PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT OVER THE COUNTER DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES (AMENDMENT, ETC., AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2018

Tuesday 22 January 2019

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Saturday 26 January 2019

The Committee consisted of the following Members:

Chair: Sir David Crausby

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Eagle, Maria *(Garston and Halewood)* (Lab)
† Glen, John *(Economic Secretary to the Treasury)*
† Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Heald, Sir Oliver *(North East Hertfordshire)* (Con)
† Herbert, Nick *(Arundel and South Downs)* (Con)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† McGovern, Alison *(Wirral South)* (Lab)
† Merriman, Huw *(Bexhill and Battle)* (Con)
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Streeting, Wes *(Ilford North)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Walker, Thelma *(Colne Valley)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Dominic Stockbridge, *Committee Clerk*

† attended the Committee

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Tuesday 22 January 2019

[Sir David Crausby *in the Chair*]

Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

2.30 pm

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

That the Committee has considered the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

It is a pleasure to serve under your chairmanship, Sir David. As part of our contingency preparations for a no-deal scenario, 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 UK. To deliver that, we are laying statutory instruments before the House under the European Union (Withdrawal) Act 2018. A number of those instruments have already been debated in this place and in the House of Lords. The draft regulations are part of that programme.

The draft regulations will fix deficiencies in UK law to ensure that regulations on over the counter derivatives, central counterparties and trade repositories continue to operate effectively post exit, following an approach that aligns with that of other 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 a no-deal context. They are the last of three sets of regulations to address deficiencies in the European market infrastructure regulation—EMIR—and ensure that an effective regulatory framework is in place for over the counter derivatives, central counterparties and trade repositories in a no-deal scenario. They follow two instruments that have already been debated and made: the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.

EMIR is Europe's response to the G20 Pittsburgh commitment made in 2009 to regulate over the counter derivative markets in the aftermath of the financial crisis. It imposes requirements on all types and sizes of entities that enter into any form of derivative contract, including those not involved in financial services, and establishes common organisational, conduct-of-business and prudential standards for central counterparties and trade repositories. It places three main requirements on entities that enter into any form of derivative contract: reporting to a trade repository every derivative contract that they enter into, implementing new risk mitigation standards for uncleared derivative contracts, and clearing through a central counterparty those over the counter derivatives that are subject to a mandatory clearing obligation.

A derivative is a financial contract linked to the fluctuations in the price of an underlying asset or basket of assets. Common examples of assets on which a derivative contract can be written include interest rates instruments, equities and commodities. Over the counter derivatives, which make up the vast majority of the derivatives market, are derivatives that are privately negotiated and not traded on an exchange. Central counterparties stand between counterparties in financial contracts, becoming the buyer to every seller and the seller to every buyer. By guaranteeing the terms of a trade, even if one party defaults on the agreement, they reduce counterparty risk. Trade repositories centrally collect and maintain the records of derivatives and play a key role in enhancing the transparency of derivative markets and reducing risks to financial stability.

In a no-deal scenario, the UK would be outside the European economic area and outside the EU's legal, supervisory and financial regulatory framework. The draft regulations will therefore address deficiencies in EMIR and related UK legislation to ensure that the UK continues to have an effective regulatory framework for over the counter derivatives, central counterparties and trade repositories in a no-deal scenario.

First, they will provide for a continuation of the key requirements set out in EMIR and transfer the relevant EU functions to UK authorities, ensuring that the UK remains compliant with its G20 commitments and maintains a safe and transparent derivatives market. Those requirements include the clearing obligation—the requirement that certain derivatives contracts be cleared through authorised or recognised central counterparties—and the reporting obligation, which is the requirement that firms report details of their trades to an authorised or recognised trade repository. They also include the margin requirements—the provisions in EMIR that dictate that derivative contracts not cleared through a central counterparty should be subject to higher margin requirements.

The margin requirement compels firms to put forward money to cover the costs associated with trades. To have a framework in place to facilitate these requirements, the relevant functions are transferred from the European Securities and Markets Authority to the UK regulators, namely the Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England.

The responsibility for drafting binding technical standards relevant to EMIR is also transferred to UK regulators. The Bank of England will take responsibility for specifying which classes of over the counter derivatives should be subject to the clearing obligation, and will set the phasing in of new clearing obligations for firms regulated by the PRA, with the FCA setting the phasing in for all other firms. The FCA will assume new supervision and enforcement powers for UK trade repositories and the ability to suspend the reporting obligation for firms for up to a year, in the unlikely scenario where no trade repository services are available. The PRA will take on the function of specifying the over the counter derivative margin requirements for those financial counterparties that are authorised by the PRA, with the FCA responsible for setting the requirements for all other cases.

Secondly, the draft regulations transfer the power of granting equivalence decisions for non-UK trade repositories from the European Commission to the Treasury, and transfer functions for recognising non-UK trade repositories from ESMA to the FCA. They also remove from the equivalence process the requirement for an international data agreement, to take into account the UK position outside the EU financial services framework.

Thirdly, the draft regulations create a temporary intra-group exemption regime. Under EMIR, intra-group exemptions may be granted to allow parts of corporate groups to be exempt from the clearing obligation and certain requirements of the risk management obligations, such as the margin requirements, when trading with each other. In a no-deal scenario, after exit day certain cross-border exemptions granted before exit day will no longer apply to the UK. The regime will ensure that intra-group transactions that are exempt from the EMIR requirements before exit day or currently will continue to be so after exit day, to avoid any unintended additional cost and burden on UK firms. The regime will last three years from exit day to allow time for the FCA to determine a permanent exemption, and can be extended by the Treasury if necessary. Under the MiFID II—the second markets in financial instruments directive—legislation, there is an exemption from clearing and margining for certain energy derivative contracts and this exemption is maintained in the draft regulations.

Finally, changes are made to ensure that redundant EU processes that will no longer apply after exit, are removed and replaced with relevant UK processes. Under EMIR, EU trade repositories are authorised and supervised by ESMA and follow the EU's processes of appeal. However, following the transfer of functions from the trade repositories SI, it will be the FCA rather than ESMA who will authorise and supervise trade repositories operating in the UK after exit. EU central counterparties are supervised by colleges, which are groups of EEA regulators that oversee the jurisdiction in which central counterparties and their members are based. After exit day, the UK will be independent from EU jurisdiction and will no longer be required to comply with the EU college system; that regulatory oversight will instead be provided by the Bank of England.

Provisions relating to obligations of member states to share information with ESMA will also be omitted as after exit the UK will no longer be part of the EU supervisory framework. That will not preclude the regulators co-operating with each other in future, as appropriate.

The Treasury has been working closely with the FCA, the Bank of England and industry bodies. The statutory instrument was published in draft form, with an explanatory policy note on 5 December 2018, to maximise transparency to Parliament, industry and the public ahead of laying. Regulators and industry bodies have generally been supportive of, and welcomed, the provisions in this SI. The Government believe that the proposed legislation is essential for ensuring the UK continues to have an effective regulatory framework for over the counter derivatives, central counterparties and trade repositories if the UK leaves the EU without a deal or an implementation period. I hope that colleagues will join me in supporting the draft regulations and I commend them to the Committee.

2.39 pm

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on the Committee with you in the Chair, Sir David. It is a pleasure to once again sit across from the Minister. I am grateful to him for his opening comments.

We are yet again in Committee to discuss a Treasury statutory instrument that makes provision for the financial regulatory framework after Brexit in the event that we crash out of the EU without a deal. On each such occasion, I and my Labour Front-Bench colleagues spell out our objections to the use of secondary legislation in this manner, as well as the challenges of ensuring proper scrutiny of the sheer volume of legislation passing through Committee. The frustration that we must spend time and resources—£4.2 billion—creating a framework that might never be used has already been expressed in Committee. I am sure that hon. Members are aware that yesterday there a Committee divided because of ambiguities over customs arrangements for our Crown dependencies. Just before Christmas, we sought a debate on the Floor of the House concerning the transposition arrangements for MiFID, but were rebuffed by the Government. Today, we are yet again being asked to pass legislation without any impact assessment having been provided and with many aspects of the legislation going unexplained. That is just not good enough.

Because of the dangerous game being played by the Prime Minister and her party, instruments being passed through Committee may well 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 were the Government to allow the no-deal scenario to be realised. This instrument must be considered through that lens.

As the Minister explained, the main purpose of the instrument is to transfer responsibilities from EU institutions to the Bank, PRA and FCA and to establish a temporary intra-group exemption regime. That regime will initially last three years, to ensure that intra-group transactions can continue to be exempted from EMIR requirements. Colleagues will be aware that the EMIR system was created in the wake of the financial crisis to ensure that over the counter derivatives would be logged and cleared—conducted through central clearing counterparties in many cases, as the Minister explained—and, where necessary, that margin would be posted. That was required to provide more market transparency and to prevent the kinds of contagion that were in evidence during the financial crisis. EMIR has not been a completely uncontentious technical package of legislation—quite the opposite. There has been controversy about its scope. When I was a Member of the European Parliament, I was involved in discussions about its scope when applied to non-financial firms.

We must act to secure the future of UK derivatives clearing services. Those services play an important role in helping to increase the resilience of our financial system by decreasing the risk of trading. A no-deal Brexit could pose significant risks to access by European traders to services in the UK, as well as vice versa, so although many elements of these measures would be necessary in the event of no deal, we need to know that there would be reciprocation from the rest of the EU. That means working with our partners in the EU to guarantee that we will be granted equivalence rights for

[Anneliese Dodds]

UK clearing services in the case of no deal if the Government insist on not ruling that out. I hope that the Minister will inform us of any assurances that he has received from ESMA and others on that point.

As was echoed in the Minister's comments, the explanatory memorandum for this instrument states that it is aimed at making

"derivatives markets safer and more transparent"

in the event of no deal, but I have questions about the drafting that I hope the Minister can answer. The first and most significant point is that, yet again, we are in Committee without an impact assessment for the instrument. That contradicts the claim on the first page of the explanatory note for these measures, which states:

"An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the 2018 Act"—

the European Union (Withdrawal) Act—

"at or about the same time…is available from HM Treasury…and is published alongside this instrument at www.legislation.gov.uk."

I wasted quite a bit of time looking for the impact assessment. Incidentally, I also looked for the instrument; it is not on that website, either, from what I can see. Later on in the text of the explanatory memorandum I understood why. Section 12.5 states:

"An Impact Assessment has been prepared and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received."

Maria Eagle (Garston and Halewood) (Lab): Does my hon. Friend agree that such statements, whether they were drafted when the intention was to publish a proper impact assessment, as it states, are misleading to the Committee? I have every sympathy with staff rushing to prepare all kinds of statutory instruments, but the fact is that it completely undermines the capacity of the Committee properly to scrutinise this instrument.

Anneliese Dodds: I strongly agree. My hon. Friend is absolutely right that our civil servants are being placed under enormous pressure. None of us underestimates the enormous challenge they face, but equally, as Members of this House, we need to be able to scrutinise legislation properly. That requires knowing when we will have those kinds of documents available to us or otherwise.

I am aware that the Minister said to me at the last such Committee that I attended that the Regulatory Policy Committee was looking at a number of the no-deal related Brexit SIs in the round, in terms of impact assessment, but that its processes take some time to work through and we should receive the assessment soon. I understand the challenges facing the Regulatory Policy Committee—it is facing an almost impossible task—but we need those assessments. When does the Minister expect the Regulatory Policy Committee to be finished with its task? Was it the right decision for it to lump together a number of different SIs and conduct the impact assessment collectively? Is that approach being taken to other bodies of legislation? I know that financial services are particularly complex, but presumably we have similar complex constellations in other areas of no-deal planning. Committee members need to have some degree of certainty that more information will become available. Hon. Members are deeply concerned about that.

Secondly:

"Part 2 of this instrument also introduces a power for the FCA to suspend the reporting obligation for a period of up to one year and with the agreement of HM Treasury, in a scenario where there is no registered or recognised UK TR available."

I was not able to find out before the sitting whether that provision exists within EMIR itself—that the reporting obligation would be suspended if there was no recognised or registered TR at EU level—but it would be helpful to hear from the Minister in what scenario the Government envisage that a UK trading repository would not be available. He said in his comments that this was unlikely, but if this has been identified as a potential issue and if gaps in provision are possible, we should be making provisions now for equivalence, so that there would not be any risk of detriment to UK market participants, but there does not seem to be anything in this SI, which aims towards that.

Five of the registered trading repositories seem to my eye—admittedly non-expert—to have at least some kind of a presence in London, whereas only two of them are based entirely outside the UK, in Poland and Sweden. Therefore, the converse question also applies. What will happen to the EU's EMIR regime if UK-based trading repositories cannot provide a service to EU27-based traders? I ask specifically about this because it is surely essential that the reporting obligation is maintained so that transparency continues to be a feature of both UK and EU27 derivatives trading. This is a highly internationalised activity.

Thirdly, the statutory instrument states:

"Provisions relating to TR appeals, fines, supervisory fees, penalties and other supervisory requirements are being omitted and replaced with provisions that align with those already contained in the Financial Services and Markets Act 2000 (FSMA) concerning supervision and enforcement".

However, no indication is provided here of whether these are more or less onerous. Can the Minister enlighten us on that score? Again, there is no clear indication here of the additional resourcing that might be required. That is something we talked about a lot in this Committee until now. This is occurring in a context where the FCA has never before had responsibility for dealing with the supervision of EMIR-related functions.

Finally, the draft regulations transfer powers from the European Commission to the Treasury and from ESMA to the FCA, as with MiFID no-deal transposition, which has already been passed. Most equivalence decisions will be made by the FCA, but as the Minister just confirmed again, those on central counterparty clearing houses will ultimately be made by the Bank of England, so this will not be occurring through the collegiate system that applies currently at the EU level. Will the Minister give us more background? Why is it happening? It sounds like a policy judgment, but we have not been provided with a rationale. As the Opposition have pointed out before in Committee, the Government are effectively trying to transpose the Lamfalussy process into the UK institutional context, but the Commission and ESMA do not interact in the same way as the Treasury interacts with the FCA. There is a different relationship. It is surely inappropriate to port the powers over without any change to supervision. I hope the Minister will give us some assurance on that point. Also, we really need clarity on when the impact assessment will be available if we are to be willing to allow this SI to pass.

2.51 pm

Kirsty Blackman (Aberdeen North) (SNP): I am not the Scottish National party's most regular contributor to this Committee, so I have some learning to do before I get to the level of knowledge that many people in this room have. I have a few questions in relation to the information that has been provided to us and also some of the information that has not been provided to us.

My first question is about the lack of consultation on this statutory instrument. The explanatory memorandum says clearly that no consultation has been undertaken on the instrument, although it says that the Government have been interacting with the Bank of England and the FCA in relation to the drafting of this regulation, which I appreciate. I am pleased that the Treasury put it online back in October so that people could access it. It would be useful to understand how many people engaged with that process. Were representations made by individuals and companies or those who use these regulations and are governed by them? If the Government put them online and only four people see them, there seems little point in doing so. The Government should publicise the fact that the regulations are online for people to comment on. Also, it would be useful for people who might want to comment to know that the Government take comments on board and might actually make changes to the draft instrument before it comes to Committee. Even the Minister's making a statement to that effect would be useful for the people who think, "Is there a point in me spending my time writing a submission on this SI when the Government are just going to ignore me, anyway?" If the Government were willing to say that they would take on board representations, it would be helpful.

My second question is about the intragroup regime and the period of time when it will happen, which is a three-year period with the possibility for extensions, as the Minister mentioned. The explanatory notes state that

"equivalence decisions will be sought, allowing for the establishment of new permanent exemptions."

I am not clear about the exact process for those equivalence decisions being made, as mentioned by the hon. Member for Oxford East. Are such decisions difficult to achieve or relatively smooth? If we have the three-year time period, will there be sufficient time for equivalence decisions to happen, and in adequate ways so that the legislation equivalence rules that we have going forward are appropriate? Does the Minister foresee that being a smooth or a difficult process, and, to allow those things to happen, will it require input from lots of people whom we have no control over?

My next point relates to no deal. The explanatory memorandum states that the Government do not anticipate no deal happening, although, since it was written, things look a little different from the Government's point of view. I am still not particularly clear on any of the statutory instruments that come forward. A lot of them seem to be things to do with no deal as well as things to do with deal. I am not always entirely clear which bits relate to no deal and which bits relate to deal. Not necessarily for this instrument, but going forward, it might be better for the Government to be clearer in the explanatory memorandum about which parts of any SIs would be necessary in all outcomes for Brexit: which ones would be necessary in a no-deal scenario and also which ones would be necessary in a deal scenario, but not until the end of the implementation period. There are all these different outcomes, and I do not have the level of clarity needed. Given that we have quite a packed parliamentary agenda, it is difficult to spend a huge amount of time on legislation.gov.uk trying to find out all these bits of information.

The last point was in relation to the impact assessment. I managed to find the SI online. If you look on the back page there is a direct link to legislation.gov.uk—probably you never thought to look on the back page, but it is there. That takes you through the statutory instrument. I do not know whether it has got the explanatory memorandum there. On that web page, which I checked before I came here, it says that no impact assessment has been prepared for this SI—which is directly contradicted by the information that we have in the explanatory memorandum, which says that an impact assessment has been prepared—*[Interruption.]* I absolutely agree that it is a mess. I do not understand why, if the Government have prepared an impact assessment, we need to wait until the Regulatory Policy Committee sees the impact assessment before we can see it. Surely it could come to hon. Members, with the caveat that it has not been through that Committee? Then we would be in a position to make better decisions.

One of the lines in the explanatory memorandum says:

"It is difficult to quantify the size of the market affected as the instrument covers both the financial sector and non-financial counterparties".

I would expect the impact assessment to cover that information and provide Committee Members with the information included. If the information is not there for the explanatory memorandum, I am concerned about how good the impact assessment must be—if it does not include proper information about the financial impact on various types of companies and organisations. The way this has been put together is not great. I am particularly concerned about the lack of an impact assessment. As I said, MPs do not have a huge amount of time right now. If we had been provided with the impact assessment at the outset, this meeting would have been a lot quicker, given that we would have been able to read all the information before coming here and easily have it to hand.

The fact that the shortened web address is written throughout the explanatory memorandum and the actual address is only at the very back is not particularly helpful. It means that MPs are wasting time trying to find these things, when the full web address could have been provided throughout the text of the explanatory memorandum.

To push on the point that the hon. Member for Oxford East made, if the Minister can give the Committee today a date when the impact assessment will come, or, at least, some kind of timeline, that would give us a level of comfort. Going forward, though, it is totally inappropriate for MPs to be asked to consider statutory instruments when an impact assessment has been written and is required, yet we are not provided with it until after we have considered the statutory instrument—at which point it is too late for us to make any changes to it. If the Minister could give some comfort and, going forward, look at any other SI Committees so that this shambles does not happen again, that would be incredibly helpful.

Maria Eagle: I rise to support my hon. Friend the Member for Oxford East on the points she made, and on some of the points made by the hon. Member for Aberdeen North. I was appointed to this Committee last week. I do not normally spend my time considering derivatives of the over-the-counter version—or any other kind. However, having spent many years as a Minister—and therefore knowing how to look at legislation—I found, when I looked at this instrument, something else that I would like to raise with the Minister. When I was a Minister I used to spend my time, before I came to Committees, making sure that my officials would bring along to the Committee all instruments referred to in the regulations, to enable the Committee, if it wished to look in detail at some wording, to be able to understand what that meant. I thought that having the other instruments in the Committee room was the norm. What we have here is an instrument that refers in terms, for example in part 2, to regulations from 2013, and then sets out:

"In regulation 2, in paragraph (1), for the definition of 'the EMIR regulation' substitute—

'"the EMIR regulation" has the meaning given in section 313 of the Act;'."

To understand the meaning of that, one has to have the regulation to hand. I do not see any copies of the regulation that the instrument refers to here. It was always the practice when I was in Government, and I am sure it was the practice of some Conservative members of the Committee who have been in Government in their time too, to have in Committee all the regulations referred to and being amended, so that if somebody had a particular point to make about a particular part we could see clearly what was being changed, what the implementation of that change would mean, and whether the wording appeared appropriated.

Here, we are left with nothing, in practice, but the explanatory memorandum. We have to take on trust—not that I am saying that I do not trust the Minister—that what we are being told in the explanatory memorandum is in fact being done by the wording that we see in the instrument. I think it is poor practice, if I might say so, and I hope that he will take this back to his Department, to come to Committee with instruments that effectively alter other regulations without making them available in the room. Any officials who had left me in that position as a Minister would have known about it. In fact, I used to ensure that such things were correct in Committee.

I know that there is a big burden of statutory instruments at present, and I understand that Ministers are hard pressed, but it is not right in terms of proper scrutiny for us not to be able to understand the meaning of the regulations. Regulations under the European Union (Withdrawal) Act 2018 are more complex than many because they often simply refer to amendments to primary legislation. Here we have a suite of three regulations, but I was not on the Committees that considered the other two.

It makes it increasingly difficult for an ordinary, intelligent person to understand what the hell is going on. That is not good for scrutiny, for the Minister, for the Government, or for good governance, and it leads us to the impression that what is happening is rushed, has not been thought through, and may be defective. If it is, it will not be possible for members of the Committee to pick up the defects. That is a real problem for proper parliamentary scrutiny.

My hon. Friend the Member for Oxford East referred to part 2. When I was reading the explanatory memorandum, one of the things that jumped out at me, as it clearly jumped out at her, was in paragraph 7.16, on page 6:

"Part 2 of this instrument also introduces a power for the FCA to suspend the reporting obligation for a period of up to one year…in a scenario where there is no registered or recognised UK"

trade repository. I immediately wondered in what circumstances that might be the case. The Minister made a reference to that, and said that it would be highly unlikely—but it is not so unlikely that steps are not being taken in the instrument to deal with it.

Can the Minister tell me how many UK-registered trade repositories there are, and in what circumstances—unlikely though they might be—he envisages that this part of the instrument might have to come into force, or that the powers specified might have to be used? As he said, the whole purpose of the regulations, whether they are operated by EU institutions or by the Treasury, the Bank and the Financial Conduct Authority, is to try to prevent the disaster of the global financial crisis that resulted last time from insufficiently prudent, untransparent regulation of such trades. Will he give us a bit more detail about why he has felt it necessary to include such a provision in the regulations?

I agree with the remarks made thus far by my hon. Friend the Member for Oxford East and others about the lack of any kind of impact assessment. It struck me that there is not even a guesstimate of the cost. Will the Minister tell us what trades we are talking about? If the regulations were referring to a couple of hundred thousand pounds a year, we would not worry as much about it as we would if we were dealing with the equivalent of a quarter or a half of our GDP. Will he tell us what level of financial dealings the regulations relate to?

Kirsty Blackman: I am struck that in these Committees, the Government do an impact assessment for more than £5 million of costs to businesses, but not for under £5 million of costs to businesses. If that is all the information we have to go on, that is sketchy, at best.

Maria Eagle: The hon. Lady makes a good point, and perhaps the Minister would like to comment on that as well.

The other point I would like to make is about the financial and resource burdens that the transfers made through the regulations will put on those who inherit the obligations and functions that used to be carried out by the EU institutions. That appears to be the Bank and the Prudential Regulation Authority part of it, the Financial Conduct Authority and, of course, the Treasury. There is nothing I can see that suggests that extra resources will be passed on to the FCA and the PRA part of the Bank for dealing with the additional obligations that the regulations place upon them. While they may well have experts in such instruments and this kind of trading already on their staff, the work that they are going to be expected to do as a consequence of the regulations, if they have to be used, would be different to the work they are already doing.

What financial provision are the Government making to ensure that the FCA and the Bank have the relevant staff and resourcing to do this very important job that he is asking us to bestow on them? There does not seem to be any information about the impact on those who

will acquire the extra burdens of doing this work, or the likely cost to the Government, the Bank, the FCA and any other authorities, of carrying it out in a way that will work as well as their current arrangements.

3.8 pm

John Glen: I thank the hon. Members for Oxford East, for Aberdeen North and for Garston and Halewood for their clear questioning. I shall try very hard to answer the points raised.

I hear the frustration on the volume and the time that this scrutiny process is taking. All of the 63 statutory instruments we are bringing forward are under the terms of the European Union (Withdrawal) Act that we have previously debated.

The hon. Member for Aberdeen North referred to the issue of equivalence and what would happen with respect to the EU's assessment of the UK. Clearly we cannot determine that unilaterally. We have as deep a dialogue as we can, but these are provisions for no deal. We have sought to engage deeply with the industry and all the different industry players to achieve an outcome that is as optimal as can be in the circumstances. That is why I put on record my absolute commitment to ensuring that we get a deal. I feel very keenly the frustration of the speeches on the process, and I acknowledge that it is not as it would be under normal circumstances.

In terms of the consultation with industry, we have engaged with stakeholders, including the financial services industry, while drafting the SIs. They are strictly limited by the enabling power, and therefore have limited policy choices within them. In some of the areas I cannot go further than what I said in my opening remarks, which is that we are transferring things over and dealing with deficiencies. However, I shall in a moment address the points raised.

We published a document in June, which set out the approach. We have been publishing draft legislation in advance of laying it to maximise transparency, and securing industry knowledge from TheCityUK and others along the way. We discuss EU exit preparations regularly with industry, which has helped us to understand the impact of the SI. We shared a draft version of the SI to allow stakeholders to familiarise themselves with aspects of it.

As to the key question raised in all three Opposition speeches, about impact assessment, I am conscious of the need to publish the relevant impact assessments as soon as possible and want to reassure the Committee that I am doing everything I can to make that happen. I met officials last week and this morning to try to expedite that and complete the necessary clearance processes. We will publish it as soon as possible.

Maria Eagle: Why does the explanatory memorandum say that it has been published?

John Glen: Because at the time it was printed it was anticipated that it would have been published by then.

As ever, I must stress that some firms would incur some costs adjusting to the changes made by the SIs, if they come into effect, but those costs are significantly outweighed by the benefit that is provided by ensuring that the legislation transferred by the European Union (Withdrawal) Act operates effectively after exit. Without the amendments made by the SIs firms would face far greater disruption to their businesses.

Anneliese Dodds: The Minister is being generous with his time and none of us doubts his commitment to ensuring that the process works properly, but will he enlighten us as to the blockages that are preventing that? Is it a matter of resources or policy issues that have to be dealt with? It would be helpful for us to understand, because although it is wonderful to hear he is trying so hard to get it sorted out, the Committee needs more.

John Glen: I am happy to give clarification. Essentially the process of gaining approval for the impact assessment demands that we share certain information and provide it in an adequate form. Because of the unusual nature of the process and the volume of material, it is difficult to line up. As I said to the hon. Lady in the last Committee in which we served opposite each other, we submitted a group of SIs together, and are working as hard as we can to resolve that.

As Miles Celic, the chief executive of TheCityUK, said in a letter in November, these are exceptional circumstances, which require a unique response. We are doing everything to reach that, but I would not want the process to be truncated. We have not yet had an impact assessment that does not give us a green rating, and I want to make sure that that is how things will end up. However, I fully accept that the situation is not an optimal one. I take on board the observations of all three hon. Ladies, and all that I can say is that I am doing everything I can. I understand that that is inadequate in itself, and wish I could give a date, but it is not possible.

Maria Eagle: Given that it has not proved possible to do what the explanatory memorandum says has been done, why has not the Minister republished and corrected it?

John Glen: Because I wanted the opportunity to explain face to face in the Committee and, given the need to secure the SIs for industry, as I made clear in the quotation from TheCityUK, it is not the perfect process. *[Interruption.]* I understand the point that the hon. Lady makes but I think I have responded to it as reasonably as I can.

Kirsty Blackman: Lastly, although the Minister has not said it, it appears to me that the issue might be with the Regulatory Policy Committee not getting through the impact assessments that are sent to it. Given that we are going to have an awful lot of SIs and, presumably, an awful lot of impact assessments, that is likely to become more of a problem. Is it necessary for the assessment to go to the Regulatory Policy Committee? Is there a way we could see it without it going to the RPC?

John Glen: The responsibility rests ultimately with me and my officials, and I have to take it on board. It is for me to be accountable for the impact assessments—I am not blaming anyone else. I will continue to do everything I can over the coming hours and days.

The hon. Lady mentioned impact. The draft regulations will not place new regulatory burdens on UK firms. We expect a one-off familiarisation cost for legal experts to examine the draft regulations, which we estimate will have an impact on just over 400 firms and cost £350,000 in total.

[John Glen]

The regulatory requirements for trade repositories as defined in title VII of EMIR, will remain largely unchanged. The FCA has been given the power to supervise trade repositories against those requirements, but it has been in close engagement with trade repositories to ensure that their transition is as smooth as possible. Trade repositories will have to familiarise themselves with changes to the supervision and enforcement procedures under the UK regime, but we do not anticipate that that will be burdensome or that the familiarisation costs will be high.

The hon. Member for Oxford East asked how likely the FCA is to use the power to suspend the reporting obligation. It is almost certain that it will not need to use that power because the trade repositories regulations enable it to process advance applications for new trade repositories, or convert authorisations for existing UK trade repositories, to ensure that the UK has operational trade repositories from exit day.

Sir John Hayes (South Holland and The Deepings) (Con): As I read it, part 2 makes it clear that, should the obligations be suspended, the FCA will retain the power to decide when any trades conducted through the period of suspension are made known. The a priori assumption that businesses should retain information and be willing to report it during the period of suspension provides considerable reassurance.

John Glen: I concur.

The hon. Member for Oxford East asked whether the regulator has adequate resources to cope with its new powers to supervise trade repositories. The Treasury has worked closely with the regulator to prepare the legislation, and we are confident that it is making adequate preparations ahead of exit day and that it has the resources to manage its task. I should point out that, at the end of December 2018, the FCA had a total of 158 full-time employees working on Brexit—an increase from 28 in March 2018. It will publish its 2019-20 plan in the spring, setting out its work for the coming year. When I met Andrew Bailey, head of the FCA, for an hour last week, he did not raise the matter—he has the resources in place.

The hon. Lady asked what would happen in a scenario in which the Treasury provided a temporary regime for intra-group transactions that was not reciprocated by the EU. The Government can address only deficiencies in UK firms, not the issues for EU-based entities—that is why we want to get a deal and get the equivalence process signed off six months before the end of the implementation period, as was set out in the political declaration. The Commission has adopted a temporary equivalence decision for UK CCPs, and in the central counterparties regulations we put in place a reciprocal temporary recognition regime in the UK for EU CCPs.

The hon. Member for Garston and Halewood made a point about the publication of appropriate documents for the Committee. I can only apologise to her. I will examine immediately whether our approach needs to change.

The hon. Member for Oxford East asked why the EMIR provisions on trade repository appeals, fines, supervisory fees and penalties are being replaced with provisions in the Financial Services and Markets Act. The current EU provisions on those matters will no longer be effective under a UK regime, so it is appropriate to replace them. The FSMA provisions that currently apply to FCA supervision of authorised persons will be applied, with appropriate modifications, to its supervision of trade repositories. The new provisions on trade repositories will be equivalent to those to which they are currently subject.

The hon. Member for Aberdeen North asked whether the draft regulations will apply in a no-deal scenario only. This legislation is being implemented to ensure that in the event of no deal we have a fully functioning regime. It will not come into effect in March 2019 in the event of an implementation period on securing a deal, which would be delivered through a separate piece of legislation—the EU withdrawal agreement Bill. However, it could be amended to reflect an eventual deal on the future relationship or a no-deal scenario at the end of the implementation period.

I think I have dealt with all the points raised. I believe that the draft regulations are essential to ensuring that the UK continues to have an effective framework in place for over the counter derivatives, central counterparties and trade repositories if the UK leaves the EU without a deal or an implementation period. I hope the Committee has found this afternoon's sitting informative and will support the draft regulations.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018.

3.21 pm

Committee rose.