

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventeenth Delegated Legislation Committee

RISK TRANSFORMATION AND SOLVENCY 2  
(AMENDMENT) (EU EXIT) REGULATIONS 2019

*Monday 7 October 2019*

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**Friday 11 October 2019**

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

*Chair:* PHIL WILSON

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| † Bowie, Andrew ( <i>West Aberdeenshire and Kincardine</i> ) (Con)   | † Jones, Graham P. ( <i>Hyndburn</i> ) (Lab)                     |
| † Day, Martyn ( <i>Linlithgow and East Falkirk</i> ) (SNP)           | † Jones, Ruth ( <i>Newport West</i> ) (Lab)                      |
| † Dodds, Anneliese ( <i>Oxford East</i> ) (Lab/Co-op)                | Ross, Douglas ( <i>Moray</i> ) (Con)                             |
| † Drax, Richard ( <i>South Dorset</i> ) (Con)                        | † Rowley, Lee ( <i>North East Derbyshire</i> ) (Con)             |
| † Freer, Mike ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)            |
| † Glen, John ( <i>Economic Secretary to the Treasury</i> )           | † Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con) |
| † Hands, Greg ( <i>Chelsea and Fulham</i> ) (Con)                    | † Walker, Thelma ( <i>Colne Valley</i> ) (Lab)                   |
| Hepburn, Mr Stephen ( <i>Jarrow</i> ) (Ind)                          | Sarah Rees, <i>Committee Clerk</i>                               |
| Hoey, Kate ( <i>Vauxhall</i> ) (Lab)                                 |  |
| † Jones, Mr David ( <i>Chwyd West</i> ) (Con)                        | † <b>attended the Committee</b>                                  |

# Seventeenth Delegated Legislation Committee

Monday 7 October 2019

[PHIL WILSON *in the Chair*]

## Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019

7.45 pm

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

That the Committee has considered the Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019, No. 1233).

It is a pleasure to serve under your chairmanship, Mr Wilson. The Government made all the necessary legislation under the European Union (Withdrawal) Act 2018 to ensure that, in the event of a no-deal exit on 29 March 2019, there was a functioning legal and regulatory regime for financial services from exit day. During the article 50 extension period, the Treasury has continued to work with UK regulators and the financial services industry to ensure our regulatory regime remains prepared for exit on 31 October. This statutory instrument ensures that our regulatory regime for insurance and reinsurance business will continue to work effectively from exit.

First, the instrument updates UK law to ensure that EU revisions to the Solvency 2 delegated regulation made since 29 March operate without deficiencies. Secondly, the instrument makes amendments to the UK's domestic risk transformation regulations, which govern the UK's regime for insurance-linked securities.

I turn first to the provisions that deal with revisions to the Solvency 2 delegated regulation. In January this year, the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 were approved by Parliament. Those regulations addressed deficiencies in Solvency 2 legislation as it will form part of UK law at exit. Since then, revisions by the EU to the delegated regulation made under the Solvency 2 directive have updated aspects of the approach to setting solvency requirements for insurance firms, including the simplification of capital calculations and greater alignment of capital requirements across insurance and banking legislation. Those revisions took effect across the EU on 8 July 2019 and will form part of UK law after exit.

The substance of those revisions will not result in deficiencies after exit, and the updated provisions will continue to operate in the UK as they do now. However, routine deficiency fixes, including removing references to the EU and EU institutions, will be needed to ensure Solvency 2 regulation continues to operate effectively in the UK. This instrument also replaces references to EU law with references to relevant UK law at exit.

I turn to the amendments to the UK's risk transformation regulations. The Risk Transformation Regulations 2017 set up a new regime for insurance-linked securities. ILS are an innovative form of risk transfer that allow insurers and reinsurers to transfer risk to a special purpose

vehicle. ILS are now an important and rapidly growing part of the reinsurance market, and the new regime for ILS was introduced as part of our efforts to help ensure that the UK remains a leading global centre for specialist reinsurance business.

As the risk transformation regulations were designed to follow Solvency 2 requirements, they rely on references to and definitions in EU law. This instrument fixes those by using references to relevant UK legislation and importing certain definitions into Solvency 2 as it will form part of UK law at exit, with those definitions adapted to work in a UK stand-alone regime.

Before I conclude, it is important that I address the procedure under which the SI has been made. This SI, along with three other financial services exit SIs, was made and laid before Parliament on 5 September under the made affirmative procedure provided for in the EU withdrawal Act. That is an urgent procedure that brings an instrument into law immediately, before Parliament has considered the legislation. However, the procedure also requires Parliament to consider and approve a made affirmative SI if it is to remain in law.

The Government have not used that procedure lightly. It must be remembered that, across Departments, we have already laid before Parliament more than 600 exit SIs under the usual secondary legislation procedures. However, as we draw near to exit day, it is vital that we have all critical exit legislation in place, including legislation necessary to ensure that our financial services regulatory regime continues to function effectively from exit. It would have been reckless to leave that until the last minute. Industry and our financial regulators need legal certainty about the regime that will apply from exit. If we did not address the deficiencies covered by the SI—particularly the deficiencies in new Solvency 2 rules recently introduced by the EU—there would be significant legal uncertainty for firms and for our regulators, with the risk of serious disruption to the insurance sector.

The SI makes relatively minor fixes to new Solvency 2 legislation and to the UK's legislation for insurance risk transfer to ensure that the legislation continues to operate as intended after exit. It does not alter the substance of requirements in either case, and the same Solvency 2 and risk transfer rules will continue to apply to firms. I hope that colleagues will join me in supporting the draft regulations, which I commend to the Committee.

7.50 pm

**Anneliese Dodds (Oxford East) (Lab/Co-op):** It is a pleasure to serve with you in the Chair, Mr Wilson, and, as always, to sit across from the Minister in yet another Delegated Legislation Committee relating to financial services. I am grateful to him for that explanation of the statutory instrument, but it leaves a number of questions unanswered.

First, there seems to be a lack of clarity about the locus for application of the measures. The Minister referred at various points to the fact that the Government have laid before Parliament many such instruments in relation to no deal, but as the made affirmative procedure was used, the measures are already in place, regardless of the manner in which the UK will exit the EU. That is not very clear in the explanatory memorandum, which flits between no deal and circumstances where a deal has been reached.

I wonder whether that is an implicit acknowledgement that whatever deal the Government conclude, it will not explicitly cover some of the issues surrounding the co-ordination of financial services regulation. I have been looking closely at what the Prime Minister said last week and what has been released by the Government. There does not appear to be a clear indication of the regulatory regime for financial services. Perhaps the Minister could indicate whether that reflects a situation where all the previous SIs that we have looked at, including today's, will be the legislative context even if there is a deal. Currently, it does not seem that a deal will cover financial services, at least from what I can see.

The most significant element of the Solvency 2 directive is the removal of the distinction between European economic area and non-EEA insurers and reinsurers. That is done through regulation 4, which amends the Solvency 2 exit SI, which we have talked about, through, as the Minister mentioned, the insertion of a new definition of "special purpose vehicle" in the Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019, and regulation 5, which amends the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 so that the relevant Solvency 2 requirements in retained EU law apply to all UK special purpose vehicles, regardless of whether the insurer or reinsurer transferring the risk is regulated in the UK or elsewhere.

I would be curious to know whether the Treasury has conducted any risk analysis of the measure, and what it might regard as potential difficulties in removing that distinction and creating a single regime. Was any consideration given to retaining two separate regimes—one for UK insurers and reinsurers and those with equivalent regulations, and another for third-party countries without equivalent regulations? It would be interesting to hear about that. Also, what support is being offered to those in the financial services industry affected by the changes and the adoption of a single regime?

Returning to the fact that the SI amends FSMA, I asked the Secretary of State for Digital, Culture, Media and Sport when FSMA will be updated on [legislation.gov.uk](http://legislation.gov.uk) to ensure that the version available there accurately represents the legislation in its current form. I was told that it has been updated until the end of 2016. Since then, 951 amendments have been made to the Act; indeed, the Minister has discussed many of them with me in Committees similar to today's.

I was informed that a fully revised version would be available only at the end of the year—clearly beyond when the Government say that they want to leave the EU. I am very concerned about this. It is now difficult for those who wish to comply with legislation to understand what is in that crucial Act, FSMA. It seems to be symptomatic of a piecemeal approach. In this SI, we have again had post-hoc amendments to legislation that has already been passed. Can the Minister make a commitment to the Committee that he will work with the Department for Digital, Culture, Media and Sport to ensure that this process can be sped up? I am very concerned about the impact on compliance if we do not even have an up-to-date version of that fundamental Act.

7.55 pm

**Martyn Day** (Linlithgow and East Falkirk) (SNP): It is a pleasure to serve under your chairmanship, Mr Wilson. I will be very brief; most of what I was going to say has

been said already. The SI appears to be simply an attempt to patch up the damage to our financial services industry caused by a Brexit that my country did not vote for, and I am very disappointed with it. We already know that financial firms are voting with their wallets and have moved assets worth over \$1 trillion from the UK to the rest of Europe since the 2016 EU referendum, according to figures that Ernst & Young produced. I do not believe that the SI will stop the tide of financial services, jobs and assets leaving the country.

7.56 pm

**John Glen:** I am happy to address the points raised by the hon. Member for Oxford East, and the point made by the hon. Member for Linlithgow and East Falkirk. The SI follows the same process as all SIs. With respect to Solvency 2, the simple reality is that the legislation was amended between the previous presumed exit date and this one. We have simply brought that up to date, and the ILS-related mechanism derived from, and made reference to, the Solvency 2 provision. As a consequence of that relationship, which was something that we authored in the UK, it made sense to update both at this time, given that they are within the same category.

The hon. Member for Oxford East asked what would happen to this SIs if we got a deal. If a deal is secured, any withdrawal agreement Bill will make provision to defer any Brexit SIs that are not needed in a deal scenario until the end of the implementation period. We expect that the Bill will achieve this through a blanket deferral of Brexit SIs that come into force on exit day until the end of the implementation period. We expect that the Bill will also ensure that Ministers can revoke or amend any EU exit SIs as appropriate, so that they deal effectively with any deficiencies arising from the end of the implementation period. In the circumstances that we are talking about, following a hopefully successful conclusion of the deal-making process, we would have a 14-month implementation period, as per the plans at the moment, in which to make provision for the enduring solution. We will ensure that onshoring regulation is not commenced if there is a deal and a transitional period is agreed with the EU.

The hon. Lady asked about the difference between EEA and non-EEA firms. The UK special purpose vehicles are already subject to the same Solvency 2-derived requirements, regardless of whether they are accepting risks from EEA or non-EEA firms. The distinction in the Risk Transformation Regulations 2017 simply reflects the fact that EU law applies only to deals that involve EEA firms. This notional distinction will no longer make sense after exit, so it is being removed, but it will not affect any deals already in place. There is no distinction for these regimes in practice—all deals must comply with UK standards, so equivalence is not necessary.

The hon. Lady referred to her question to the Secretary of State for Digital, Culture, Media and Sport and to the update of FSMA on the [gov.uk](http://gov.uk) website. The National Archives is working to have FSMA updated in time for exit day, and the Treasury is helping with this work. I am not more familiar with the situation than that; obviously my officials helped me answer that question, but I would be happy to examine the matter closely and come back to her on that.

**Anneliese Dodds:** I am grateful to the Minister for making that commitment, because his answer contradicts what his Secretary of State said in an answer to me: that

[Anneliese Dodds]

the updates would be ready only at the end of this year. I welcome that, and hope the Minister can try to reach towards the date he gave, because otherwise I really worry about people trying to comply with the legislation without having it in front of them.

**John Glen:** I do not try to contradict my colleagues in Government, but that is the information I have received. I will provide clarification as soon as I can.

Turning to the points made by the hon. Member for Linlithgow and East Falkirk, I recognise the distinction between the Government's perspective on these matters and his party's. All I can say is that the financial services industry, which is significant in Edinburgh and Glasgow, is made secure by this process. He may—and indeed

does—disagree with the Government about what should happen, but I assure him that in a no-deal scenario, the interests of the financial services industry in Scotland will be looked after as best they possibly can.

I thank the Committee for its consideration of this SI, and the points made by hon. Members on the Opposition Benches. In conclusion, the deficiency fixes in this SI will ensure that the UK's prudential regime for insurance and insurance risk transfer remains prepared for withdrawal from the EU in any scenario. I hope the Committee has found this evening's sitting informative, and will now be able to join me in supporting these regulations.

*Question put and agreed to.*

8.1 pm

*Committee rose.*



