

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT PAYMENT ACCOUNTS (AMENDMENT)  
(EU EXIT) REGULATIONS 2018

*Wednesday 19 December 2018*

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

*Chair:* ANDREW ROSINDELL

- |  |   |
|--|---|
| † Beresford, Sir Paul ( <i>Mole Valley</i> ) (Con)               | † Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)                       |
| † Dodds, Anneliese ( <i>Oxford East</i> ) (Lab/Co-op)            | † Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con)          |
| † Duffield, Rosie ( <i>Canterbury</i> ) (Lab)                    | † Walker, Thelma ( <i>Colne Valley</i> ) (Lab)                            |
| † Green, Chris ( <i>Bolton West</i> ) (Con)                      | † Warburton, David ( <i>Somerton and Frome</i> ) (Con)                    |
| † Hair, Kirstene ( <i>Angus</i> ) (Con)                          | † Whittaker, Craig ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| Hepburn, Mr Stephen ( <i>Jarrow</i> ) (Lab)                      | Williamson, Chris ( <i>Derby North</i> ) (Lab)                            |
| † Jenrick, Robert ( <i>Exchequer Secretary to the Treasury</i> ) |   |
| † Merriman, Huw ( <i>Bexhill and Battle</i> ) (Con)              | Ben Sneddon, <i>Committee Clerk</i>                                       |
| † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)            |   |
| Smith, Laura ( <i>Crewe and Nantwich</i> ) (Lab)                 |   |
| † Swayne, Sir Desmond ( <i>New Forest West</i> ) (Con)           | † <b>attended the Committee</b>   |

## Sixth Delegated Legislation Committee

Wednesday 19 December 2018

[ANDREW ROSINDELL *in the Chair*]

### Draft Payment Accounts (Amendment) (EU Exit) Regulations 2018

2.30 pm

**The Exchequer Secretary to the Treasury (Robert Jenrick):** I beg to move,

That the Committee has considered the draft Payment Accounts (Amendment) (EU Exit) Regulations 2018.

There is no better way to round off the year than with another statutory instrument. As the Committee will be aware, 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. This instrument will fix deficiencies in UK law on the regulation of payment accounts. The approach taken in the instrument aligns with that taken in other SIs being laid under the European Union (Withdrawal) Act 2018—providing continuity by maintaining existing legislation at the point of exit, but amending it where necessary to ensure that it works effectively in a no-deal context.

The payment accounts directive had three main objectives: to improve the transparency and comparability of fees related to payment accounts; to facilitate switching of those accounts; and to ensure access to payment accounts with basic features for all EU residents. The Payment Accounts Regulations 2015 transposed that directive into UK law. Colleagues will be familiar with payment accounts—they are the day-to-day bank or building society accounts we all use to make and receive payments and to withdraw and deposit cash. In the UK, the most common form of payment account is of course a current account.

In a no-deal scenario, the UK would be outside the EU's legal, supervisory and financial regulatory framework. The 2015 regulations therefore need to be updated to ensure that the provisions work appropriately in that scenario. These draft regulations are mostly concerned with removing EU references, so the impact on consumers and businesses will be minimal. However, I will go into a little more detail about the changes governing payment accounts with basic features—"basic bank accounts", as they are more commonly known in the UK—because the Secondary Legislation Scrutiny Committee and the House of Lords Grand Committee drew particular attention to them.

It is important to emphasise that the draft regulations retain the requirement for the UK's nine largest current account providers to provide basic bank accounts free of charge, in sterling, to customers legally resident in the UK, regardless of their nationality, if they do not hold a current account at a UK bank or are not eligible for a standard current account. However, as the UK will no longer be part of the EU's single market in

financial services after exit day, the instrument removes the requirement on those nine basic bank account providers to offer those products to customers resident in the EU or to offer EU currency services as a standard feature on any basic bank account.

It will be at the discretion of the nine providers whether to continue to offer basic bank accounts to customers resident in the EU after exit day, or to keep existing basic bank accounts of EU residents open. Although firms will no longer be compelled to provide non-sterling services on basic bank accounts, conversations with the industry suggest that they are very unlikely to withdraw those services.

The SLSC and Members in Grand Committee in the other place asked for reassurances that, should the nine providers choose to close the bank accounts of customers resident in the EU, those customers would not be placed in financial difficulty as a result. There was particular concern that although that might not affect many customers, it could have a significant impact on the small number of individuals affected. Taking into account the comments made in the Lords debate, I will explain briefly why the Government do not expect that these changes will significantly disadvantage customers.

First, the nine providers must give customers at least two months' written notice if they plan to close an account, which should give customers adequate notice to open another account. Secondly, a customer's right to a basic bank account is EU-wide, so customers should be able to open another basic bank account in the member state in which they reside. To be clear, the right of access to a basic bank account depends on residency alone, not nationality.

Under the 2014 payment accounts directive, a customer legally resident in the EU, regardless of their nationality, still has the legal right of access to a basic bank account within the EU. What may change is the cross-border right of access to a basic bank account, which under this SI will no longer be mandated on the UK side because the UK will no longer be part of the single market.

The Treasury worked very closely with the Financial Conduct Authority and the Payment Systems Regulator when drafting the regulations. It has engaged the financial services industry and leading consumer groups, and of course it will continue to do so.

In summary, the Government believe that the draft regulations are necessary to ensure that the Payment Accounts Regulations 2015 continue to function appropriately if the UK leaves the EU without a deal or an implementation period. Most importantly, they mean that fee-free basic bank accounts, which are a key financial inclusion product, will remain robustly regulated and available to all eligible customers legally resident in the UK. I hope colleagues will join me in supporting the draft regulations, and I commend them to the Committee.

2.36 pm

**Anneliese Dodds (Oxford East) (Lab/Co-op):** It is a pleasure to serve under your chairmanship, Mr Rosindell. I am grateful to the Minister for his helpful explanation.

Once again, we are in a Delegated Legislation Committee debating a Treasury-related statutory instrument that makes provision for the financial regulatory framework after Brexit in the event that we crash out without a

deal. In each of those debates—there have already been many—I and my Labour Front-Bench colleagues 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 that is being passed. We have expressed frustration many times that we must spend time and resources creating a framework that might never be used. The fact that, as of last night, an additional £2 billion will be spent on no-deal planning, all for the sake of a dangerous game of brinkmanship, is not lost on those whose schools, hospitals and other public services are struggling.

**Michael Tomlinson** (Mid Dorset and North Poole) (Con): It is disappointing to hear the tone the hon. Lady is striking. Does she not see that this is sensible contingency planning, as the Minister set out? We need to be ready for all eventualities, and that is exactly what we are doing. I look forward to her constructive comments on this measure.

**Anneliese Dodds**: I have spoken in many of these Committees, and I will go on to speak constructively about the details of the measure. However, I reiterate that there is considerable concern in the nation about what is happening. To many of us, the prospect of no deal appears closer than it has in recent days, and that is enormously concerning. If we cannot reflect on that concern in this House, I do not know where we can. I believe we do a service to our constituents—businesses as well as individuals—by expressing their worries. *[Interruption.]* I beg your pardon? I think the hon. Gentleman wants to say something.

**Michael Tomlinson**: I said we just need to be ready for it.

**Anneliese Dodds**: I absolutely agree—of course we need to be ready for it. That is why the Opposition have spent so much time going through, to the extent of our abilities, every piece of delegated legislation that has been delivered to us. There will be up to 70 pieces of delegated legislation relating to financial services, so that has been a challenge. Much of that legislation has been delivered at the last minute, without the appropriate documents alongside it and so on, but we are doing our very best to make sure that we are as prepared as we can be in the event of no deal, given the considerable disruption it would create for us all.

Much of this particular piece of delegated legislation is straightforward and merely amends existing legislation to create regulatory equivalence. None the less, I have a number of questions for the Minister. The first issue is the gap in reporting between the potential no-deal date and 2022. I am unclear why regulation 13(b) will omit regulation 43(1)(b) of the Payment Accounts Regulations 2015, which commits the FCA to reporting back to the Treasury every two years on

“compliance by the Money Advice Service with the requirements of regulation 12”

of the 2015 regulations. Regulation 12 states:

“The Money Advice Service must provide consumers with access, free of charge, to a website comparing fees charged by payment service providers”.

There is no indication in the 2015 regulations, or in the draft regulations we are considering, why that is in any way necessary or in keeping with the rest of the measures. Perhaps the Minister will explain that.

I note that Baroness Drake raised the issue of the transparency of fees and charges in the other place, but the Minister there did not respond to her question, although he responded to other issues she raised. Will this Minister explain why an alteration is being made in that regard when, in theory, as he said in his introduction, this measure is meant to be a simple transposition of responsibility?

The second issue is that, at least as of this lunch time, the impact assessment has still not been published, despite the fact that this SI was debated by the Lords last week. Will the Minister explain why it has not been published and why we are being expected to pass a measure when we have not even seen an impact assessment? That approach is becoming common across Government, and it is a worrying development. Just last night, we saw that, in relation to the most fundamental power of a Government—the ability to deprive people of their liberty; in that case, people who are mentally incapacitated—an impact assessment was provided only the day before, and it was already out of date.

We have procedures in this House to prevent the passage of flawed legislation and ensure democratic scrutiny. The Opposition are well aware of the pressure that our civil servants are under. They are working in incredibly difficult circumstances, which the Government created. We cannot stand by and let our capacity to scrutinise measures be reduced by information not being made available to us. I hope the Minister will inform us when the impact assessment will be provided and explain why it was not available before the Committee sat or the Lords considered this measure.

Baroness Drake pushed the Minister in the other place on the impact this SI may have on UK citizens resident in other EU countries. We are all aware of the necessity of bank accounts for everyday activities. Even with the two months’ notice period that the Government have stressed applies to this measure, it is worrying that banks could close accounts in the event of no deal. The Minister in the other place seemed to suggest that would be a commercial decision, and this Minister suggested it would be at the discretion of banks—I think that was his terminology. Will he provide deeper assurances that the Government will consider the people who may be negatively affected? I appreciate that there have been conversations—to use his language—but we need something stronger.

In the other place, we were informed that only a very small number of people would be affected, but the impact could be very significant. As my counterpart in the other place, Lord Tunncliffe, rightly stated,

“for the people it affects, it affects them 100%. If you cannot get a basic bank account, that is pretty close to catastrophic in the modern world”—*[Official Report, House of Lords, 12 December 2018; Vol. 794, c. GC88.]*

I am not sure about the situation in the UK, as I have not been in that situation myself, but in other countries it is difficult to conduct certain transactions without a domestic bank account. Paying Government bills or bills to public service providers can get very complicated without a domestic bank account. Even with the international bank account number system, it is still very difficult.

I can imagine a UK citizen resident in an EU27 country needing a UK bank account to pay for services or goods consumed by an elderly parent—almost like

[Anneliese Dodds]

an emergency bank account. If that account were closed, the UK citizen would have the hassle of searching around to find another bank that was capable of providing an account to them. Presumably, they would have to do that on their own—they would need to shop around themselves, potentially at a time when they were nervous about their ability to use their existing account over the next two months and about needing to get a new one to pay for the items their parent required.

Will the Minister consider asking the FCA or another body, if such circumstances arise, to ensure that people who are affected by closure of their account can at least access information about which other providers may be willing to provide such an account to them as residents in the EU27? Will he look at ensuring that there is some continuing availability if all the banks decide that, commercially, it is not worth the candle and they do not want to provide an account? That may be the outcome.

The Minister in the other place stated that, although there had not been a formal consultation process about these measures with consumer associations beyond sending them the SI and accompanying information, he suspected that there might have been some contact from consumer organisations following the debate in the other place seven days ago. Will the Minister tell us whether there has been contact with consumer organisations? If so, what was their feedback? Are they happy with the change? We need that kind of information before we can be happy with this measure.

2.45 pm

**Alison Thewliss** (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Rosindell. I agree with many of the comments by the hon. Member for Oxford East; I will not reiterate them all. To pick up a point that was made earlier, yes, we need to do this. Late in the day though it is, we need to be prepared for the worst, because it seems the worst is coming.

I have a few concerns about the SI. It mentions that power to enforce compliance will be moved to the FCA. I have asked other Ministers in other Committees whether the FCA has the capacity to do that. If we say it has to but it does not have the capacity, clearly there will be a huge gap in our financial system, which we cannot afford.

I also note that there are issues with the cross-border opening of accounts. The explanatory memorandum states at paragraph 2.14 that the SI

“removes the requirements for PSPs to facilitate the cross-border opening of accounts”,

and at paragraph 2.17 that

“it will be at the discretion of the nine designated credit institutions whether to offer non-sterling services to customers of a payment account with basic features, and they can continue to charge a reasonable fee for those services.”

Will the Minister say a little more about how the cross-border opening of accounts will work in the event of a no-deal Brexit? What will happen to people who have existing accounts?

I declare a slight interest—my parents have an account in France. Will that account continue to function? Will they be allowed to make transactions? Will arrangements be put in place for the millions of people with accounts across Europe, and will those arrangements be reciprocal?

If we do something at this end, we cannot guarantee that individual EU member states will not make different decisions. We may have 27 different approaches as a result of what we do here, and the Minister needs to tell us a wee bit more about what discussions have been had about that.

It seems clear to me that people will get less of a service. They will also get less protection, for the reasons the hon. Member for Oxford East mentioned to do with advice agencies and everything else. How will people continue with their business or personal banking in the event of their bank accounts being closed with two months' notice? Will they be able to get another bank account, or will the door be firmly closed to them? How do they go about restarting all the transactions that happened through their old account, if they have no certainty that the new account will be good in the future?

As I have noted previously in SI Committees, under the Government's hostile environment, many non-EU nationals in this country have been prevented from having bank accounts to make it as difficult as possible for them to live here. I have just come from the Chamber, where the Home Secretary made a statement about immigration that suggested to me that European economic area nationals in this country will be treated in pretty much the same despicable way as non-EEA nationals. What assurances can the Minister give us that the draft regulations will not be used as part of a hostile environment for EU nationals?

It would be good to have clarity about the number of people affected by the draft regulations. What research has been done on exactly how many EU nationals hold bank accounts in the UK and how many UK nationals hold bank accounts in EU countries? We need to know that to know how many people will be impacted. As the hon. Member for Oxford East said, we have not seen an impact assessment. We really ought to have one.

I note finally that the European Commission seems to have been trolling the UK Government today. It tweeted earlier that it is making cross-border payments in euros across the EU easier and cheaper, which is more of a future than the UK is willing to offer its own citizens and citizens of EU countries.

2.49 pm

**Robert Jenrick:** I am grateful to the hon. Members for Oxford East, and for Glasgow Central, for their comments. I will try to respond to as many as possible.

As we have heard, it is only prudent of the Government to make sensible contingency plans for no deal. Frankly, I would be surprised if any hon. Member did not wish us to do so, given that, although our preference is to leave with a deal, leaving without one is the default position—it is the legal position—and is entirely possible, if not necessarily desirable. In this statutory instrument, we are making modest preparations to ensure that equivalent provisions are in place in the event of no deal.

**Sir Paul Beresford** (Mole Valley) (Con): It is interesting; if the Opposition Members who have been protesting actually supported the deal, we would not be in this situation and would not have to worry about this. I must use this opportunity to congratulate and thank the hon. Member for Glasgow Central, because I understood every word she said.

**Robert Jenrick:** Well, let me answer the questions asked by the hon. Member for Oxford East. She mentioned the gap in reporting between exit day and 2022. That is because the Money Advice Service reports to the Treasury, which then reports to the European Commission, and it is that provision that is deficient. I assure the hon. Lady that there are no changes to the requirement for the Money Advice Service to host a price comparison website—that has already been launched—so to answer the question that she perfectly understably asked, there should not be an issue.

There is no reduction in the requirement for transparency on fees. The only change is that the FCA is taking over responsibility for the regulation of the documents from the European Banking Authority. We have of course worked with the FCA, so I can say in answer to the hon. Member for Glasgow Central that it is willing and ready to take on those responsibilities.

On the wider question about UK citizens living in the EU27, we expect the number of individuals affected by the measure to be very small. We have had conversations with banks on the arrangements that we will put in place; the hon. Member for Oxford East mentioned the subject. It is worth remembering, as I said in my opening remarks, that any individual legally resident in an EU27 country will have the right, under EU law, to access a basic bank account in that country. If they had been using their basic bank account from the United Kingdom solely, and then no longer had access to that—an unlikely scenario, and one that would affect a very small number of individuals—they could, as of right, open a basic bank account in the country in which they are legally resident. We see no reason why they would not be able to do that.

**Anneliese Dodds:** I am grateful to the Minister for that explanation, but surely the question is not whether certain people would become completely unbanked as a result of the changes, but whether they could still carry out the kind of transactions that are very difficult to do, in whatever country, unless one has a domestic bank account. If one does not, it can be very difficult to pay certain kinds of bills and make certain kinds of transactions and so on—and there are normally additional charges involved.

**Robert Jenrick:** Those people would be able to open a bank account in the UK at the commercial discretion of a UK bank. We do not think there will be many, if any, examples of individuals having their bank account withdrawn, but of course it is technically possible that a bank might choose to do that. We think it is unlikely that these individuals would continue to use their UK-based bank account as their sole current account. If, say, a Spanish student came to study in the United Kingdom, opened a UK basic bank account and then returned to Spain, it would be a costly bank account for them to continue to use as their current account, because they would have to pay currency charges whenever they transferred money. The situation that the hon. Lady alludes to would apply only in a limited number of circumstances. I take her point that there could be such circumstances, but we do not think there will be a substantial number.

It is worth remembering that our duty in this instance—I am sure the hon. Lady would support this—is to maintain equivalence, not make policy changes. We are ensuring

that any individual resident in the UK will have access to a basic bank account, but we are not making a change to ensure that UK citizens resident in third countries can have access to a UK basic bank account; that would be a policy change, because it would of course be applicable beyond the EU27 to any country in the world in which a UK citizen might choose to reside. I hope that she is reassured that our intention is to act within the confines of the law—not to go beyond it and take action that might apply to a British citizen resident in, for example, Canada or the United States who wished to maintain or open a UK basic bank account.

The hon. Lady also asked a question about consumer organisations and industry consultation. In drafting the statutory instrument, the Treasury engaged confidentially with industry representatives to make them aware of these changes, and to allow them the opportunity to comment on any of them. We have not received any queries or comments on the proposed changes from those groups, or from any consumer groups, since publication, so we can only assume that they are content, but of course we will continue to work, and to be open to comments, should any come forward in the weeks and months ahead.

I think that I have answered most of the questions posed by the—

**Anneliese Dodds:** The Minister is being very generous with his time. I believe that I asked when the impact assessment would be forthcoming.

**Robert Jenrick:** The hon. Lady is absolutely right, and I will come on to that as my final comment. First, I will answer what I think was the final comment from the hon. Member for Glasgow Central, in respect of potential discrimination against EU nationals resident in the UK. What she suggests is not the case under this statutory instrument. Any resident of the United Kingdom who is legally resident in the United Kingdom will have access to a basic bank account, just as they would if they were living elsewhere in the EU.

**Alison Thewliss:** This is the very point that I was making, though. The issue is the “legally resident” part. I have many non-EU national constituents who end up in dispute with the Home Office, and who could fall foul of being not seen to be legally resident. The Government are now throwing EU nationals into that pot as well, and there is every risk that they could be not legally resident in the eyes of the bank or in the eyes of the Home Office. That is the problem with this situation.

**Robert Jenrick:** With respect, the hon. Lady is not correct. The position under this statutory instrument will be exactly the same as the position today. Anyone legally resident in an EU country and anyone legally resident in the United Kingdom after exit day will have access to a basic bank account, so nobody will be disadvantaged as a result of the SI. The Treasury is working very carefully to ensure, for example, that bank accounts are available to those who are homeless and to ex-offenders as they leave prison. The Government are working carefully with difficult and vulnerable groups to ensure that they have basic bank accounts, but people must be legally resident in the UK. It goes without

*[Robert Jenrick]*

saying that we cannot legislate for those people who are illegal. We have to work on the premise that this will apply only to those who are legally resident in the UK, just as the existing EU rules do.

The hon. Member for Oxford East asked about the impact assessment. We have prepared an impact assessment, as she would expect, and we hope to publish it shortly. The impact assessment is with the Regulatory Policy Committee for consideration, along with a series of other statutory instruments. Together, they form the second tranche of statutory instruments coming from the Treasury. This is the first one, as I understand it, from that tranche that has come before the House. We will publish the assessment once the committee's opinion has been received. We have tried to ensure that impact assessments have completed all the usual processes in time to be published before debates, but that has not

always been possible, for the reasons that the hon. Lady helpfully gave. The sheer quantity of statutory instruments coming forward is placing pressure not just on the civil service, but on the Regulatory Policy Committee, which is a relatively small organisation. These statutory instruments are being prepared at pace, to ensure that we have a robust stand-alone regime in place before March 2019.

This statutory instrument is needed to ensure that consumers in the UK continue to benefit from the regulation of the payment account market, and that the legislation functions appropriately if the UK leaves the EU without a deal or an implementation period. I hope that the Committee has found this afternoon's sitting informative and will join me in supporting the regulations.

*Question put and agreed to.*

2.59 pm

*Committee rose.*