of MiFID II during the temporary permissions regime, and only where the EEA MiFID II requirement has equivalent effect to the UK MiFID II requirement. This instrument will also put in place transitional arrangements for data reporting service providers, which are entities that report details of transactions to regulators and publish information under the transparency regime.

Finally, under the transaction reporting regime in MiFID II, investment firms are required to submit a report to their national regulatory authorities following the execution of a trade. Those transaction reports are used by regulators to detect and prevent market abuse. UK branches of EEA firms do not send reports to the FCA, but rather send them to their home regulator, which can then share them between EU regulators. As we will no longer be part of that system, the draft regulations will require UK branches of EEA firms to report to the FCA, in the same way that UK branches of non-EEA firms are required to do. In addition, this instrument provides that firms must continue to report on trades in financial instruments admitted to trading, or traded, on trading venues in the UK and in the EU. That will maintain the existing scope for the monitoring of markets by the FCA and will minimise disruption and adjustment costs for firms.

The Treasury has been working closely with the FCA, the Bank of England and industry bodies—representing large and small firms—in the drafting of these regulations. The Treasury published the instrument in draft, along with an explanatory policy note, on 5 October 2018 to maximise transparency to Parliament, industry and the public, ahead of laying it before Parliament. Regulators and industry bodies have generally been supportive of the provisions in this SI.

To conclude, the Government believe that it is necessary to ensure that MiFID II continues to function appropriately if the UK leaves the EU without a deal or an

implementation period. I hope that colleagues will join me in supporting the draft regulations. I commend them to the Committee.

4.47 pm

**Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): Good afternoon, Mr Sharma. As ever, it is a pleasure to see you in the Chair.

Once again, the Minister and I are in Committee to discuss Treasury-related statutory instruments that make provision for the financial regulatory framework after Brexit in the event that we crash out without a deal. On each of those occasions, my Labour Front-Bench colleagues and I have spelled out our objections to the use of secondary legislation in this manner, as well as the challenges of ensuring proper scrutiny of the sheer volume of legislation passing through Committee.

The frustration that we will spend time and resources creating a framework that might never be used is a point that has already been made several times in Committee. All of us hope that the draft regulations will never have to be used; no deal would be so seriously detrimental to the UK that it is hard to believe that it is anything more than a threat from the Government to try to force their deal through. However, we must recognise that the instruments passing through the Committee might well not disappear on 29 March 2019. Given the chaotic events of the past few weeks, we simply cannot treat lightly the possibility of no deal.

What we are doing today could therefore end up in real and substantive changes to the statute book, so the measures need proper, in-depth scrutiny. If the Government end up without a deal, we have to bear in the mind the stress that the financial markets would be under. We believe that the draft regulations must be considered through that lens, because they would certainly have to be robust.

Members of the Committee might be aware that this draft statutory instrument was originally scheduled for discussion on 28 November, but that was postponed. That is because the Opposition requested that a full debate take place on the Floor of the House regarding this transposition. As has been mentioned previously in these Committees, we must agree to about 70 Treasury-related SIs to ensure that markets do not grind to a halt in the event of no deal. The secondary legislation process contains, as a democratic backstop—if I dare use the word—the option for a debate on the Floor of the House. In the case of this instrument, we believe that to be essential. I will explain why.

I very much appreciate the efforts that the Minister personally and the civil service have made to brief us on the process, and the information that they have provided to us. Earlier today, in the Treasury, we had a most helpful meeting with the civil service staff working on this, as well with representatives of the Financial Conduct Authority. I understand that they are working extremely hard to draft this legislation in a tight timeframe, and I appreciate them taking the time to engage with us, but my conversation in the Treasury reinforced the enormous magnitude of the issues with which we are dealing in this Committee. We simply must have this debate on the Floor of the House, where Members may contribute and the issues can be discussed in the depth they deserve.

The draft SI is different in size and scope from those that have preceded it. The markets in financial instruments directive, or MiFID, as it is more commonly known, is a sprawling piece of legislation that affects our financial markets, from investment banks to retail investors. Now in its second iteration, named MiFID II, the directive has transformed pre and post-trade efficiency in the UK. It has progressed us towards more transparent markets, enshrined critical investor protection, and taken a tough line on inducements.

For anyone not so familiar with the recent changes, there was significant debate about what constitutes an inducement from a financial adviser to encourage an investor to buy a product or service. That resulted in sweeping changes to historical market practices, such as the bundling of free investor research by sell-side operators into execution relationships. We cannot allow any room for the UK to dial back on those measures, or any other measure that helps to improve the transparency and fairness of financial markets in the UK.

The volume of potential legislative changes from transposing MiFID has necessitated the production of a Keeling schedule, which Her Majesty's Treasury has stated it will not draw up for any other SI. If the Government are going to the expense and trouble of producing such a schedule, it should form part of a proper process of democratic review that goes beyond the Committee Room. The shadow Leader of the House, my hon. Friend the Member for Walsall South (Valerie Vaz), made that point during business questions last Thursday.

I wonder whether anyone in the room has come across a Keeling schedule before. We have some exceptionally distinguished Members here, but I would not be surprised if the answer were in single figures, because they are not used very often. A Keeling schedule is effectively a track changes on original legislation. It is necessitated by the significant scope of the alterations to the legislation. The last one needed was for the general data protection regulation. I think we can all attest to the sprawling reach of that item, given the effect on our inboxes. Just 18 Keeling schedules have been deposited in the Library since 2002. The Treasury has told us that it will not draw up such a schedule for any other SI, so how can the Government argue that an item demands a Keeling schedule but does not require a debate on the Floor of the House?

The Treasury's impact assessment of the SI lists the familiarisation cost of it at £9.6 million. That far exceeds the next closest figure, which is for the capital requirements regulations, at £1.7 million. By comparison, the average equivalent cost for the remaining eight SIs for which the Treasury has conducted assessments is significantly lower at just £266,000. The Minister has reassured us on multiple occasions that policy decisions are not being made in the fabric of these instruments, but we must examine closely the implication of what we would be enabling.

The EU approach to drafting regulations, known as the Lamfalussy process, is being imported into UK law. The Treasury will enact the European Commission's powers, and the FCA will take on the responsibilities of the European Securities and Markets Authority. That has wide-ranging implications for supervision. For example, it has been decided that the European Commission's function of assessing equivalence would be transferred

to the Treasury rather than the FCA, yet historically, equivalence decisions have been made by both parties in different circumstances. That should be properly examined and debated, rather than arbitrarily assigned.

In a letter to my colleague the noble Lord Tunnicliffe after the instrument was debated in the other place last month, Lord Bates explained that the intention is to continue the MiFID pre and post-trade transparency regime in the UK. To achieve that, the FCA will have the power to suspend the obligations for pre and post-trade transparency for a specified non-equity financial instrument or a class of non-equity financial instruments during a transitional period of up to four years beginning from exit day. That sounds to the Opposition like a very slippery slope.

Although the intention is that the balance of powers will be examined in future, we cannot be expected effectively to sign a blank cheque on the UK's regulatory regime for four years. We understand, as the Minister explained, that the reason behind it is that the FCA will not be ready to operate the required framework of specified thresholds for transparency on day one. However, my hon. Friend the Member for Oxford East (Anneliese Dodds) raised that issue very early on in the process. It is frustrating that we are receiving clarity on it only now.

Equally, it is challenging for the Opposition to assess the transfer of powers to the FCA without an accompanying policy statement. We are told that the policy statement will be made available before exit day, but it is difficult for us comprehensively to assess the implications of the SI without that information. That is before we have even touched on the FCA's resources to cope with the new regime, a point raised by my hon. Friend the Member for Oldham East and Saddleworth and my right hon. Friend the Member for Tottenham.

There are other issues bound up in the SI that we believe need further debate. Paragraph 7.15 of the explanatory memorandum states that EU trading venues will be denied

“the right to request access to a UK central counterparty (CCP)” under the temporary permissions regime

“unless an equivalence decision is made by HM Treasury”

for that market segment. A lot of assumptions are bound up in that. It means that the European Commission's function of assessing equivalence will be transferred to the Treasury, rather than the FCA. Is the Treasury set up to do that? Historically, the FCA has made decisions about equivalent jurisdictions.

Just two weeks ago, in this same Committee Room, the Minister and my hon. Friend the Member for West Ham (Lyn Brown) debated the draft Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, through which the Bank of England was given powers on equivalence decisions. What governs the decision-making process for restoring those powers to different institutions? A small addendum is included on the future of UCITS—undertakings for the collective investment of transferable securities—funds, which is a significant product segment across the EU with inflows of tens of billions of dollars every month. I know from stakeholders that it suffers particular issues related to temporary permissions regime applications.

For more than a decade, MiFID has acted as the cornerstone of how financial markets operate in the UK. Today, we are proposing hauling that entire operation

[Jonathan Reynolds]

back into the purview of our own regulators and the Treasury if we end up leaving the EU without a deal. More than any other instrument in this process, this one cannot be subject to a top-level discussion by a small group of Members in Committee. The Government helpfully cleared an easy 90 minutes of time to debate this instrument last week when they pulled the debate on the Brexit agreement. That was our window to discuss things further.

There was ample time for this debate to take place on the Floor of the House this week, too; that would have allowed Members to contribute to the analysis. Any reasonable Government in any other reasonable circumstances would have agreed to that request, but this Government cannot afford to allow any EU-related business on to the Floor of the House of Commons, because they are not sure of their majority, but Governments who do not have a majority in the House of Commons are not Governments at all.

As stated at the outset, a no-deal scenario would be so disastrous for the UK that it is difficult to see it as much more than a negotiating tool, by means of which the Government will try to force Parliament's hand. We do not want markets to be unprepared, but there must be proper scrutiny on what we decide, with objections recorded and recognised.

The Opposition believe that this instrument must be debated properly on the Floor of the House. That is why we intend to divide the Committee. I urge fellow Members who support real scrutiny and the sovereignty of Parliament to join us in voting against it.

4.57 pm

**Alison Thewliss** (Glasgow Central) (SNP): It is a pleasure to serve on the Committee with you in the Chair, Mr Sharma. I begin by agreeing with the hon. Member for Stalybridge and Hyde (Jonathan Reynolds); I will support him in that vote. There is ample time for this to be debated on the Floor of the House, if that is wished for. This afternoon we are debating pornography regulations there. If we can debate those there, I do not know why we cannot do the same for something almost as important—MiFID II and this statutory instrument.

There are so many issues that this statutory instrument encompasses that deserve great and serious attention from Members across the House. All Members should be allowed to participate in the debate, not just the small, dedicated crew here. Issues such as the significant data gap are of huge concern. It worries me greatly that between the FCA not having this information and having it, there is ample opportunity for our systems to be exploited. What assurance can the Minister give that that cannot happen? The response to the financial crash showed that gaps in oversight between regulators, the Bank of England and the UK Government can have disastrous consequences. We must hear some assurance that there will be ongoing discussions with all involved to ensure there is no gap for those who wish to exploit one. That would be incredibly serious.

As always, I stress that Scotland's financial sector, which includes firms and workers in my constituency, has been clear that the interests of this sector are best served by us staying in the EU single market and the customs union. Ten years on from the crash, our financial services sector needs urgent reform—not new problems

originating from the decision to go for a hard Brexit. Instead of planning how to minimise the damage, we should use our time to plan a successful future within in the EU, where we can use our skills to make things better, rather than starting from scratch with skills we do not yet have. That seems a huge waste of time and resources.

The hon. Member for Oldham East and Saddleworth picked up on the point that I usually make in Committee about the skills and resources of the FCA and all the other institutions. This draft SI sees a when more powers and responsibilities heading towards those institutions—and huge costs. I very much thank the Minister for the opportunity to meet the FCA, which the Labour Front-Bench spokesperson mentioned. I was not able to be there this morning, but I will certainly take up that invitation in the new year, because it is important to get its perspective.

The impact assessment is clear:

“The direct cost to the FCA of developing and adapting IT systems in order to carry out its new and revised responsibilities under the transaction reporting and transparency regimes is estimated at £3.5m to £4m”.

It also talks about the operational challenges for the FCA of the transparency regime. A whole load of other areas are mentioned in the impact assessment, which hon. Members would do well to have a look at. That is significant; it is a huge amount of money that we do not need to be spending on doing this. It is money that would be better spent in other ways.

I am also concerned about the costs to business. As I mentioned, huge costs are outlined in the Government's impact assessment. Familiarisation costs are a staggering £9.6 million in total; that will affect 3,300 UK firms and 1,650 EEA firms. That is significant. Furthermore, there are the monetised non-familiarisation costs to business. The cost of changes to reporting requirements is £8,750,000; changes to IT systems are £1,750,000 as a one-off cost; and transition costs are £16,750,000. That is huge. On the back page, there are recurring costs to business, year in, year out. Changes to reporting requirements will mean an £8,750,000 recurring cost to firms, and changes to IT systems will mean a cost of £1,750,000. Those are huge costs to business. I would be interested to know how much was anticipated before we got into Brexit. How much was known beforehand? I bet that not an awful lot was known or anticipated.

The hon. Member for Stalybridge and Hyde mentioned the four-year transitional period without a review clause. I, too, am concerned. How do we ensure any degree of scrutiny or transparency? Where is the House of Commons in that process? Basically, we are saying, “Yes, you guys go off for four years. Do what you like, and come back to us if you need to do it any sooner or any longer.” We are losing sight of scrutiny. It sticks in my craw that some people said that we were taking back control from unelected bureaucrats, but here we are handing it over to the nameless, faceless suits in the FCA. Again, that is certainly not what was argued in the campaign.

Lastly, the hon. Gentleman mentioned the Keeling schedule. Every day is a school day in this Committee, but it is very interesting that that has been used in such a limited sense. It is significant that the schedule goes through such a huge document line by line, tracking the changes. For that reason, for reasons of scrutiny, and to ensure clarity about all issues, I support the Labour

Front-Bench spokesperson in favouring an open debate on the Floor of the House. I will vote with him this afternoon.

5.3 pm

**Debbie Abrahams:** It is a pleasure to serve under your chairmanship, Mr Sharma. I will keep my comments brief. I want to put on the record my dismay and despair at where we are. Without having had a meaningful vote on the Floor of the House, we now have to discuss so much legislation—

**The Chair:** Order. Will the hon. Lady kindly link her comments to the SI?

**Debbie Abrahams:** I will indeed. I am making a broader point about why we are here in Committee in the first place, and that is important. This is one of the most undemocratic Governments we have had in my lifetime. To back up the points made by my hon. Friend the Member for Stalybridge and Hyde and the hon. Member for Glasgow Central, the expectation that we will go through an SI with this much detail in half an hour to an hour is completely intolerable. I reiterate that this is so undemocratic. I know that the Minister, who served on the Work and Pensions Committee, is an honourable man. However, the Government really need to look at themselves in the mirror.

5.5 pm

**John Glen:** I listened carefully to the Opposition's remarks, and I will try hard to give a thorough response. Before I get into the detail, it is important to set out clearly that this programme of 70 SIs is about ensuring that if there is an outcome that the Government do not want—no deal—we have a comprehensive regime in place; that is something that we are determined to deliver across financial services.

I listened carefully to what the hon. Member for Stalybridge and Hyde and others said about where the debate should take place. I acknowledge that this is complex legislation, but the terms of the European Union (Withdrawal) Act and the Joint Committee on Statutory Instruments say that it is within our powers to conduct the process in this way, in this place. I recognise that that is disputed, but all I can do is draw attention to the Joint Committee's judgment.

I will need to write to the hon. Gentleman on the issue of inducement, but the point of the European Union (Withdrawal) Act is to maintain the standards that applied while we were in the EU. I reiterate that business decisions are not in my gift as Economic Secretary, but all SIs are approved on the Floor of the House.

A point was made about Keeling schedules. The Treasury will not produce Keeling schedules for anything else. This is undeniably complex legislation. We will produce Keeling schedules in a number of instances. They are internal documents that have not been sufficiently validated for publication, but Parliament decided when it passed the European Union (Withdrawal) Act that powers could be used in that way to prepare us for exit.

On the transitional period being four years, it took approximately four years to develop the detail of the current transparency system and to put in place the systems needed to operate it. The calibration of the current regime is based on EU data. If, in the circumstances following the UK's exit from the EU, it is not possible

or desirable to use such data, the regime will need to be recalibrated to ensure that it achieves its intended effects. That will involve changes to the binding technical standards, the FCA developing the necessary IT infrastructure to operate the regime, and industry having adequate time to implement changes, hence the length of time.

The experience of implementing the current regime taught us that it is necessary to take the time to get things right, rather than rushing complicated policy and operational challenges through. However, the Treasury can end the transitional period at an earlier date if it considers those processes to have been completed, and that the FCA has the ability to run the MiFID II transparency regime before the end of the four-year period.

A point was made about the transitional regime reducing the transparency of trading within the UK, given the FCA's powers to suspend certain transparency obligations, such as those applying to non-equities. The FCA has the power to suspend specified transparency obligations in respect of certain instruments during the transitional period. For instance, the FCA may suspend pre and post-trading transparency obligations in respect of bonds and structured finance products during the transitional period. It can use those powers only where that would advance the FCA's integrity objective—and there are other constraints on its use of the powers. It is not intended or envisaged that the FCA would use those powers to effect a general or long-term suspension of transparency requirements in the UK; it would use them to match a suspension of those requirements in the EU. Without those powers, a suspension in the EU could create regulatory arbitrage between the UK and the EU—something that we wish to avoid.

I acknowledge the points made by the hon. Member for Glasgow Central about the costs of regulatory and IT processes and the number of institutions affected—3,300 in the UK and 1,650 in the EEA. Of course, the assessment sets out the one-off costs and the ongoing costs. I accept that it would be preferable not to do this, but I point out that those sums would be divided over a quite large number of institutions.

As to the appropriateness of delegation, essentially the decision is made on the appropriate functional expertise. The FCA and the Treasury worked very closely leading up to the publication on 5 October. Firms are supportive, and they seek the continuity and orderly market functioning that are imperative for the City and the economy. I accept overall that the process is not perfect, but we have undertaken it in good faith, to establish a functioning regime in a no-deal situation.

I hope that that answers the questions that have been raised. The Government believe that the regulations are necessary, and I hope that the Committee will support them.

*Question put.*

*The Committee divided: Ayes 9, Noes 8.*

**Division No. 1]**

**AYES**

Djanogly, Mr Jonathan	Merriman, Huw
Glen, John	Whately, Helen
Gyimah, Mr Sam	Whittaker, Craig
Knight, rh Sir Greg	Whittingdale, rh Mr John
Lamont, John	

**NOES**

Abrahams, Debbie  
Ellman, Dame Louise  
Lammy, Mr David  
Reynolds, Jonathan

Smith, Jeff  
Thewliss, Alison  
Turley, Anna  
Walker, Thelma

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

5.13 pm

*Committee rose.*



