

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT MORTGAGE CREDIT (AMENDMENT)
(EU EXIT) REGULATIONS 2019

DRAFT FINANCIAL SERVICES (DISTANCE
MARKETING) (AMENDMENT AND SAVINGS
PROVISIONS) (EU EXIT) REGULATIONS 2019

Monday 11 March 2019

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The Committee consisted of the following Members:

Chair: MRS MADELEINE MOON

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| † Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP) | † Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| † Burden, Richard (<i>Birmingham, Northfield</i>) (Lab) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Fitzpatrick, Jim (<i>Poplar and Limehouse</i>) (Lab) | † Spelman, Dame Caroline (<i>Second Church Estates Commissioner</i>) |
| † Glen, John (<i>Economic Secretary to the Treasury</i>) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) | † Walker, Thelma (<i>Colne Valley</i>) (Lab) |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>) (Con) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Lamont, John (<i>Berwickshire, Roxburgh and Selkirk</i>) (Con) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Malhotra, Seema (<i>Feltham and Heston</i>) (Lab/Co-op) | Kenneth Fox, <i>Committee Clerk</i> |
| † Merriman, Huw (<i>Bexhill and Battle</i>) (Con) | † attended the Committee |
| † Philp, Chris (<i>Croydon South</i>) (Con) | |

Second Delegated Legislation Committee

Monday 11 March 2019

[MRS MADELEINE MOON *in the Chair*]

Draft Mortgage Credit (Amendment) (EU Exit) Regulations 2019

6 pm

The Economic Secretary to the Treasury (John Glen):

I beg to move,

That the Committee has considered the draft Mortgage Credit (Amendment) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019.

John Glen: It is a pleasure to serve under your chairmanship, Mrs Moon. As the Committee will be aware, the Treasury has been undertaking a legislative programme under the auspices of the European Union (Withdrawal) Act 2018 to ensure that if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime for financial services in the UK. A number of debates—some 29, I believe—have been undertaken in this place and in the House of Lords about statutory instruments that are part of that programme.

That figure includes the two SIs that are to be debated today, which fix deficiencies in UK law relating to the regulation of consumer buy-to-let mortgages and the distance marketing of consumer financial services. These two SIs were debated and approved in the House of Lords on 5 March 2019. The approach taken in this legislation aligns with that of other SIs that have been laid before the House under the withdrawal Act: to provide continuity by maintaining existing legislation at the point of exit, but amending where necessary to ensure that the regime works effectively in a no-deal context.

The first SI, the draft Mortgage Credit (Amendment) (EU Exit) Regulations 2019, concerns the regulation of consumer buy-to-let mortgages. Many members of the Committee will be familiar with the Mortgage Credit Directive Order 2015, which implemented the 2014 mortgage credit directive in the UK. That order established a national framework regulating consumer buy-to-let mortgage contracts. A consumer buy-to-let mortgage is a loan that can be offered to a borrower who is letting out their home, but not for the purpose of business or as an investment. In the event of a no-deal exit, the UK would be outside the European economic area and the EU's legal, supervisory and financial regulatory framework. The mortgage credit directive order therefore needs to be updated to ensure that provisions work properly in a no-deal scenario.

This SI makes three main changes to the regulatory regime of consumer buy-to-let mortgages. First, it amends the territorial scope of regulated consumer buy-to-let lending, so that in future it applies only to lending relating to property in the UK, not in the EEA. That change will apply to a very small number of loans, and

will not affect consumer buy-to-let lending relating to land in the EEA that was entered into before exit day, which will continue to be covered by Financial Conduct Authority regulation.

Secondly, the SI amends the rules on consumer buy-to-let foreign currency mortgages. A foreign currency mortgage is a loan denominated in a different currency to that of the borrower's income or assets. The SI equips lenders who lend to UK borrowers through a consumer buy-to-let foreign currency mortgage with the option to allow borrowers to convert their loan into pounds sterling, in order to meet the requirement to protect borrowers from exchange rate risk. Under current arrangements, the 2015 order prescribes that when a lender protects a borrower from exchange rate risk by allowing that borrower to convert the loan into a different currency, that currency must be that of the EEA state in which the borrower is resident, or the currency in which the borrower holds their main income or assets. Once the UK leaves the EU, the pound sterling will no longer be an EEA currency, and this provision has been made to ensure that UK borrowers with those types of loans can continue to convert them into pounds sterling.

Thirdly, the SI transfers from the European Commission to the Treasury the responsibility to update the remarks and assumptions that accompany the calculation of the annual percentage rate of charge. The APRC is a standardised calculation of the cost of credit that provides the borrower with the total cost of the mortgage over its full term. It is necessary to confer this power on the Treasury to ensure the APRC remains accurate post-exit. On 22 November 2018, the Treasury published this SI in draft form, along with an explanatory policy note to maximise transparency for Parliament and the industry.

Turning to the draft Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019, this statutory instrument will fix deficiencies in UK law related to the distance marketing of consumer financial services, such as by telephone, email or fax, to ensure the regime operates effectively post exit.

The UK's regulatory regime for the distance marketing of consumer financial services stems from the EU's distance marketing directive. Currently, EEA financial services firms that carry out distance marketing from an EEA establishment to UK consumers are not subject to the UK's distance marketing regime. This is on the basis that such firms are subject to equivalent regulation in their own EEA state, as the distance marketing directive operates on a country of origin basis. As a result, the UK's distance marketing regime, which consists of both FCA rules and the distance marketing regulations, applies only to firms undertaking activity from a UK establishment. Broadly, firms operating from an establishment in the UK, and which undertake regulated activity, are subject to FCA distance marketing rules, and firms undertaking unregulated activity from an establishment in the UK are subject to the distance marketing regulations. Nevertheless, some of the distance marketing regulations apply to all activity, whether regulated or unregulated.

Should the UK leave the EU without a deal, retained EU and domestic law relating to the regulation of distance marketing and financial services needs to be amended to ensure that such provisions operate effectively. By making these changes, we will ensure firms continue to supply consumers with the information that they need to make decisions about financial services products.

To address deficiencies stemming from exit, the regulations will remove EU references that will no longer have legal effect. However, they will maintain the distance marketing regime as set out in the distance marketing directive. More materially, and to ensure that consumers continue to receive the appropriate information from firms undertaking distance marketing, they expand the scope, where necessary, of the Financial Services (Distance Marketing) Regulations 2004, which will now cover certain EEA firms that will operate in the UK post exit under one of the temporary permission regimes that have previously been debated by the House.

Passporting EEA firms operating in the UK are regulated to the same standard in their home state, as they will be subject to the distance marketing directive and, as a result, the UK's distance marketing regime does not apply to them. However, the onshored distance marketing regulations will now cover certain EEA firms that will operate in the UK post-exit under a temporary permission. FCA rules will also be amended where appropriate, ensuring that such firms will be subject to the UK's distance marketing regime and that consumer protection is maintained.

The Treasury has worked closely with the Financial Conduct Authority in the drafting of the regulations. It has also engaged with the financial services industry, and will continue to do so going forward. On 12 December 2018, the Treasury published the distance marketing regulations in draft, along with an explanatory policy note to maximise transparency for Parliament and the industry.

In summary, the Government believe that the proposed legislation is necessary to fix deficiencies arising as a result of the UK's withdrawal from the EU, both to maintain compliant practices for UK mortgage lending activity and so that the UK distance marketing regime continues to protect consumers, and to ensure that the legislation continues to function appropriately 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.

6.8 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is a pleasure to serve under your chairmanship this evening, Mrs Moon.

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—*[Interruption.]* On each of those occasions, I and my Labour Front-Bench colleagues have spelt out our objections to the Government's approach to the process and the use of secondary legislation.

Today we are here to discuss two different instruments that have been grouped together, no doubt in an effort to clear the significant workload that still remains to complete the statutory instruments that are necessary in the event that we crash out without a deal and with which we have been engaged since October—*[Interruption.]*

The Chair: Order. I will not have Members muttering from the Back Benches. If you wish to be heard, you ask to be heard. You do not mutter from a sedentary position. I do not intend to make that remark again.

Jonathan Reynolds: Thank you, Mrs Moon.

I was about to thank the Minister for his detailed explanation. On the draft mortgage credit amendment regulations, will he give us some clarification? In the explanatory policy note on the regulations, the paragraph on amending the territorial scope of the application of regulated consumer buy-to-let lending covers various changes that are not altogether obvious. First, it notes at the bottom of page 4:

“Lending relating to land in the EEA outside the UK that was entered into after the implementation of the Mortgage Credit Directive but before exit day, and which is currently supervised under the consumer buy-to-let regime, will continue to be covered by FCA regulation under that regime.”

Can the Minister guarantee that the FCA will still have the right to apply the regulations to do that? Is it not the case that local rules would apply at that point?

The explanatory policy note also stipulates that the regulatory perimeter for owner-occupiers will be amended under a separate statutory instrument relating to the Financial Services and Markets Act 2000. Can the Minister confirm whether that was included in the version of FSMA that we have already debated? If not, when will it come to Committee?

I am sure that I do not need to remind the Minister that, at the end of this week, we will be just two weeks away from exit day, so we have an extremely short amount of parliamentary time. If anything, owner-occupiers will need more certainty than buy-to-let owners, given that we are more likely to be talking about their actual homes than a rented holiday home. I confess that I do not have a place in the sun in Europe, but many Britons do, and they will need clarity as they seek to make retirement plans or decide where their family will be located in future.

The explanatory policy note also notes that the Treasury is conferring another power

“to make regulations modifying the remarks and assumptions which accompany the formula for the calculation for the annual percentage rate of charge (a standardised calculation of cost of credit), where they are out of date or do not create a uniform result.”

Could the Minister give us some further explanation about the scope of those remarks and their typical impact? Given that no impact assessment has been prepared on the statutory instruments, we are somewhat in the dark as to the exact ramifications of the proposals.

The second set of regulations provide important consumer protections in the UK and the Opposition support onshoring them in principle. Again, however, I would like to clarify some points with the Minister. First, the explanatory policy note states that

“references to the European Consumer Credit Information Form have been replaced with references to the Pre-Contract Credit Information (Overdrafts) Form.”

Has a full assessment been undertaken of where deficiencies might arise as a result of the switch between those documents?

Secondly, the European Union is undertaking a review of the regulations, as announced by the publication of an evaluation and fitness roadmap consultation in December 2018. Will the Treasury pay any heed to the outcome of that consultation, if it identifies issues with the regulations that we are attempting to onshore?

Seema Malhotra (Feltham and Heston) (Lab/Co-op): My hon. Friend is making an important speech. Am I correct that he just wants clarity about whether there will be any effective reduction in the amount of consumer protection that will apply to UK consumers as a result of the regulations?

Jonathan Reynolds: I am extremely grateful to my hon. Friend for that question. That is exactly the type of concern that we on the Front Bench have sought to outline. As she knows, we need not only to onshore some regulations, but to prepare for the legislation that will be passed in the European context between exit day and the end of any transition. We are all particularly interested in the impact on consumer protection, the overall regulatory burden and the function of the regime, and the Minister has sought to provide clarity on those issues.

Those two specific points are all I wished to say about the second set of regulations.

6.13 pm

John Glen: I thank the hon. Member for Stalybridge and Hyde for his questions, which I shall seek to address. On the mortgage credit regulations, the amendments to the territorial scope of regulated consumer buy-to-let lending and the effect they will have on contracts, lending relating to land in the EEA outside the UK that was entered into after the implementation of the mortgage credit directive but before exit day, and which is currently supervised under the consumer buy-to-let regime, will continue to be covered by FCA regulation under that regime. The regulatory status of post-exit lending to consumers relating to any property outside the UK will be decided under the regulatory regime for consumer credit, as is the case currently for lending relating to property outside the UK. The hon. Gentleman referred to the impact assessment. A de minimis impact assessment was undertaken for both draft instruments and found that the changes made are technical and will have minimal impact on business.

The hon. Gentleman referred to assumptions concerning the APRC. Assumptions behind the APRC cover a wide range of influences that affect credit agreements, ensuring that the APRC reflects the commercial situation of the UK mortgage market, and that it is calculated in a uniform manner. I am not quite clear about his point on further comments that might be made, but I will endeavour to examine his comments carefully, and where I can offer further substantiation, I will do so.

The hon. Member for Feltham and Heston, in her interaction with the shadow Minister, made observations about consumer protections. The changes proposed in the draft regulations do not affect existing consumer protections and the FCA will continue to regulate consumer buy-to-let loans taken out in relation to an EEA property outside the UK before exit day. The regulatory status of post-exit lending to consumers relating to any property outside the UK will be decided under the regulatory regime for consumer credit, as is currently the case for property outside the EEA.

On the draft distance marketing regulations, the hon. Member for Stalybridge and Hyde referred to a review launched within the EU in December 2018. The Treasury will take a close interest in that in all circumstances. Obviously, if we leave with a deal, we will face a different scenario in how we onshore the regulations, which will ultimately depend on the passage of the in-flight files Bill. However, no reduction in our regulatory oversight is intended as a consequence of the draft regulations.

I will look very carefully at the text of the hon. Gentleman's speech, and if he raised any other points that I have not responded to, I will seek to get back to him, but I do not think I can add anything else at this point. In conclusion, the regulations are needed to ensure that legislation concerning consumer buy-to-let mortgages continue to function appropriately if the UK leaves the EU without a deal or implementation period, and that consumers continue to receive the appropriate information in distance marketing about the financial services products that they might seek. I hope the Committee finds those explanations at least adequate, and that we might now be able to agree the draft regulations.

Question put and agreed to.

**DRAFT FINANCIAL SERVICES (DISTANCE
MARKETING) (AMENDMENT AND
SAVINGS PROVISIONS) (EU EXIT)
REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019.—(*John Glen.*)

6.18 pm

Committee rose.

