PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixteenth Delegated Legislation Committee

DRAFT FINANCIAL SERVICES (GIBRALTAR) (AMENDMENT) (EU EXIT) REGULATIONS 2019

DRAFT GIBRALTAR (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

Thursday 7 March 2019

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Monday 11 March 2019

The Committee consisted of the following Members:

Chair: James Gray

† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
† Caulfield, Maria *(Lewes)* (Con)
Cunningham, Alex *(Stockton North)* (Lab)
† Docherty, Leo *(Aldershot)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
Farrelly, Paul *(Newcastle-under-Lyme)* (Lab)
Gaffney, Hugh *(Coatbridge, Chryston and Bellshill)* (Lab)
† Glen, John *(Economic Secretary to the Treasury)*
† Knight, Julian *(Solihull)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† O'Brien, Neil *(Harborough)* (Con)
† Peacock, Stephanie *(Barnsley East)* (Lab)
Streeting, Wes *(Ilford North)* (Lab)
† Throup, Maggie *(Erewash)* (Con)
† Trevelyan, Anne-Marie *(Berwick-upon-Tweed)* (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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Thursday 7 March 2019

[JAMES GRAY *in the Chair*]

Draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019

11.30 am

The Chair: Hon. Members will have recognised that there are in fact two instruments to be discussed today. If it is the will of the Committee to consider the two together, the Minister will move the first instrument now and the second one later.

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

That the Committee has considered the draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019.

John Glen: It is a pleasure to serve under your chairmanship, Mr Gray. As the two instruments are to be taken together, I will also speak to the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019.

As the Committee is aware, and as with the previous statutory instruments we have debated, these SIs are part of the legislative programme under the European Union (Withdrawal) Act 2018 that aims to ensure that, if the UK leaves the EU with neither a deal nor an implementation period, there will continue to be a functioning legislative and regulatory regime for financial services in the United Kingdom.

Gibraltar holds a special place within the British family, because of not only our shared history, which stretches back over 300 years, but the priorities and values that we share today. The UK Government are steadfast in their commitment to maintaining our close relationship, which will remain unchanged following the UK's and Gibraltar's parallel withdrawal from the EU.

The instruments deliver on the commitment made at the Joint Ministerial Council with the Government of Gibraltar in March 2018. The UK guaranteed that the access of Gibraltar's financial services firms to UK markets will continue until 2020 in any scenario. In a no-deal scenario, both the UK and Gibraltar will be outside the European economic area and outside the EU's legal, supervisory and financial regulatory framework. Since the current market access arrangements between the UK and Gibraltar are underpinned by the EU framework, the UK-Gibraltar framework would become deficient without the SIs.

The SIs update existing UK legislation and make amendments to other EU exit legislation to make special provision for Gibraltar, ensuring that UK legislation relating to Gibraltar operates effectively in a no-deal scenario. The draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 deal primarily with the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, known as the Gibraltar order. Along with section 409 of FSMA, the legislation modifies EU passporting rights to allow market access for authorised financial services firms between the UK and Gibraltar. It applies to a range of authorised firms and, importantly for Gibraltar, includes those in the insurance industry.

Subsequently, since domestic legislation is derived from EU law, in a no-deal scenario, passporting arrangements between the UK and Gibraltar will become deficient. The draft SI amends domestic legislation, including the Gibraltar order and section 409 of FSMA, to retain existing passporting arrangements between the UK and Gibraltar until at least 2020 after we leave the EU. That is in line with the Government's previous commitment. The provisions are therefore sunsetted and will cease to have effect at the end of 2020.

At the JMC in March 2018, the UK Government also announced that they will work closely with the Government of Gibraltar to design a long-term permanent framework for market access beyond 2020. That will similarly be based on shared high standards of regulation enforcement and regulatory co-operation. Although the duration of market access in the SI is contingent on the introduction of a replacement framework, the UK Government are committed to preventing a potential cliff edge in Gibraltar-based firms' access in 2020 and to providing clarity to Gibraltar's market. Accordingly, the SI includes a power to extend existing market access arrangements by one year at a time from the end of 2020. This will be supported by a ministerial statement on progress towards the replacement framework between the UK Government and the Government of Gibraltar.

Currently, EEA firms passporting into Gibraltar also have the ability to onward passport into the UK, and vice versa. Consistent with the general removal of EEA passporting provisions in the event of our leaving without a deal, the SI also removes provisions enabling such access. It will have no impact on UK or Gibraltarian firms.

The draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 relate to non-passporting arrangements between the UK and Gibraltar in financial services that support the market access arrangements. Various references across legislation in retained EU and UK law treat Gibraltar as if it were an EEA state in relation to such arrangements. For example, Gibraltar, like other EEA states, has home-state responsibility in the event of a Gibraltar-based firm becoming insolvent in the UK. Gibraltar-based firms are also included within existing treatments for policyholder and deposit protections, as well as in the EU payments regime for euro transactions.

As a result of the UK's withdrawal from the EU, the arrangements between UK and EEA states will change to reflect the new relationship, but we need to ensure that our existing arrangements with Gibraltar are not affected. The draft regulations therefore make bespoke amendments to EU-derived financial services legislation and to other EU exit SIs to maintain the current treatment of Gibraltar. The draft regulations also make a set of broad provisions that save relevant matters in remaining EU-derived and EU exit legislation that relate to Gibraltar so that regulatory arrangements between the UK and Gibraltar can be treated as they were before exit.

The provisions specifically ensure that Gibraltar-based firms, UK-based firms, Gibraltar trading venues, and provisions related to the arrangements between the UK and Gibraltarian regulators continue to be treated in UK law as they were before exit day. Additionally, these broad savings provisions allow the rights or obligations that are dependent on the function of an EU body to instead be performed by the appropriate UK regulator or the Treasury.

Lastly, the SI makes minor amendments to the Prudential Regulation Authority's existing powers of intervention over Gibraltarian insurers operating in the UK. That will allow the PRA, where necessary and appropriate, to address risks of disruption that could threaten the financial stability of the UK. No changes are being made to the Financial Conduct Authority's powers in relation to Gibraltar-based firms.

The Treasury has been engaging closely with the Government of Gibraltar on the legislation, and it supports the approach taken in the SIs. It has also engaged with the PRA and the FCA in drafting the SIs and has shared with the financial services industry drafts of them ahead of their publication. On 19 December 2018, the Treasury published the draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019. The draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 were published on 7 February 2019, with an updated explanatory policy note on the two Gibraltar SIs.

The Government of Gibraltar are also undertaking their own contingency preparations for Gibraltar's withdrawal from the EU to ensure that UK firms currently operating in Gibraltar retain their market access in the event of our leaving the EU without a deal and to maintain current regulatory arrangements.

Before I conclude, I draw the Committee's attention to a small mistake that has been discovered in the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019—unfortunately, mistakes happen from time to time. Where they are found, I have always been transparent about the need to put an explanation on the record. Shortly after the draft SI was laid, a small typographical error was found in regulation 10(3), which inserts proposed regulation 4C into the Solvency 2 and Insurance (Amendment, etc) (EU Exit) Regulations 2019. Paragraph 2(a) of that proposed regulation refers to

"UK law which implemented or the Solvency 2 directive".

It should read, of course, "UK law which implemented the Solvency 2 directive". That typographical error will be corrected before the draft SI is made.

The draft regulations are necessary to ensure that Gibraltar-based financial services firms can continue to passport into UK markets as they do now and that existing regulatory treatments in relation to Gibraltar continue to function effectively after exit day if the UK leaves the EU without a deal or an implementation period. I hope colleagues will join me in supporting the regulations, and I commend them to the Committee.

11.39 am

Anneliese Dodds (Oxford East) (Lab/Co-op): It is a pleasure to serve on this Committee with you in the chair, Mr Gray. As always, I am grateful to the Minister for his explanation of the statutory instruments.

Once again, the Minister and I are here to discuss statutory instruments that make provision for a regulatory framework after Brexit in the event that we crash out without a deal. On each such occasion, I and my Labour Front-Bench colleagues have spelled out our objections to the Government's approach to secondary legislation. The volume of EU exit secondary legislation is concerning in terms of accountability and proper scrutiny. The Government have assured the Opposition that no policy decisions are being taken. However, establishing a regulatory framework inevitably involves matters of judgment, and raises questions about resourcing and capacity.

Secondary legislation ought to be used only for technical, non-partisan, non-controversial changes, because it allows for limited accountability. Instead, the Government continue to push through far-reaching financial legislation via this vehicle. As legislators, we have to get things right. These regulations could represent real and substantive changes to the statute book, and they need proper, in-depth scrutiny. In the light of that, the Opposition would like to put on the record our deepest concerns that the process is not as accessible and transparent as it should be.

On 18 February, I asked the Minister why Gibraltar was excluded from some previous SIs. The SIs we are considering today are presumably intended to fill that gap. It is of course essential that they do so appropriately. As colleagues will know—the Minister referred to this—Gibraltar is part of the EU as a so-called special member state territory, but it does not follow all elements of the EU's policy approach. It is exempt from the common agricultural policy, the common external tariff and the VAT rules. Obviously, recent months have been very worrying for many people living in Gibraltar, given the potential for the Brexit negotiations to open up other constitutional questions and, of course, the fact that 96% of its population voted to stay in the EU.

I understand that, in March last year, at the Joint Ministerial Council with the Government of Gibraltar, the UK Government announced that, in a no-deal scenario, Gibraltar's authorised financial services firms would continue to be able to access the UK as now until 2020 and, vice versa, that UK firms would continue to be able to access Gibraltar as now. The two SIs set out to enact that. It has taken some time for them to be laid—a point I will return to later. It would be helpful to know whether that rather delayed process has caused any problems for those in Gibraltar or elsewhere. Clearly, we have had many months since last March.

Surely it is more important than ever that we ensure that the arrangements the House makes for Gibraltar take account of its specificities and needs, at the same time as recognising the need for sound and thorough financial regulation. The latter is particularly important given the unique nature of economic activity on the Rock. As Committee members are probably aware, there are two businesses per head of population in Gibraltar. Despite its tiny population, there are more than a dozen registered banks there. The Rock's self-description suggests that at least some activities on the Rock reflect differences rather than similarities with the UK's regulatory and tax systems.

[Anneliese Dodds]

For example, the Gibraltarian Government website refers to the fact that those using Gibraltar can conduct

"business in a quality low-tax jurisdiction with a profit oriented capital base at low levels of corporate tax, all in a stable currency with few restrictions in moving capital or repatriating dividends"

and distribute

"competitively priced VAT-free goods and services to the markets of the EU and Africa."

The Gibraltarian Government also note that there is a

"variety of interesting fiscal products ranging from lucrative"—

their word, not mine—

"funds development and administration to customized financial solutions, ranging from international tax planning strategies to monthly tax-free registered debentures".

Finally, the Gibraltarian Government inform us that legislation is in place there

"to encourage High Net Worth Individuals…and High Executives Possessing Specialist Skills…to establish tax residency in Gibraltar, affording them the opportunity to have the tax payable on their income restricted to a capped amount."

All that occurs, of course, at the same time as Gibraltar has EU membership and, again in the words of the Gibraltarian Government, a

"highly-developed business services infrastructure where it is possible to passport an EU licence in financial services such as insurance and re-insurance, EU-wide pensions, banking and funds administration, amongst others".

I am aware that Gibraltar was taken off the OECD's tax haven list after making progress in concluding double tax agreements, and I am also aware that its representatives would strongly reject such a characterisation, although all I have done is quote the Gibraltarian Government's own words. Indeed, I recently met representatives from the Rock, and I am grateful to them for enabling me to discuss their jurisdiction's situation. I know they would maintain that they have strong procedures in the area of financial regulation, and against money laundering in particular, and they feel their current status enables them to have financial independence from the UK. I am also aware of their genuine concerns about unfair criticism from Spain.

In that regard, I was encouraged to read earlier this week that Gibraltar, with the support of the UK Government—as I understand it, the UK Government have to negotiate these matters for Gibraltar—has just signed a tax treaty with Spain that provides

"for Gibraltar to keep legislation equivalent with EU law on matters related to transparency, administrative cooperation, harmful tax practices and Anti-Money Laundering once EU law ceases to apply in Gibraltar".

That is a positive commitment, which will also pave the way for the removal of Gibraltar from Spain's tax haven blacklist and enable it to sign up to the OECD's base erosion and profit shifting process.

That is the context of these two SIs, both of which are obviously focused on no-deal planning. As the Minister stated, in the longer term, it is envisaged that the UK Government will work closely with the Government of Gibraltar to design a long-term framework for market access beyond 2020, which will be based on these regulations. The approach that is represented here, to use an overused word, appears to be a form of passporting of services between the UK and Gibraltar; instead of the previous context, in which Gibraltar and the UK were viewed by the EU as one jurisdiction, they will have to operate as two jurisdictions outside of the EU.

However, the existing passporting measures for Gibraltar are provided for within a plethora of different bits of legislation. Some are focused on just Gibraltar, including the Gibraltar order 2001, which the Minister mentioned. Others are much more wide-ranging and cover UK financial services as well. Why was the no-deal SI dealing with some of the regulations that cover both the UK and Gibraltar—specifically, those on payment systems and electronic money—passed back in November, while a different approach has been taken here? That is particularly the case for regulations around insurance, which are directly amended by the amendment SI that we are considering. I beg your pardon, Chair—these are convoluted matters.

The Minister mentioned the need to preserve stability, particularly in the area of insurance, and that it was necessary to empower the PRA to do so. However, that surely applies to other areas of financial services as well. I am rather confused about this. Given that the amendment SI amends a number of no-deal SIs as well, one rather receives the impression that arrangements for Gibraltar have been considered quite late on in the process, rather than as an integrated part of it. *[Interruption.]* I am pleased to see the Minister shaking his head; I hope he can expand on that in his remarks.

Finally, it would be helpful to understand how the Gibraltarian Government are responding to this—whether they are happy with the approach that has been taken, and whether they feel it is going to be sufficient to remedy any potential gaps or inconsistencies. I urge the Minister to ensure that the door remains open to discussions with them as time goes on, to make sure that any potential glitches or problems can be quickly dealt with.

11.47 am

John Glen: I thank the hon. Member for Oxford East for the thoroughness of her scrutiny, and will endeavour to answer the questions she has raised. On the general points that we have rehearsed a number of times, I remind the Committee that everything we have done through these SIs has been within the scope of the withdrawal Act. I understand that having 30 debates in three months has been unusual; it has not been a desirable process, but it has been a necessary one.

The hon. Lady made a number of points about the delay following the Joint Ministerial Council in March last year. That delay did not cause problems for Gibraltar, and the financial services industry in Gibraltar has welcomed these SIs. There has been a lot of dialogue over the year, and the Government of Gibraltar have been closely engaged with the SIs and are content with the approach we have taken.

The hon. Lady raised concerns about the overall regime in Gibraltar. Gibraltar complies with EU and global standards on tax transparency. It has received the same rating for tax transparency from the OECD's global forum as Germany, the United States and the United Kingdom, and because of its status within the EU, it follows all EU directives relating to tax avoidance and tax transparency. I recognise that there are bigger issues about the final regime we end up with, which will be scrutinised outside of the scope of this Committee.

We have undertaken consultation throughout the EU exit process, and have been committed to engaging with the Gibraltar Government. On a ministerial level, that engagement has been structured through the JMC on Gibraltar-EU negotiations. As for contingency preparations, the Government of Gibraltar have received both SIs positively, and we have had deep discussions over the past year at official and ministerial levels.

Some other points were made about the nature of the fix for insurance. Of course, the vast majority of the financial services industry in Gibraltar relates to insurance. We did things this way because it was a pragmatic solution that did what was necessary, based on conversations with the PRA and the FCA. The second statutory instrument is essentially a horizontal fix that deals with all the deficiencies in terms of references to Gibraltar.

As I have acknowledged in previous debates in recent weeks, there is no one way to do this. Given the resources and timetable available, and given that it is a contingency arrangement for no deal, we have taken pragmatic steps that are in line with the expectations of the Gibraltarian Government and that deal with the risks that existed. Obviously, we hope that we will enter an implementation period and have time to develop a fuller solution for the long term, beyond the end of 2020. One in six UK motorists has insurance contracts from Gibraltar, so it was important to put an emphasis on insurance.

I do not think any other specific issues were raised. I have dealt with the degree of co-operation. In the light of that, I hope the Committee will support the regulations as being necessary in the circumstances that I have set out.

Question put and agreed to.

Draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

Resolved,

That the Committee has considered the draft Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019.—*(John Glen.)*

11.51 am

Committee rose.