

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Twentieth Delegated Legislation Committee

**DRAFT UNCERTIFICATED SECURITIES  
(AMENDMENT AND EU EXIT) REGULATIONS 2019**

*Tuesday 12 March 2019*

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**Saturday 16 March 2019**

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**The Committee consisted of the following Members:**

*Chair:* † MR VIRENDRA SHARMA

- |  |   |
|--|---|
| † Abrahams, Debbie ( <i>Oldham East and Saddleworth</i> )<br>(Lab) | † Prisk, Mr Mark ( <i>Hertford and Stortford</i> ) (Con)                      |
| † Glen, John ( <i>Economic Secretary to the Treasury</i> )         | † Reynolds, Jonathan ( <i>Stalybridge and Hyde</i> ) (Lab/<br>Co-op)          |
| † Green, Chris ( <i>Bolton West</i> ) (Con)                        | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)                         |
| † Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> )<br>(Con)  | † Thewliss, Alison ( <i>Glasgow Central</i> ) (SNP)                           |
| † Jayawardena, Mr Ranil ( <i>North East Hampshire</i> )<br>(Con)   | † Walker, Thelma ( <i>Colne Valley</i> ) (Lab)                                |
| † Johnson, Gareth ( <i>Dartford</i> ) (Con)                        | † Whittaker, Craig ( <i>Lord Commissioner of Her<br/>Majesty's Treasury</i> ) |
| † Knight, Julian ( <i>Solihull</i> ) (Con)                         | † Zeichner, Daniel ( <i>Cambridge</i> ) (Lab)                                 |
| Kyle, Peter ( <i>Hove</i> ) (Lab)                                  | Bradley Albrow, <i>Committee Clerk</i>  |
| † Lord, Mr Jonathan ( <i>Woking</i> ) (Con)                        |   |
| † Lucas, Ian C. ( <i>Wrexham</i> ) (Lab)                           | † <b>attended the Committee</b>   |

# Twentieth Delegated Legislation Committee

Tuesday 12 March 2019

[MR VIRENDRA SHARMA *in the Chair*]

## Draft Uncertificated Securities (Amendment and EU Exit) Regulations 2019

2.30 pm

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

That the Committee has considered the draft Uncertificated Securities (Amendment and EU Exit) Regulations 2019.

It is a pleasure to serve once again under your chairmanship, Mr Sharma.

The Treasury is laying this statutory instrument under both the European Union (Withdrawal) Act 2018 and the European Communities Act 1972. 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 continues to be a functioning legislative and regulatory regime for financial services in the UK. This draft SI is part of that programme. It has been debated by the House of Lords and was approved on 25 February. The SI also uses the powers in section 2(2) of the European Communities Act to amend UK law as necessary to ensure that the directly applicable EU central securities depository regulation, or CSDR, operates effectively in the UK.

The draft regulations amend the Uncertificated Securities Regulations 2001, or USRs, which concern the registering and transfer of securities such as bonds or shares electronically on computer-based systems. Certain requirements within the USRs are also subject to the CSDR, which creates a common authorisation, supervision and regulatory framework for central security depositories, or CSDs, across the EU. The SI makes the necessary changes to UK legislation to ensure that the EU regime operates effectively in the UK. The instrument also contains provisions to address deficiencies in UK law and retained EU law that arise due to the UK's withdrawal from the European Union.

The changes to the USRs that implement CSDR will come into effect on the day after the draft regulations are made in Parliament in any scenario. However, the changes made under the EU (Withdrawal) Act to fix deficiencies in the legislation arising as a result of the UK's withdrawal from the EU will only come into effect on exit day in the event that the UK leaves without a deal or an implementation period.

First, the draft regulations make amendments to ensure that the USRs align with both the EU regulation and the UK implementing legislation concerning the CSDR. That includes authorisation and recognition of CSDs and article 49 of the CSDR. Article 49 allows issuers the right to issue securities into a CSD in any European economic area member state. Accordingly, amendments have been made to ensure that no provisions in the USRs are incompatible with that right. By removing

the duplication between CSDR and USR requirements for operators of relevant systems, the instrument provides clarity to the industry in the area. Further, USR operators now gain operator status by virtue of gaining authorised CSD, EEA CSD or third-country CSD status for CSDR purposes, not via the USR recognition regime, which will be revoked by this SI.

Secondly, the SI will provide transitional provisions for UK operators of systems that were approved under the USRs before 30 March 2017, when the period for CSDs to apply for authorisation or recognition under the CSDR began. That transitional power ensures that operators can continue to operate under the previous USR regime, pending their authorisation or recognition as a CSD under the EU CSDR regime. The SI also inserts a provision into the UK's Central Securities Depositories Regulations 2014 that grants the Bank of England the power to charge fees to third-country CSDs. That is considered necessary in relation to its new role in recognising third-country CSDs following exit day. That role was granted by the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, which have been agreed by this House.

Finally, the draft regulations amend article 15 of the EU short selling regulation to change its scope from the EU to the UK. The change ensures legal certainty on the scope of that provision after exit day. To maximise transparency, the Treasury has worked closely on the instrument with the Financial Conduct Authority, the Bank of England and industry. The Treasury consulted on changes to the uncertificated securities regulations as part of implementing the CSDR in 2015, and undertook an informal consultation with industry in October 2018. The current form of the instrument, which includes EU exit changes, was laid on 17 January 2019.

Provisions relating to the consultation are dealt with in parts 1 to 4. Part 5 of the instrument deals with the EU exit changes.

**Mr Ranil Jayawardena** (North East Hampshire) (Con): On the consultation that the Treasury has undertaken, I note that the instrument provides for a requirement for a statutory review within five years. Does the Minister have a position on how soon it may be necessary to review the instrument?

**John Glen:** I am sorry, but I do not have a position on that at this point in time.

**Mr Jayawardena:** What discussions have there been between the FCA, the Treasury and the Bank to determine the level of the fees the Bank can charge other than to meet the expenses incurred?

**John Glen:** I am sure that my hon. Friend will understand that the Bank of England routinely issues fees under many financial services regulations. This power is consistent with that general responsibility and will be exercised in consultation with those subject to the fee, as in all the other areas of regulation the Bank engages with.

Regulators and industry have welcomed the Government's approach to the SI. The Government believe that the proposed legislation is necessary to ensure the smooth functioning of UK financial markets if the UK leaves the EU without a deal or an implementation period.

Relevant parts of the SI are also needed in any scenario to ensure the effective functioning of the CSDR. I hope that colleagues will join me in supporting the regulations, which I commend to the Committee.

2.37 pm

**Jonathan Reynolds** (Stalybridge and Hyde) (Lab/Co-op): As ever, it is a pleasure to serve with you in the Chair, Mr Sharma. Once again, the Minister and I are here to discuss a statutory instrument that would make provision for the regulatory framework after Brexit in the event that we crash out without a deal. On each of those occasions, the Minister has heard the objections that my Front-Bench colleagues and I have spelled out about the Government's approach to transposing this amount of legislation through the secondary legislative process.

I thank the Minister for his explanation of the regulations. The Opposition are satisfied that parts 1 to 4 are essentially straightforward transpositions of the EU regulations into UK law. Central securities depositories form an important part of our financial market infrastructure, and it is important that their regulation continues to be robust and consistent. Post-trade market systems have been subject to significant reform after the financial crisis and it is important that those changes are not mitigated or unpicked in any way.

I would, however, like the Minister to provide additional clarity on part 5, which begins on page 7. As the explanatory memorandum stipulates—this was the subject of the exchange between the Minister and the hon. Member for North East Hampshire—the instrument allows the Bank of England to charge fees to some central securities depositories located in third countries. I ask the Minister for a little more explanation about whether that is a typical function of the Bank's activities.

The explanatory memorandum also states that the Bank can charge fees to cover expenses that it or the FCA incur. Can the Minister clarify why the Bank would pick up fees on behalf of the FCA and the nature of that arrangement? Why would the FCA not collect its own fees? Once again, the concern is that this appears to be a material change to the relationship between significant institutions and we should be clear if that is what we are doing during the transposition.

Furthermore, as was announced on 1 March, the European Securities and Markets Authority will recognise the UK CSD in the event of a no-deal Brexit, but can the Minister say if there has been any clarity on whether the fee arrangement would be reciprocal? Would central banks in the EEA reserve the right to change the UK CSD fees and, if so, what assessment of the potential impact of that has been carried out? Those two points of clarity are all I want to raise with the Minister.

2.39 pm

**Alison Thewliss** (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Sharma. I very much agree with what has been said by the Labour Front-Bench spokesperson, the hon. Member for Stalybridge and Hyde. I do not want to delay us from all the exciting statements still struggling on in the Chamber, but I want to raise a couple of points.

The Minister will not be surprised to hear me say again that this is not what Scotland voted for and not what Scotland's financial sector needs. Our interests are

not best served by being taken out of the EU single market and customs union. The deal we have as a member state is particularly good for financial services. Nothing that the Prime Minister can negotiate will come anywhere near what we have at the moment. Nevertheless, we need to ensure that what comes into place does not undermine all the progress made since the financial crash. We cannot allow Brexit to be an excuse for any kind of backsliding on that regulation and on the progress made. I would like assurances from the Minister that none of the provisions in the SI would allow those kinds of things to happen.

I understand that a few concerns were raised in the Lords about the SI and the landscape in which it would sit. It has been raised before in Committee that we have all these financial services SIs coming through but no comprehensive picture of what the full jigsaw will look like when it is put together, or even if the pieces of the puzzle fit neatly. It would be good to hear a bit more from the Minister about the Government's intentions. We have so much coming through at the moment that we need some clarity to ensure that nothing falls through the gaps, be it for purposes that are innocent or otherwise. We need to ensure that the system does not allow anything like that to happen.

In the Lords, Baroness Bowles said that

"by the time we have ploughed through all 60 statutory instruments that we are told we have to deal with, and then whatever other number we may get regarding corrections and re-workings—some of which are coming along now—FSMA will be even more incomprehensible on the legislation website, and so too will be any sensible comparison of how EU legislation has been retained with regard to the EU originals... It is actually quite a mockery to make a fuss about the accessibility and clarity of wording in individual documents while it remains impossible to find out their cumulative effect."—[*Official Report, House of Lords*, 25 February 2019; Vol. 796, c. 33.]

We need to get to that cumulative effect.

The hon. Member for North East Hampshire made an interesting point about the fees and the powers going to the Bank of England. I have raised the issue of fees before, and it would be good to get more clarity on the scale, size, scope and application of the fees and how they would work. It seems that here and in all our other financial services SIs it is the Bank of England, the FCA and other bodies that are getting powers, not Parliament, which, as I am sure he would agree, is barely taking back control. I am sure that is not his intention with Brexit.

**Mr Jayawardena** *indicated assent.*

**Alison Thewliss:** The hon. Gentleman is nodding his head.

Are there any resource implications, as indicated by the fees, for the Bank of England or the FCA, that would have to be recouped through the fees? How many more people would be needed to process these types of uncertificated securities? Do the Government have any idea how many people and what processes they might need? Is there a cost they would affix to that which we could see and understand?

The Minister mentioned the consultation process. It would be interesting to know what changed with that process. Can he give any narrative on where he started out and where he ended up, and were any substantial

[Alison Thewliss]

changes made as a result? I continue to be concerned that there is not enough ability for people to engage and for organisations and those concerned about uncertificated securities to come and give their views and seek changes. The biggest problem with the SI and the way the process works is that we cannot amend it—we accept it or reject it, but we cannot amend it. It is difficult to see where corrections might come from and what tracking there is of that.

2.44 pm

**John Glen:** I thank the hon. Members for Stalybridge and Hyde and for Glasgow Central for their observations, and I welcome their broad agreement with the main elements of the SI. Both made significant observations on the fees. Why does this SI contain a provision on the Bank of England fees? As a result of the UK leaving the EU and the changes made by the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018, the Bank of England will have the power to recognise third-country CSDs. On why the Bank of England collects fees for the FCA, this SI concerns the Bank of England fees only. The assessment of other countries charging fees is a decision for other jurisdictions, so I do not have any clear observations on that.

The hon. Member for Glasgow Central asked how the SI had changed since the 2015 consultation draft. A central aim of this instrument is to implement the right, under article 49 of the EU CSD regulation 2014, for issuers of securities to use a CSD established in any EU member state. The 2015 consultation draft instrument contemplated that the uncertificated securities regulations might be extended to apply to securities governed by a foreign law.

Following industry feedback, the Treasury changed its approach so the uncertificated securities regulations would not be extended to foreign law-governed securities where article 49 is used. In order to avoid duplication and to provide legal certainty, the 2015 consultation draft instrument removed provisions from the existing uncertificated securities regulations, which are now governed by the EU central securities depositories regulation 2014. This element has not changed.

The hon. Lady asked about the regulators' resourcing and the impact of taking on provisions of this SI. We are confident that the regulators are making adequate preparations and are effectively allocating resources ahead of the end of March. They have considerable experience and technical expertise. We have participated in a large number of groups with them and I am confident they are well resourced and ready for all outcomes.

I acknowledge the broader points made by all three Members about the Bank of England's fee-raising powers. I will evaluate thoroughly what has been said, and where I can bring greater clarity following discussion with officials, I will write to the Committee if that is appropriate.

The Government believe that the proposed legislation is necessary to ensure the smooth functioning of financial markets in the UK if it leaves the EU without a deal or an implementation period. Relevant parts of this SI are also needed in any scenario to ensure the effective functioning of the CSDR. I hope my comments clarify matters sufficiently and that the Committee will be able to support these regulations.

*Question put and agreed to.*

2.48 pm

*Committee rose.*