PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ALTERNATIVE INVESTMENT FUND MANAGERS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2018

DRAFT VENTURE CAPITAL FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2018

DRAFT SOCIAL ENTREPRENEURSHIP FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2018

Wednesday 9 January 2019

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not later than

Sunday 13 January 2019

The Committee consisted of the following Members:

Chair: MR VIRENDRA SHARMA

† Baron, Mr John *(Basildon and Billericay)* (Con)
† Cunningham, Mr Jim *(Coventry South)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Glen, John *(Economic Secretary to the Treasury)*
† Grant, Mrs Helen *(Maidstone and The Weald)* (Con)
† Hughes, Eddie *(Walsall North)* (Con)
McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Seely, Mr Bob *(Isle of Wight)* (Con)
† Shuker, Mr Gavin *(Luton South)* (Lab/Co-op)
† Smith, Jeff *(Manchester, Withington)* (Lab)
Snell, Gareth *(Stoke-on-Trent Central)* (Lab/Co-op)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Hannah Bryce, Yohanna Sallberg, *Committee Clerks*

† attended the Committee

Seventh Delegated Legislation Committee

Wednesday 9 January 2019

[MR VIRENDRA SHARMA *in the Chair*]

Draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018

2.30 pm

The Chair: I will now call the Minister to move the first motion and speak to all the draft instruments. At the end of the debate, I will put the question on the first motion and then ask the Minister to move the remaining motions formally.

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

That the Committee has considered the draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018.

The Chair: With this it will be convenient to discuss the draft Venture Capital Funds (Amendment) (EU Exit) Regulations 2018 and the draft Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018.

John Glen: It is a pleasure to serve under your chairmanship, Mr Sharma. As the Committee will be aware, the Treasury has been undertaking a programme of legislation to ensure that, if the UK leaves the European Union without a deal or an implementation period, there will continue to be a functioning legislative and regulatory regime for financial services in the UK. The Treasury is laying statutory instruments under the European Union (Withdrawal) Act 2018 to deliver that, and several such debates have already been undertaken in this place and in the House of Lords. These draft instruments are part of that programme.

The approach taken in these draft regulations aligns with that in other SIs laid under the EU withdrawal Act, 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 three draft instruments relate to the management, administration and marketing of alternative investment funds.

Investment funds are investment products created to pool investors' capital and invest it in financial instruments such as shares, bonds and other securities. An alternative investment fund is defined as any investment fund not covered by the directive on undertakings for collective investment in transferable securities, commonly known as UCITS. Such funds are often sold to institutional investors, such as pension funds and corporate investors, as opposed to UCITS, which are mainly aimed at retail investors.

Alternative investment funds include hedge funds, venture capital funds and private equity funds. Registered venture capital funds and social entrepreneurship funds are sub-categories of alternative investment funds. The former focus on start-ups and early-stage companies, and the latter on social enterprises. These sub-categories will also have to comply with the alternative investment fund regulations, as well as the regulations specific to them.

The issue is that, in a no-deal scenario, the UK would be outside the single market and the EU's legal, supervisory and financial regulatory framework. Retained EU and domestic law relating to the regulation of alternative investment fund managers, European venture capital funds and European social entrepreneurship funds will therefore need to be updated to reflect this, and to ensure that the provisions work properly in a no-deal scenario. The draft regulations amend the legislation to create a UK-only regulatory framework for alternative investment funds in the UK.

I think it would be worth while to pause at this point and to reinforce the point I have made in previous debates. This is about creating a UK-only regulatory framework; it is not about innovating in any way with respect to disputes that may exist about the regulations. The draft regulations remove references to the Union and EU legislation, replacing them with references to the UK and UK legislation. That includes references to the passporting system, which the UK will no longer be part of after exit.

To ensure that a clearly defined funds regime is identifiable in the UK, the draft instruments create UK-only fund labels, which replace the European Economic Area fund labels with "registered venture capital fund" and "social entrepreneurship fund", reflecting the fact that these funds are located in the UK and subject to UK rules.

The alternative investment fund managers regulations alter the definition and scope of alternative investment funds to reflect the UK's position outside the EU in the scenario that I have described. Any fund that is not a UK UCITS will be treated as an alternative investment fund. The effect is that UCITs located in EEA countries will be treated as alternative investment funds in the UK after exit.

However, the alternative investment fund regulations were not intended for UCITS funds, which are specifically regulated funds aimed at retail investors. As I said, alternative investment funds are more complex funds, largely aimed at professional investors. Different requirements are needed for these types of funds. Therefore, treating EEA UCITS in the same way we currently treat alternative investment funds would be disproportionate. In recognition of that, this instrument removes certain regulations that were not designed for retail funds such as UCITs—for example, certain reporting requirements. That will ensure that EEA UCITS funds continue to be regulated proportionately in the UK as retail funds.

These instruments will also transfer responsibility for the regulation of alternative investment funds and their managers from EEA authorities to the Financial Conduct Authority and from the European Commission to Her Majesty's Treasury. As the UK's national competent authority in the EEA, the FCA is already responsible for supervising alternative investment funds and their managers and therefore has extensive experience of making rules relating to this sector. As of last month, there were 3,936 highly trained and professional individuals working in the FCA on all these areas of regulation.

Furthermore, powers are transferred from the Commission to the Treasury, as the suitable Government body. The Treasury will have powers regarding the rules and regulations in respect of investment funds. For example, it will have the power to specify the criteria used by the FCA in assessing alternative investment fund managers.

Finally, to offer continuity for EEA funds and the UK consumers they service, the alternative investment fund managers instrument delivers a temporary marketing permissions regime for EEA alternative investment fund managers currently passporting into the UK. This was part of the announcement made by the Government in December 2017 in relation to creating a temporary permissions regime for EEA firms and funds. That was something that the Government did proactively to ensure maximum continuity. For alternative investment funds, it will allow EEA fund managers who currently have a marketing passport to continue to market their funds to UK customers, as they could before exit day, for a period of up to three years. Following an assessment by the FCA of the effect of extending or not extending the period, the Treasury will have the power to extend the period for a maximum of 12 months at a time, in line with the position under other transitional regimes that we have been putting forward through such SIs. The SI that will extend the regime will be subject to the negative procedure.

At this point, I want to refer to concerns expressed in the other House during the debate on the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018. In response to those concerns, which I think came from Baroness Bowles, in particular, but probably also from Lord Tunnicliffe, the Treasury has committed that any extension of this or any other such temporary regimes will be preceded, at an appropriate interval of time, by a written ministerial statement issued to both Houses of Parliament, to facilitate closer scrutiny of the decision to have an extension. The statement would give Parliament notice of the Government's decision to extend the temporary permissions regime ahead of the extension SI's being laid.

By the end of the temporary marketing permissions regime, fund managers will be directed to notify the FCA under the national private placement regime, the current mechanism for non-EU, third country fund managers to market alternative investment funds into the UK.

In drafting this instrument, the Treasury worked closely with the FCA, but it has also engaged closely with the financial services industry and, in particular, the Investment Association, and it will continue to engage very closely. In September and October 2018, the Treasury published the instruments in draft form, along with explanatory policy notes to maximise transparency to Parliament and to the industry. That significant engagement has given us positive feedback. The reaction is that people are pleased that we have taken the measures proactively in advance of, and ready for, all outcomes.

I would also like to note that an amendment to the alternative investment fund managers regulations will be brought forward separately and additionally under the related Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, which were laid before Parliament on 17 December 2018. It will amend part 1 of the alternative investment fund managers regulations to bring forward the commencement date of the temporary marketing permissions regime to the day after the 2019 regulations are made. That will ensure that the FCA has the powers it needs in time to have systems in place to implement the temporary marketing permissions regime. Specifically, it will give the FCA power to process notifications before exit day. That is consistent with the other temporary permission regimes that have been introduced.

In summary, the Government believe that the proposed legislation is necessary to ensure that alternative investment funds continue to operate effectively in the United Kingdom, providing continuity for UK investors, 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 the regulations, which I commend to the Committee.

2.41 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a tremendous pleasure to be in the Committee with you in the chair, Mr Sharma. As always, it is a pleasure to sit across from the Minister, and I am sure we will have many more discussions on such SIs this year.

Once again, we are here to discuss Treasury-related statutory instruments that would make provision for the financial regulatory framework after Brexit, in the event that we crash out without a deal. On each previous occasion, 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 the Committee. We have already pointed to the frustration at the fact that we must spend time and resources creating a framework that might never be used, as well as to the public money that has been spent on planning for what should not be viewed as a potential eventuality.

Anyway, because of the dangerous game currently being played in the Commons, the instruments passing through this Committee may well not disappear into the ether on 29 March, even despite yesterday's welcome Government defeat. They could represent real and substantive changes to the statute book, and they therefore need proper and in-depth scrutiny. Equally, in the scenario that the Government allow a no-deal situation to materialise, we need to bear in mind the stress that financial markets would be under, so we must consider these three instruments through that lens.

As a general comment, I am sure it has not escaped the Committee's attention that, yet again, the Government have failed to publish impact assessments for any of the three instruments before us. It is important for parliamentarians and the public to have access to those impact assessments, as the UK leaving the passporting system is likely to have significant consequences. As I mentioned on the last but one such Committee, we are now seeing a worrying trend in information not being produced in time for it to be taken into consideration before measures are passed.

Indeed, that arguably reached farcical proportions last night, when a new tax break was passed for corporations without any information about how corporation tax revenue would be reduced. We were told that that

[Anneliese Dodds]

information would not be produced until after the measure was in place. We in the Opposition cannot fulfil our constitutional role as scrutineers of legislation when such information is not provided to us. Conservative Members also need that information if they are to adequately perform their roles as Ministers or Back Benchers. I hope this will be the last Committee where we are asked to pass new legislation without impact assessments having been produced beforehand.

The alternative investment sector is clearly highly significant for the UK as a whole. There is significant employment in the sector, which was estimated to have around 4,000 people in 2009, and I am sure there are many more now. In addition, the investments the sector permits are essential to the good functioning of our financial system—they have a strong impact on the real economy. On the other hand, of course, weak and in some cases non-existent regulation of this sector was what promoted regulators at EU level to seek to improve accountability and transparency in the wake of the financial crisis, through the regulations that—in theory—are onshored through this set of SIs.

It is therefore essential that we properly scrutinise these measures and, indeed, all the other SIs that have been coming forward in relation to financial and related professional services. I have to say that it was unfortunate that we did not have the chance to discuss the new markets in financial instruments directive arrangements, despite their significance for the UK's financial market infrastructure, but that is a discussion for another day.

Let me turn now to the draft Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018. Of course, as the Minister set out, this instrument attempts to provide regulatory equivalence between the UK and EU regimes for alternative investment fund managers, or AIFMs as I will call them from now on, by maintaining the level of regulation of AIFMs in the UK, while providing an additional temporary permissions regime that would ensure continuity for EEA AIFMs already operating in the UK.

As eligible AIFs will need to notify the FCA prior to exit day if they wish to join this temporary permissions regime, I hope the Minister can clarify what measures are being put in place at the FCA to deal with those requests. I would be grateful if he could also confirm whether his Department has estimated the cost of this process and whether any extra funds have been set aside for this purpose. Also, it would be useful to know what kind of communication strategy has been developed to inform AIFs about this process.

In addition, and perhaps most substantively, the explanatory memorandum for this instrument states that it forms part of the Treasury's contingency planning in the event that the UK leaves the EU with no deal. This instrument achieves that in part by maintaining the same level of internal regulation in the UK. However, as the explanatory memorandum goes on to state, if the UK were to leave the EU without a deal, we would no longer be part of the passporting system, which would impact UK financial interests in the rest of the EEA. That is surely the elephant in the room in this discussion.

I hope the Minister can outline what further efforts the Government are making to mitigate the impacts of these changes and to create a deal that would minimise the impact of our exit on financial services. Personally, I find it extraordinary that we seem to have shifted over the last few months from a position whereby passporting was viewed as the default to a situation where that is now seen as an unreachable goal, despite the fact that financial and related professional services employ one in 10 members of the UK workforce and such services are an enormous contributor to tax revenues and so on. These services really need to be allotted importance within these negotiations.

More specifically, as the Minister will be aware, one of the conditions of the alternative investment fund managers directive is that the depositary and fund service provider to the AIF must be an EU-based institution. What provision has been made for AIFs with UK-based depositaries or fund service providers? Will they lose their AIF status? Will they be assessed on an equivalence basis? Who will regulate them? If they need to switch to an EU-based institution and have not done so already, then the timetable is very, very tight for them.

There is another issue related to that. When it comes to the treatment of EEA-based AIFs, I found the Minister's comments a little confusing. When he first talked about this issue, he said that it was important that those AIFs were not then treated as UCITS, with all the additional requirements, but of course we passed the UCITS-related onshoring measures, as I understand it, on 17 December. So it was not really clear in his comments what the articulation would be between those two onshored regimes. Maybe he could write to me about that.

I find it peculiar that the Minister suggested that things could work the other way round, namely that foreign UCITS could potentially be treated as if they were AIFs, so it would be important to exempt them from regulation. However, they would surely need to be covered by some form of regulation, which, as I say, I thought had been put in place on 17 December. Maybe he can get back to me on that issue, if that is all right.

Similar problems infect the other two SIs we are considering. Of course, social entrepreneurship funds and venture capital funds are now regulated, in practical terms, using a very similar approach to that in the AIF regime. Again, we still have this problem that although these SIs deal with the issue of internal regulation within the UK, we do not have a consideration here of the treatment of UK-based funds within the EEA post exit, and that is surely very important for domestic jobs and financial interests.

2.49 pm

Mr John Baron (Basildon and Billericay) (Con): May I first thank the Minister for his opening comments, and say what a pleasure it is to speak under your chairmanship, Mr Sharma?

As the Committee discusses how we can ensure that those financial standards presently governed by the EU are transferred to our own regulatory bodies in good order, and that any deficiencies are made good, I would like to continue to develop the conversation we have started with the Minister regarding a real concern in the financial services industry about some present EU regulations that, if transferred wholesale, would continue to cause major concerns, particularly to investment trust investors. I double-checked that with the Minister's authorities before the Committee sitting. I understand that investment trusts are caught by these regulations because they are deemed to be investment companies.

Let me start by briefly highlighting for Members my interests in the issue. I specialise in investment trusts, courtesy of my City days when I managed a lot of money for charities at Henderson's and at Rothschild Asset Management. I wrote the *Financial Times* guidebook to investment trusts and my business specialises in investment trusts—I refer Members to my entry in the Register of Members' Financial Interests.

The Minister will be more than aware that the EU's core retail financial services regulations—known as package retail investment products, or PRIPs—have at their heart a key information document, which is supposed to be produced for every single investment trust and unit trust from 2020, in order to help investors better understand what they are buying.

Let me describe as clearly and succinctly as I can what an investment trust is. An investment trust is like any other public company, such as Marks & Spencer or Shell, but instead of managing clothes or oil, it specialises in financial products or investments. Investors have a wide range of investment trusts to choose from—more than 400—covering all areas of the investable world, if that is not a contradiction in terms, ranging from the UK market to very esoteric markets overseas, and specialist sectors within those markets. They are very old and some of them are quite large—one or two are now FTSE 100 companies, Scottish Mortgage being the prime example. They are becoming increasingly popular in the favour of private investors, who are increasingly recognising their ability to outperform benchmarks and outperform their open-ended cousins, unit trusts, over the long term.

The EU regulations we are looking to embody within UK law may have a good intention but the problem is the execution. Many in the industry believe that these key information documents are grossly misleading on the assessment and comparison of risk, grossly misleading on the projection of future returns, and certainly misleading on the comparison with similarly mandated sister funds within the unit trust industry. I suggest to the Minister that that could make for a perfect storm if no corrective action is taken. No wonder all three of the major trade organisations that oversee this particular area—the Investment Association, the Association of Investment Companies and the Personal Investment Management and Financial Advice Association—believe that these regulations should be scrapped or reworked. I am pleased to see that the FCA has instigated a call for evidence but I will later have questions for the Minister about that call for evidence and the follow-through.

Perhaps one needs to make the simple point that investment trusts, although they have a superior long-term track record, are actually riskier because they are more volatile than their open-ended cousins, unit trusts. When an investor puts money into a unit trust, that adds to the pot. When an investor takes money out, that detracts from the money that is managed in the pot. There is a direct relationship between the net asset value of the fund and the share price.

An investment trust is closed-ended. In other words, when one buys an investment trust, as when one buys Marks & Spencer or indeed Shell, one is not adding to their portfolio, but buying shares in the market. There is a disconnect between the net asset value and the share price. Therefore, that makes for volatility by the share price, which is why investment trusts are considered riskier than unit trusts over the short term, but actually they perform better over the long term. That is in part because as a company they can gear—as can all companies, such as Shell and Marks & Spencer—but also because they can take the long view, because they are not having to worry about redemptions and money coming in and out.

The Minister will be pleased to hear that I do not want to rehearse the arguments that we went through when we last discussed this issue, but I remind him that the key information documents—KIDs—being produced by the EU about investment trusts and a similar document that will have to be produced for unit trusts from 2020, are misleading. They are misleading on three counts. They are misleading on the assessment and comparison of risk. They are actually suggesting that investment trusts are less risky than unit trusts, which is clearly not the case. It is generally accepted in the industry that investment trusts are riskier because they are more volatile in the short term, but long-term investors can accept that volatility because they are hoping for better longer term returns, which, on average, investment trusts deliver. If one were just to believe the KIDs coming across from the EU, that logic is turned on its head. They say that unit trusts are riskier, which is simply not the case.

The documents also overstate expected returns because they extrapolate recent returns. KIDs produced in a bull market will suggest higher returns, whereas in a bear market they will suggest lower returns. We all know that past returns should be no guide when investing for the future. In a recent Association of Investment Companies report, 42 KIDs forecast 20%-plus returns per annum in a moderate performance bracket for investment trusts. Anybody who works in investment trusts or in the investment industry generally will understand that to achieve 20% per annum takes quite a bit of doing, and that you have to take on quite a bit of risk. Because of the way the KIDs are formulated, that is treated almost as the norm.

I suggest to the Minister again that if we are not careful and do not address that point, we will encourage the kind of investment behaviour that we should really be doing our best to avoid, which is buying high and selling low, because we simply extrapolated recent returns. That is the complete opposite of what people should do in the investment world. Extrapolating recent returns misleads investors, so there again the KIDs are no help.

I could go on about sister funds, but I am conscious that time is short and I do not think that this is going to be contentious delegated legislation, so I do not want to add to the Committee's time. I remind the Minister of the importance of this issue. When we last discussed it on 10 October, we went into more detail—that was in a Delegated Legislation Committee and the shadow Minister, the hon. Member for Oxford East, was there as well. After that debate, the Minister kindly responded in a letter and, quite reasonably, made the point that the FCA is in the process of reviewing this scenario. He accepted that there were problems with the KIDs and that the FCA was looking into it. There had been a call for input, which closed on 28 September. The FCA is

[Mr John Baron]

now reviewing responses, and the Minister suggested that he expects the FCA to publish its feedback statement this quarter.

That is well and good, but may I press the Minister on a couple of points? First, there is a role for Government in this situation. I accept that the FCA is the overarching regulatory body in this regard, but the Government, given that they are rightly making provision for the repatriation of EU powers in this field of finance, have a certain responsibility to ensure that the regulatory bodies are actually performing as they should. I gently suggest to the Minister that the FCA has been slow off the mark on the issue. All the regulatory bodies I quoted earlier suggest that that is the case. It is playing catch-up, and the problem with that is that it can make for hasty decisions and it can mean that the buffer of the timetable is hit more quickly than expected.

I ask the Minister to ensure that the FCA has liaised with the major trade organisations. Until fairly recently there has not been the sort of communication that one would have expected, or certainly anticipated, and that I hope he would have expected, given the delicacy and intricacy of what we are discussing. I ask him to try to ensure that the FCA is doing that and to get his officials to double-check that it is happening.

I also ask the Minister to look at the issue with a greater sense of urgency, if only because we will be leaving on 29 March. It is very likely that the regulations that we are putting in place will take effect, and if they take effect in their present form, they will be deficient. It is as simple as that. The FCA has clearly made that case, because otherwise it would not be calling for evidence. People have been beating the path to its door for quite a while now and it has finally decided to do something about it. I ask him to make sure that it is regarded by his Department as a matter of urgency.

We have a situation in which key information documents, produced under an EU regulation, are telling untruths when it comes to investing in investment trusts. They suggest that investment trusts are less risky than unit trusts. They extrapolate returns that are unrealistic and that one would have to take on quite a bit of additional risk to achieve. That in turn can lead to the sort of investment behaviour that we all think is bad, which is buying high and selling low.

I will not get into the complex issue of sister funds and so forth, but even there, when the key information documents compare investment trusts with unit trust sister funds, there are errors. That is an important point. People's financial futures are—I will not say dependent—certainly influenced by those sorts of issues. As a society, we are rightly saying that people should take greater responsibility for their financial futures, but if they cannot rely on the accuracy of the information supplied by Government, under Government regulation, the Government need to look at that carefully and regard the matter with the sense of urgency I have suggested.

I will stop there. I look forward to the Minister's response. As before, given that we have moved the discussion on, I do not expect a detailed response now—that would be unfair—but I expect some sort of response in writing, because the subject will not go away, particularly as the deadline approaches and as private investors are still not being well served.

3.3 pm

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Sharma. I wish all members of the Committee a happy new year, as this is the first time I have seen them this year.

I echo many of the comments of the hon. Member for Oxford East, particularly about the impact assessments. It is deeply concerning that we do not have the detail on the three instruments before us. The Minister knows that I look at the impact assessments in great detail, as I have quoted figures from them in previous Delegated Legislation Committees, and it is extremely concerning that we are expected to approve the measures with no real idea of their financial impact or the implications for the number of organisations involved—all that detail that is so useful when it comes to our considerations in Committee. The Government must do something about that. We have lots of these instruments coming up, and although I appreciate the time pressures and difficulties of the situation, if we do not have that information we really are making these decisions blind. That is not acceptable, certainly not in a democracy and certainly not given the seriousness of the situation.

I was struck by the very helpful and considered contribution of the hon. Member for Basildon and Billericay, which was based on his extensive experience of the matter. He talked about it being now highly likely that the provisions in the draft orders will take effect. The language in the notes provided for such instruments has also changed significantly from last year. Instead of saying that it is highly unlikely that the provisions will be needed, it now says that the Government have every confidence that a deal will be reached and an implementation period will be in place, but that it is their duty to plan for all eventualities, including a no-deal scenario. That is a significant shift from where things where last year, and we can see the difficulties that it will cause, particularly if, as the hon. Gentleman says—he knows far more about this than I do—the draft orders are not adequate for the task at hand.

The Minister talked about consultation responses. The draft orders have gone out for consultation and responses have come back. We do not really have any idea how many people were consulted and how many responded, or the substance of those responses. It strikes me that other Committees that look at legislation get evidence; it is published and we can see it. However, for these Committees we do not get evidence. I trust the Minister on many things, but we have to trust his saying that all the responses were fine, because we, as members of the Committee and members of the Opposition, have no idea about their substantive content.

If concerns were raised similar to those of the hon. Gentleman, we will not see them, because we have not seen that evidence. I ask the Minister to think about that, and to ask if anything more can be done to give us more access to the consultation responses. Unless we attempt to go out and contact all possible organisations, which we cannot really do as ordinary Members or as party spokespeople, and unless we are specifically given that information, we will not know it. It is difficult for us to get it. I appreciate that the Government have a different job to do in asking for that evidence, but for us to seek it ourselves is impractical, given the speed of the passage of these SIs.

The Minister helpfully mentioned the total number of staff at the FCA, which was good to hear. If he can give us any more detail as to how many might work on the provisions in each of the separate instruments, that might also be useful. I am always looking for more information about how many staff at the FCA will be required to work on these provisions, should they be implemented. We need an idea of the capacity there and how difficult or otherwise it might be to keep control over these draft orders should they be implemented.

I reiterate concerns I have raised before about the extensive powers that the Treasury is taking for itself in the future. I appreciate very much the Minister saying that Parliament has the option to scrutinise further, through a written statement or through an SI to extend any future powers if required. However, I am not quite certain how effective that will be. We need some idea of Parliament's role in all of this as we go forward, because if changes are made in the EU, changes will obviously need to be made here so that we have a degree of equivalence in standards, because otherwise things will completely fall apart. It would be good for Parliament to scrutinise these provisions as we go forward.

It would be useful to know the level of consultation with organisations in Scotland. I am always interested in that. Some of the draft orders will have an impact in Scotland. It would also be useful to know the Government's response to the concerns of the hon. Member for Basildon and Billericay about communication, timing and accuracy. I appreciate that we are under the pressure of time. It might be useful to extend article 50 to give us more time, but in the meantime it would be good to know the answers to these questions and to those that others have raised. There are real concerns about the scrutiny of these provisions now and in the years ahead.

3.9 pm

John Glen: I thank my hon. Friend the Member for Basildon and Billericay and the hon. Members for Oxford East and for Glasgow Central for their exhaustive scrutiny of what I said and some of the issues. I put on the record my great respect for the assiduous way in which Opposition Front Benchers have conducted themselves during this process; I concede that it has not been optimal, in terms of the level of engagement and impact assessments. I will now try to faithfully respond to all the points; when I cannot, I shall write to the relevant Members.

Before I come to the issue of the level of engagement and impact assessments, I will address the point that the hon. Member for Oxford East raised. There were long discussions during the passage of the EU withdrawal Act, but that legislation does not give the Treasury the ability to make major changes to policy or legal frameworks beyond those appropriate to ensure basic continuity. We are acting within the spirit of that and doing so as professionally as we can, with as much work to consult and engage with the industry as possible.

We have not conducted a formal consultation on these SIs, but we have engaged closely with industry to ensure that there is a functioning legal framework in a no-deal scenario. That hints at the points raised, which I will come on to more substantively in a moment, about the fact that there are contested spaces in this area and that, in a no-deal scenario, there would be a significant imperative for a bigger corpus of legislation to set the industry fair in this country. Obviously, though, we anticipate and hope—well, not hope, but believe—that we will secure that deal.

The engagement has involved talking to asset management trade associations, representative bodies such as the Investment Association and wider financial services bodies such as TheCityUK, to get technical input to inform our work. That is across the United Kingdom as a whole. I chair the asset management taskforce and I had three or four meetings through 2018 where many of those concerns were also taken forward. I draw attention to the words of Chris Cummings, the chief executive of the Investment Association, who said on 7 December last year:

> "In a possible no deal Brexit, HM Treasury's commitment to remain open to international funds ensures that the UK will remain a world leading asset management centre and that UK savers will continue to have access to a full range of investment opportunities."

We have worked to satisfy him, and other stakeholders like him, through this process.

I turn specifically to the issue of the impact assessment. The challenge in some areas has been that multiple statutory instruments will apply. We have grouped them together and taken them to the Regulatory Policy Committee to be looked at in the round, so it can then provide a more meaningful assessment of the impact.

I recognise that, as the hon. Member for Glasgow Central said, it is sub-optimal not to have it at this point, but the impact assessment that covers the SIs being debated today has been prepared and is going through the normal clearance and scrutiny procedures. We hope to have it published shortly. It will then cover the balance of those statutory instruments that we will be debating subsequently in these Committees over the next eight weeks, so I hope I will not need to make this apology again.

I emphasise that the point of this legislation is to minimise disruption to firms and their customers and maintain continuity of service provision as a whole. As such, these SIs will significantly reduce costs to business in a no-deal scenario, as without them the legislation would be defective. That is the principle on which we are doing this: we are doing it because the industry wants us to deliver it.

On the point made by the hon. Member for Oxford East about the temporary marketing permissions and the volume of notifications to the market, earlier in the year the FCA launched an online survey for EEA inbound passporting firms and funds, to help inform its preparations and identify firms for which a temporary permission may be relevant. In 2018 there were around 2,060 EEA alternative investment funds that had been notified via a passport to market into the UK. It is not expected that those firms will enter into the temporary marketing permissions regime.

The hon. Lady asked about the specific requirements on depositories. Authorised UK AIFs will be required to have a UK depository as a result of amendments to be made in a related collective investment schemes SI. Transitional arrangements are included in that SI to ensure that firms have sufficient time to make preparations, and unauthorised AIFs will be allowed to have an EEA depository.

[John Glen]

The hon. Lady went on to ask about something that has often been raised: the cost to the sector. Again, we will need to see the overall cost, based on that impact assessment. UK investors will maintain their rights to funds in which they are already investing, and will continue to have access to funds currently marketed under a passport and enter the temporary marketing permissions regime. The main cost to firms that we have identified are familiarisation costs of the new legislation and transition costs, because of changes in legal definitions and reporting requirements for firms using the temporary marketing permissions regime. In due course, I think that will be seen to be a very modest sum.

Both Front-Bench spokesmen referred to the FCA resourcing. I will seek to provide more clarity on that. I managed to get the number of full-time equivalents, but I knew that if I gave some information, more would be requested, so I will seek that out. In its business plan it is funded by a levy and it would be able to move quickly, should it need additional resources.

With regard to UK fund managers passporting into the EEA, the Government are only able to take legislative action in relation to EEA fund managers who passport into the UK; we cannot determine the outcome the other way around. However, again, for the comfort of the Committee, I draw attention to the statement made by the chair of the European Securities and Markets Authority on 3 October 2018, in which he said:

> "In the case of a no deal Brexit, NCAs and ESMA should have in place with our UK counterparts the type of MOUs that we have with a large number of third country regulators…ESMA has co-ordinated the preparations for such MOUs together with the EU27 NCAs."

That is also supplemented by the remarks of Andrew Bailey of the FCA to the Treasury Committee last December, when he estimated that the cost of EU withdrawal for the FCA has been less than initially expected, thanks in part to the temporary permission regimes that the Government have enacted, and which the alternative investment fund managers SI and a number of others have set up.

Mr Baron: I take on board that the Minister has just quoted ESMA and all the rest of it. The trouble is that investment trusts are not well understood within the EU. It is all right for them to say, "We are happy with things," but if they are inherently deficient, we have to step up to the plate.

John Glen: Let me just finish with the points made by the hon. Member for Oxford East and then I will come to my hon. Friend's points.

On the point about regulations on UCITS, I think the hon. Member for Oxford East was asking whether removing the AIF-related reporting requirements for the EEA UCITS, despite their being defined as alternative investment funds, will reduce transparency, in essence. It will not. This instrument carves out reporting requirements on alternative investment funds for funds that obtain recognised status from the FCA, to be sold as UK retail investments. As a result of that recognition process, the FCA will already receive all the information necessary for the effective supervision of the funds.

I want to come to the points made by my hon. Friend the Member for Basildon and Billericay. He kindly offered me the device of writing to him by letter, but in essence he set out a series of concerns, which he raised previously in a similar Committee in October, about the distinctions between the investment trust and the unit trust, and the application of key information documents and how they can be misleading. He drew my attention again to the concerns of the different industry bodies. For the edification of the Committee, I wrote to him, as he pointed out on 26 October. In Q1 2019, the FCA will publish its feedback.

My hon. Friend's point about the obligation of the Government versus the regulator is very fair. I will reflect on his comments and have a regular dialogue. I met the chairman of the FCA this week. I have regular conversations and meetings with the chief executive, and I will make those points to him. That has to be set within the context that I am not licensed by this process to innovate, although I recognise that we must also accept that over the last 10 years we have reached a level of authority and reputation, when it comes to regulatory breadth and depth of oversight, that is commonly welcomed.

My hon. Friend has quite reasonably drawn attention to the lack of familiarity in the EU framework with some of the instruments in some jurisdictions outside the UK, which means that the appropriateness of those conclusions has sometimes been contested. I very much understand the issue.

Anneliese Dodds: I am grateful to the Minister for giving way; he is being very generous overall. Might I gently suggest that, as a Committee, we surely need to know whether the Government raised these kinds of issues at any point in their capacity in the Council, in their relations with MEPs in the Parliament or in their relationship with the Commission?

Of course, as the Minister mentioned, this is a separate process that the Government are undertaking. The UK has frequently drawn attention to the specificities of the British financial sector during the creation of many of these regulations; I experienced that regularly as a Member of the European Parliament. I am not clear whether the British Government made any entreaties about how the KIDs were set up and whether they appropriately covered investment trusts, but surely that would have been the stage. If we start to say that they should be changed at this stage, without having made those entreaties, I think that would raise eyebrows—to put it mildly.

John Glen: I respect the deep—deeper than my own—personal experience of both hon. Members who have spoken about that matter. In terms of the previous engagement of the British Government through their representations as the documents were constructed, I cannot account for that now, but I am happy to write to the hon. Lady about it.

The point that my hon. Friend the Member for Basildon and Billericay is making is that, in the future, when we leave the EU, we will have to take account of the combination of responsibilities to broadly align with common expectations in like-minded investment communities and to attend to real challenges that lead to perverse investment decisions and outcomes for investors, which my hon. Friend is very familiar with.

I hope that has covered the points raised. If there are other points that I have not answered, I will be happy to write to hon. Members.

Mr Baron: May I remind the Minister of the sense of urgency that is required? It is not just that the date of the 29th is looming, but that the FCA, if one were being charitable, has been slow out of the traps—that is not just my opinion, but that of a number of trade bodies—and appears somewhat slow in coming to review the whole situation. Pressure from the Government would help.

John Glen: I accept that. In the context of Q1 of this year, with respect to no-deal preparations, the Financial Services (Implementation of Legislation) Bill on in-flight files is going through the other place at the moment to put in place a mechanism to have discretion to onshore, or not, files that are live. They have to be the priority at the moment, but the point is well made and I have heard it. I will make representations.

I hope I have demonstrated that the regulations are needed to ensure that alternative investment funds continue to operate effectively in the UK if the UK leaves the EU without a deal or an implementation period. I hope that 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 Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018.

DRAFT VENTURE CAPITAL FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2018

Resolved,

That the Committee has considered the draft Venture Capital Funds (Amendment) (EU Exit) Regulations 2018.—*(John Glen.)*

DRAFT SOCIAL ENTREPRENEURSHIP FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2018

Resolved,

That the Committee has considered the draft Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018.—*(John Glen.)*

3.25 pm

Committee rose.