PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT MONEY LAUNDERING AND TRANSFER OF FUNDS (INFORMATION) (AMENDMENT) (EU EXIT) REGULATIONS 2018

Tuesday 8 January 2019

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The Committee consisted of the following Members:

Chair: Siobhain McDonagh

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Bradley, Ben *(Mansfield)* (Con)
† Burden, Richard *(Birmingham, Northfield)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Glen, John *(Economic Secretary to the Treasury)*
† Harper, Mr Mark *(Forest of Dean)* (Con)
† Mak, Alan *(Havant)* (Con)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Moore, Damien *(Southport)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
Sheerman, Mr Barry *(Huddersfield)* (Lab/Co-op)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Walker, Thelma *(Colne Valley)* (Lab)
† Warburton, David *(Somerton and Frome)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*
† Yasin, Mohammad *(Bedford)* (Lab)

Dominic Stockbridge, *Committee Clerk*

† attended the Committee

Second Delegated Legislation Committee

Tuesday 8 January 2019

[Siobhain McDonagh *in the Chair*]

Draft Money Laundering and Transfer of Funds (Information) (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 Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018.

May I say what a pleasure it is to serve under your chairmanship this morning, Ms McDonagh? 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 will continue to be a functioning legislative and regulatory regime for financial services in the United Kingdom. To deliver that, the Treasury is laying statutory instruments under the European Union (Withdrawal) Act 2018, several of which have already been debated in both Houses, with plenty more to come—we have another tomorrow afternoon.

The draft regulations are part of that programme. They will fix deficiencies in UK anti-money laundering law to ensure that it continues to operate effectively post exit. Their approach aligns with that of other statutory instruments laid under the 2018 Act, providing continuity by maintaining existing legislation at the point of exit but amending it where necessary to ensure that it works effectively in the event that we leave the EU without a deal in place.

Many hon. Members present will be familiar with the existing anti-money laundering legislation. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 set out the requirements for regulated firms to combat money laundering and terrorist financing. The EU funds transfer regulation specifies the information that must accompany electronic transfers of funds. The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 established the Office for Professional Body Anti-Money Laundering Supervision within the Financial Conduct Authority early in 2018.

Anti-money laundering legislation is designed to combat illicit finance while minimising the burden on legitimate businesses. In a no-deal scenario, the UK will be outside the European economic area and the EU's legal, supervisory and financial regulatory framework, so the three pieces of anti-money laundering legislation that I mentioned will need to be updated to reflect the UK's new position and ensure that their provisions work properly. The changes that the draft regulations will make to the UK's anti-money laundering regime will primarily affect the financial services sector, but their impact will be minimal and we have engaged extensively with industry to ensure that affected firms are aware of them.

First, the draft regulations will transfer to the FCA responsibility for making technical standards to specify the additional measures that credit and financial institutions with branches or subsidiaries abroad are required to take. Such standards are of a similar type to those that the FCA already makes and are in an area in which it has deep technical expertise, so it is the appropriate body to take on that responsibility. The transfer of this power is necessary because the relevant standards are currently made by the European Commission.

Secondly, the draft regulations will remove the obligation for certain UK persons to have regard to guidelines published by the European supervisory authorities. The UK will be outside the EU's regulatory framework, so it would be inappropriate for UK persons to be legally required to have regard to those guidelines. However, it is important to remember that firms will continue to be required, under the broader obligations of the FCA, to have regard to guidance developed by the UK supervisory authorities and industry bodies.

Thirdly, the draft regulations will equalise the regulatory treatment of EEA member states and third countries for correspondent banking relationships, which arise when one bank provides banking services on behalf of another. Currently, UK financial institutions apply enhanced due diligence measures to correspondent banking relationships with financial institutions outside the EEA, but those measures are not required for intra-EEA relationships. The draft regulations will equalise regulatory treatment so that enhanced due diligence will be required for all correspondent banking relationships. That change better aligns with the Financial Action Task Force standards on the issue and with the existing practice of many UK institutions that apply enhanced due diligence because of the risks associated with correspondent banking relationships.

Fourthly, the draft regulations will equalise regulatory requirements with respect to the information about the payer and payee that accompanies the electronic transfer of funds. UK payment service providers will be required to provide the same volume of information to accompany transfers into EEA member states as to other countries. Those changes are being made to reflect the UK's new position outside the EU's regulatory framework. The position of the Crown dependencies within the UK's payments area will remain unaffected.

Finally, the current money laundering regulations require certain information to be communicated to EU institutions. Those provisions will be removed, as they will no longer be appropriate once the UK ceases to be a member of the EU.

The House of Lords Secondary Legislation Scrutiny Committee queried the change in requirements to transmit information to EU institutions. It also queried whether the FCA will co-operate with its counterparts in other countries to combat illicit finance. However, the draft regulations' changes to information submission requirements relate to specific duties to provide directly to EU institutions information such as the national risk assessment of money laundering and terrorist financing. Legal obligations to submit such information would be inappropriate once the UK leaves the EU, but it is important to emphasise that UK supervisory authorities, including the FCA, will continue to have an obligation

to co-operate, as they consider appropriate, with overseas anti-money laundering authorities in relation to firms that have offices in the UK.

The Treasury has worked closely with the FCA in drafting the regulations. We have also engaged with the financial services industry on them and will continue to do so in relation to other statutory instruments in the onshoring programme. To maximise transparency for Parliament and industry, we published the instrument in draft in November, along with an explanatory policy note.

The Government believe that the draft regulations are necessary to ensure that the UK's anti-money laundering and counter-terrorist financing regime operates effectively and that the legislation will continue 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 them; I commend them to the Committee.

9.2 am

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to see you in the Chair, Ms McDonagh. May I wish everyone on the Committee a happy new year?

Once again, I must say that it feels a little like groundhog day: we are here again to discuss a Treasury statutory instrument that would make provisions for the financial regulatory framework after Brexit in the event that we crash out without a deal. On each such occasion, my Labour Front-Bench colleagues and I have spelled out our objections to secondary legislation being used in this manner, as well as the challenges of ensuring proper scrutiny of the sheer volume of legislation that passes through Delegated Legislation Committees. We have expressed many times our frustration about having to spend time and resources creating a framework that might never be used, and about the public money that has been spent on planning for what should not be viewed as a potential eventuality.

Because of the dangerous game now being played, statutory instruments considered by Committees such as this may not disappear into the ether on 29 March. They could represent real and substantive changes to the statute book, so they need proper and in-depth scrutiny. Equally, we must bear in mind the stress that financial markets would be under in the scenario that the Government allowed such a situation to materialise. Such instruments must be considered through that lens.

The draft regulations follow on from the Sanctions and Anti-Money Laundering Act 2018. I do not want to rerun the many issues of contention that were debated during the passage of that Act, but I think a few significant points that relate to the draft regulations bear further scrutiny, and I hope the Minister will respond to them.

First, it would be helpful to have further information about how the FCA will assess equivalence of third countries' legislation, compared with that of EU countries, following the fourth money laundering directive. Will it use the Commission's list initially and then expand or contract it in the future? If so, what methodology and resources will be used to undertake that? Such a process could obviously be very resource-intensive—a point that I shall come back to later.

Secondly, and relatedly, the existing legislation refers to the Commission's high-risk third country list. The draft regulations would onshore the EU list as of exit day and then commit the UK to updating the list. I understand from debates in the other place that that would be undertaken via the affirmative procedure for reasons of speed.

Has the Government's thinking developed on enabling parliamentary scrutiny of changes to that list? Clearly, there is a need for speed, but that surely has to be balanced with appropriate oversight. As with sanctions policy, it would surely make sense to co-ordinate this with the EU, even if it is not done formally, given the potential resource implications of having to research many different jurisdictions speedily. We do not have an indication in the accompanying notes of how that process would occur.

Kirsty Blackman (Aberdeen North) (SNP): I was going to ask a question in a similar vein about the high-risk countries. I would have less concern if the same list as the EU was used on day one. However, looking for comfort in the future, if the list is going to be changed, and particularly if it will diverge from the EU's list, parliamentary scrutiny should be brought to bear on that.

Anneliese Dodds: I absolutely agree with the hon. Lady. We have seen a lot of contention around the definition of which countries go on the list. There have been criticisms, even at EU level, of how transparent or otherwise that process has been for countries going on or coming off the list. It is therefore important that we get it right if we end up adopting this process in the UK. We need to make sure that it is fully transparent and accountable. It can have a significant impact on the jurisdictions that are affected, so I am grateful to the hon. Lady for raising that point.

Thirdly, I hope the Government will make clear what our co-operation with the EU on anti-money laundering efforts will look like in the future. Currently, we only seem to have the ubiquitous phrase that on this issue the Government are seeking a "deep and special" future relationship with the EU. The Minister provided us with a little more in his comments, saying that we would continue to engage with international processes—I am sorry I did not catch his exact wording.

We need more detail on this. That is important, given the current developments with the recast of the EU's anti-money laundering machinery, including its decision to implement more transparency for trusts. The UK's trust register, as I understand it, is not yet complete and it is not publicly available, even to the limited extent that is proposed in the reform of the anti-money laundering regime. That reform would cover business-like trusts and enable their beneficial owners—or the people who would benefit from their proceeds—to be viewable by those who could prove a legitimate interest in knowing about them, for example journalists as well as law enforcement agencies. That would go beyond the UK regime. It would be helpful to know how we, as a nation, envisage co-ordinating with that process.

We also need more information, given the continuing role of UK-based structures in facilitating hidden transactions. I was astonished to see, in response to a

[Anneliese Dodds]

parliamentary question I tabled, that the Government's loudly promoted crackdown on Scottish limited partnerships has been anything but. In October 2018, there were no less than 3,542 SLPs that said they could not reveal ownership information—which is, of course, now required by law—because of their own failure to obtain that information, and more than 600 that said they could not provide it because, despite knowing who their people of significant control were, they had not been able to collect the required particulars from them. Those figures had only reduced by almost a third and 12% respectively over the previous year, so there really has not been a crackdown in this area, despite what was promised. That is problematic, particularly when other countries are looking nervously at what is happening in relation to these shell companies in our jurisdiction, including EU countries.

Fourthly, I am unclear about one element of drafting. Regulation 8(b)(i) changes an emphatic "must" to a weak "may", to coin a phrase—I am sorry, I could not help myself. Specifically, the amended regulations will state that the commissioners—HMRC—may, rather than must,

"make arrangements to ensure that the NCA are able to use information on the register to respond promptly to a request for information about the persons referred to in"

different regulations. It is not clear to me why that change has occurred. It seems to weaken the language and there is no explanation of it in the memorandum. Surely the parameters for such co-ordination are critical, especially in a context in which we lack any indication from the Government of when they will introduce their promised offence of failure to prevent economic crime, despite the consultation on the subject having ended many months ago.

Fifthly, and perhaps most substantially, there is—as with so many recent statutory instruments—a question about resourcing. Regulation 5(3)(b) grants the FCA the power to make further technical standards relating to the area. FCA funding has been increased by £5 million to cover withdrawal work, but as far as I can see, that is just to aid the transition; there does not seem to be any commitment to maintain increased funding to allow it to use the new powers that it has been given via such instruments. The FCA's annual business plan includes the following statement about EU withdrawal:

"Although our Annual Funding Requirement has increased by £5m to cover EU Withdrawal work, we have still made difficult and challenging decisions about our priority activities across all business areas that are not related to work on EU Withdrawal, including limiting the number of new initiatives we've taken on. We recognise the particular significance of EU Withdrawal on wholesale financial markets, investment management and the general insurance sectors, and our decisions have been driven by our recognition of the capacity of industry to absorb change."

Just yesterday, I discussed with the Thames Valley police and crime commissioner his concerns about resourcing for the FCA with respect to adequately identifying and prosecuting fraud—not an area that is covered by the EU withdrawal process, but one that needs to be provided for appropriately. There still seems to be a lack of recognition from the Government about the impact of this SI and others on the FCA's existing work programme. The FCA's activity was criticised in FATF's assessment last month for having cited only eight firms and collected just £254 million in penalties for anti-money laundering violations over the past five years. The Minister mentioned OPBAS; I am sure that he will be aware that the supervision of professions, which was meant to be tightened up, streamlined and made more coherent through OPBAS, was another area criticised in FATF's assessment.

Interestingly, the draft regulations make no mention of the National Crime Agency, despite concerns expressed in the FATF report about the lack of resources for the NCA, particularly its financial intelligence unit. The Committee may be aware that there has been considerable debate in the specialist press about whether the UK's glowing assessment by FATF was warranted, particularly given the lack of action to better resource the NCA—an issue highlighted in FATF's last evaluation in 2007, which stated that

"the UK financial intelligence unit needs a substantial increase in its resources and the suspicious activity reporting regime needs to be modernised and reformed."

FATF also flagged continuing problems with the lack of verification of data on the Companies House register, a subject that I have repeatedly raised in the House. Because of the FIU's lack of resources, FATF concluded that it

"misses the opportunity to search for criminal activity that might otherwise be missed by"

investigators who

"mine the SARs database for issues linked to their own geographical or operational remits."

I understand that the UK assigns only nine employees to analyse hundreds of thousands of suspicious activity reports, or SARs, each year.

Back in 2007, the UK pledged that it would significantly increase the staffing level of the FIU to 200, but press reports from last October suggested that it has only 80 full-time employees and that the unit has actually lost one in five of its staff over the past 11 years. Apparently, the Government have committed to increasing staffing in this area, so it would be enormously helpful if the Minister provided some assurances on that score. It is not just the FCA that works on money-laundering issues, but the FIU in the NCA, so we need to know that it will be adequately resourced.

9.13 am

Kirsty Blackman: May I start by wishing everyone a happy new year? I will not rerun the entire speech of the hon. Member for Oxford East, but I largely agree with what she said.

I have just a few points to raise. First, if the list of high-risk third countries, which the hon. Lady mentioned, is to change, it will be really important to have expertise in scrutinising those countries, so perhaps there should be a formal role for the Treasury Committee or the Foreign Affairs Committee to look at any proposed changes. Allowing the list to be considered by a group of MPs who are used to looking at such issues would reduce the likelihood of insufficient parliamentary scrutiny. People would still complain, but it would be less likely that people would say that changes to the list of high-risk countries had not been adequately scrutinised if they were looked at by one of those Committees in advance.

I am less concerned about the list in the first place if it is to be directly transposed from the EU's list, because that is clearly working adequately for us at the moment.

It is for changes that might come through in the future that a proper scrutiny process needs to be set up, to ensure that we all feel that these issues are looked at properly.

As was mentioned by the Opposition Front-Bench spokesperson and the Minister, there will be an obligation on the EU and the UK to co-operate. I appreciate that, but my concern is about the actual mechanisms that will be in place to allow that to happen. What mechanisms will be in place? Currently there are mechanisms because we are all part of the EU. How will conversation between those authorities be facilitated, and will that happen on as regular a basis as we would like?

We do not want to see a situation where the UK leaves the EU and is less good at tackling money laundering as a result, and we do not want to see the EU's powers to tackle money laundering reduced either. Continuing that close co-operation is really important. If the Minister made clear through what mechanisms those conversations would happen, it would give us a level of comfort and assurance, rather than there being an obligation to co-operate but no clarity about how it will actually happen.

Lastly, the explanatory memorandum to the draft regulations states that

"certain credit institutions, financial institutions and payment service providers need to expand existing IT systems to reflect the greater levels of scrutiny that will need to be applied to correspondent banking relationships between the UK and EEA states".

I accept that some of those organisations already scrutinise money laundering issues at that level, but some of them do not, as is reflected in that note. I would like the Government to explain what conversations they have had with such organisations about whether they are ready for the changes to be made to their IT systems, whether they are ready to expand their IT systems in the way that the Government say they need to, and whether they will be able to do that by the Government's required date.

It is important, if we are putting an additional burden on companies and organisations, that we do not talk only to financial services trade bodies in general. The Government or their agencies should be talking to the individual companies that will have to make those changes to ensure that they are compliant at the beginning. We should ensure that they are compliant not just to make sure that they are compliant, but in order that money laundering is reduced as a result. It is important that the Government make it clear whether the companies will be ready, and if the companies will not be, what they are doing to make sure that the companies will be ready.

9.18 am

John Glen: It is a pleasure to respond to the hon. Members for Oxford East and for Aberdeen North, who raised a series of thoughtful questions. I have to say at the outset that the draft regulations are about creating the functioning regime that we will need in a no-deal situation. A whole range of points that were raised were discussed during the passage of the Sanctions and Anti-Money Laundering Act 2018, but I will seek to respond to them.

The hon. Member for Oxford East raised concerns about the EU's high-risk third country list. I can confirm that we will use the Sanctions and Anti-Money Laundering Act to update the high-risk register. We will use the affirmative procedure, which will enable Parliament to vote on any changes. International standards will be considered as part of any updates.

The hon. Lady also raised the Financial Action Task Force and its recommendations, and I will come on to some of those around the resourcing of the FIU. However, it is important for the Committee to understand that the comprehensive review of the UK regime that took place last year, which is done on a 10-year basis, judged the UK to be in the best state of all 60 countries that have been evaluated. However, I acknowledge that there are pieces of work that need to be undertaken to improve it.

There has been an 80% reduction in Scottish limited partnerships.[1] The Department for Business, Energy and Industrial Strategy, which leads on this area, published a report in December that set out a series of elements, including tighter regulation, the need for a firmer connection to the UK, increased transparency of information and giving the registrar the power to strike off dormant partnerships. I accept that there is work to be done, but progress is being made.

The hon. Members for Oxford East and for Aberdeen North raised the issue of co-operation with the EU. Paragraph 84 of the political declaration explicitly sets out that the UK and the EU should co-operate on anti-money laundering. I am not able to give chapter and verse on specific mechanisms, but it is important to remind the Committee that the UK is known as a world leader in setting the agenda in this area and it is inconceivable that the Government would not wish to continue to take a lead in driving forward these standards.

Obviously in a no-deal scenario, work would have to take place to establish how the FCA's relationship with the EU would work, in the context of a thorough and holistic piece of legislation on financial services. The Treasury, working across Government with the Home Office and the Ministry of Justice, takes its responsibilities in this area very seriously. I gave evidence to the Treasury Committee's inquiry on economic crime and we look forward to its report, which will guide us and to which we will respond.

The Home Office leads on the resourcing of the FIU and the SARs reform work, so I am not able to give a detailed answer, but shall write to the hon. Member for Oxford East.

Anneliese Dodds: Would the Minister mind also writing to me to indicate when the Government will release their response to the consultation on creating an offence of failure to prevent economic crime?

John Glen: I would be happy to respond on that matter as well.

A point that often comes up in these discussions is the resourcing of the FCA. I acknowledge the great work that it has done over the last 18 months in helping the Government to prepare these SIs. It is funded by an industry levy and has set out in its business plan the resources involved in working towards exit. The Government are confident that the FCA has made adequate preparations ahead of leaving. If additional resources are needed in the event of no deal, it would be able to raise those funds very quickly, but we would all be in a situation where we would have to do things that we had not anticipated. This programme of SIs is about

1. *[Official Report, 17 January 2019; Vol. 652, c. 9MC.]*

[John Glen]

getting to the basic starting point that allows us to have confidence in the regulatory regime, but I do not deny that a considerable amount of work would need to take place.

On maintenance of standards and equivalence with the EU on anti-money laundering, the hon. Member for Oxford East discussed the use of the word "may" versus "must". I want to clarify that what we have removed is the obligation to report in a specific way, as per the legislation. It is not our intention to remove ourselves from either the spirit or substance of that obligation; it is just that it would be inappropriate to leave a legal obligation to an entity when we are a third party. That is the only way that I can describe it.

To expand further on future co-operation, through the bilateral agreement with the EU, we expect to have an expansive relationship that would have a wide scope of cross-border activity. The changes in the SIs do not preclude deep co-operation between UK and EU regulators in the future. It is desirable to have that co-operation.

The hon. Member for Aberdeen North raised the burden on banks' IT systems. When one makes a transfer between one bank and another, if it is in an unfamiliar, non-mainstream destination in Africa—I will not name an individual country for fear of getting a letter from its ambassador—some checks would be done, because the bank would then obviously receive those funds. A check would be done on that, but because that sort of transaction is inherently risky, the same degree of checking will need to take place—and does take place in practice in the banking industry—with countries in the EU that are more familiar to us. Broadly, there is harmony on that matter anyway.

I mentioned the SARs reform, which the Home Office leads on. We anticipate that new IT will provide a more user-friendly portal for reporters from all sectors and that improved data processing, storage, analytics and distribution will be required. Work is being done across the Treasury, the Home Office and the MOJ to look at how we can refine that.[1] At the moment, the basic problem is that there is a high volume of SARs and we could better interrogate that data pool.

The hon. Member for Oxford East mentioned the concerns raised by the Thames Valley police and crime commissioner. He has also raised them with me and I will get in touch with him about them. Obviously, we do not rest on our laurels with respect to the FATF evaluation. I have mentioned the concerns that the Government have acknowledged in terms of the FIU, and the improvements to SARs and to the Companies House register, on which we expect a Government report in Q1 or Q2 of this year.

The statutory instrument is needed to ensure that the UK's anti-money laundering and counter-terrorism financing regime operates effectively and that the legislation functions appropriately if the UK leaves without a deal. I hope that I have adequately responded to the points raised.

Kirsty Blackman: Will the Minister give way?

John Glen: I am very happy to; I have obviously missed something.

Kirsty Blackman: When the Minister was talking about the resourcing of the FCA in the event of a no deal, he suggested that it would be able to draw down extra money very quickly. Is he basically suggesting that, in the event of a no deal, on 1 April, Parliament will come in and approve lots of money to be given to lots of different Government agencies to deal with that scenario, or will that happen in advance of a no deal? We have only 80 days to go.

John Glen: My colleague the Chief Secretary has set out comprehensive budgets for each Department for the financial year with respect to a no deal, and a process for urgent requests. The FCA would be able to raise its levy autonomously and separately from Government. It will have contingency arrangements for doing that quickly. I obviously cannot address all Government agencies and Departments, because it will be done through different Ministers in different Departments, but I can say that the Treasury has fully communicated the process for making additional requests in a no-deal situation to all Ministers in all Departments.

Kirsty Blackman: What about communicating that to Parliament rather than just to Ministers? I know that the scrutiny process is rubbish and Parliament does not have much say on Government spend generally, but surely it should have some say on that.

John Glen: If I take the Department for Education, for example, where a large portion of the budget is for providing food in schools, in a no-deal circumstance where additional costs might be associated with that food, the Minister would need to make a statement to Parliament about that and respond to it. Inherently in the process, there is a mechanism for the Government and different Departments to bring matters to Parliament. They would need to justify where they would spend that additional money and the basis for it. With respect, I think that is beyond the scope of the statutory instrument—at least, that is my judgment.

The Chair: Fascinating though it is.

John Glen: I am sorry for that. I hope the Committee has found the debate informative and will now be able to support the regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018.

9.29 am

Committee rose.

1. *[Official Report, 17 January 2019; Vol. 652, c. 10MC.]*