

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT EQUIVALENCE DETERMINATIONS FOR
FINANCIAL SERVICES (AMENDMENT ETC.)
(EU EXIT) REGULATIONS 2020

Wednesday 16 September 2020

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The Committee consisted of the following Members:

Chair: ESTHER McVEY

† Bailey, Shaun (*West Bromwich West*) (Con)

† Baynes, Simon (*Chwyd South*) (Con)

Brennan, Kevin (*Cardiff West*) (Lab)

† Coutinho, Claire (*East Surrey*) (Con)

† Evans, Dr Luke (*Bosworth*) (Con)

† Glen, John (*Economic Secretary to the Treasury*)

† Holden, Mr Richard (*North West Durham*) (Con)

† McFadden, Mr Pat (*Wolverhampton South East*)
(Lab)

McDonnell, John (*Hayes and Harlington*) (Lab)

Oppong-Asare, Abena (*Erith and Thamesmead*) (Lab)

† Rutley, David (*Lord Commissioner of Her Majesty's Treasury*)

† Sambrook, Gary (*Birmingham, Northfield*) (Con)

Sharma, Mr Virendra (*Ealing, Southall*) (Lab)

† Smith, Jeff (*Manchester, Withington*) (Lab)

Thompson, Owen (*Midlothian*) (SNP)

† Wheeler, Mrs Heather (*South Derbyshire*) (Con)

† Whittaker, Craig (*Calder Valley*) (Con)

Nicholas Taylor, Dominic Stockbridge, *Committee Clerks*

† **attended the Committee**

Tenth Delegated Legislation Committee

Wednesday 16 September 2020

[ESTHER McVEY *in the Chair*]

Draft Equivalence Determinations for Financial Services (Amendment Etc.) (EU Exit) Regulations 2020

2.30 pm

The Chair: Before we begin, I remind Members about social distancing. I can see you are adhering to the rules and sitting in the marked seats. If people are going to speak, *Hansard* colleagues will be grateful if you email your notes to them at hansardnotes@parliament.uk. I call the Minister to move the motion.

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

That the Committee has considered the draft Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship for the first time, Ms McVey.

The Treasury has been undertaking a programme of legislation to ensure that after the end of the transition period, there continues to be a functioning legal and regulatory regime for financial services in the UK. The Treasury lays statutory instruments under the European Union (Withdrawal) Act 2018 to deliver this legislative programme, and the majority of these SIs have already been approved in this place and in the House of Lords. As part of this financial services legislative programme before exit day, the Treasury laid the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, commonly known as the equivalence regulations 2019, in January 2019.

The equivalence regulations 2019 were designed to ensure that, if the UK left the EU without a transition period, the UK would have a fully functioning equivalence framework from exit day. The additional time afforded by the transition period has provided us with the opportunity to put in place supplementary measures in the equivalence regulations 2019 to ensure that the UK continues to have a robust and functioning equivalence framework for financial services both during and after the end of the transition period.

The measures in the instrument being debated today complement the equivalence regulations 2019 by creating additional standalone powers for the relevant UK financial services regulators—the Bank of England and the Financial Conduct Authority—which are appropriate for those regulators in the transition period, and also make minor amendments to the earlier 2019 regulations, again as appropriate for the transition period. The SI will make minor amendments to add to the powers available to the regulators after the end of the transition period and to correct errors in earlier financial services EU exit legislation.

I am grateful that this SI was raised as an instrument of interest by the Lords Secondary Legislation Scrutiny Committee in its July report and for the question the Committee raised on co-operation agreements. I intend to address that question during this debate.

The instrument being debated concerns the UK's future regime for equivalence, which is a process to determine that another country's regulatory and supervisory regime is equivalent to the UK's corresponding regulatory framework. Recognising the regulatory equivalence of third countries is a key component of financial services regulation. Equivalence determinations can help to reduce regulatory burdens on firms and facilitate cross-border market access. This may lead to increased competition, which has benefits for UK firms and consumers by engendering healthy market incentives to lower prices and offer innovative products.

At present, equivalence functions are performed by the European Commission and the European supervisory authorities. At the end of the transition period, these functions will be transferred to the Treasury and the UK regulators as provisions in retained EU law. During the transition period, equivalence determinations can be made for European economic area states via powers within the equivalence regulations 2019. This instrument provides a UK equivalence framework that is appropriate for use during the transition period in relation to the EU's existing framework. This instrument allows the UK financial services regulators to complete the associated actions that mean that Treasury equivalence determinations taken during the transition period can take full effect at the end of that time.

This is a technical SI that provides for the UK's transition to its new position outside the EU. I will now explain in more detail the main categories of fixes that the SI introduces. The first three changes provide UK regulators with appropriate powers to complete the associated actions that ensure that the Treasury's equivalence determinations can take effect fully at the end of the transition period.

Currently, the equivalence regulations 2019 allow the Treasury to make equivalence determinations by direction during the transition period for EEA states, with those directions not entering into force until the end of the transition period. As part of the equivalence process, almost all the equivalence provisions in retained EU law will require UK financial services regulators to conclude co-operation arrangements with the relevant regulatory authority or authorities for that EEA state before the determination can take effect. Currently, there is no mechanism to allow regulators to undertake that during the transition period.

Where the Treasury has made an equivalence determination by direction, the SI will make transitional provision for UK financial services regulators to have the power to enter into relevant co-operation arrangements with the appropriate EEA regulatory authorities before the end of the transition period. Those co-operation arrangements will come into effect at the end of the transition period for the necessary provisions in retained EU law.

Additionally, as part of the direction-making process, almost all equivalence provisions require regulators to issue recognition or registration decisions for non-UK firms. Where the Treasury has made an equivalence determination by direction during the transition period,

the instrument puts in place a regime for firms to make an application during the transition period to the appropriate regulator and for that application to be processed.

The instrument will therefore ensure that the regulators have the power to process applications and issue recognition and registration decisions during the transition period, to come into effect at the end of that period for the necessary provisions in retained EU law. It will also give regulators the power to request fees from applicants for regulatory decisions made under it.

I appreciate that the Lords Secondary Legislation Scrutiny Committee questioned whether there is enough time for the UK regulators to establish co-operation agreements with EEA regulators once an equivalence determination is made and then process applications made by EEA firms. I am pleased to say that regulators have a period of one year to process applications from EEA firms once the required co-operation arrangements have been established. Both the Treasury and regulators consider that ample time for the regulators to decide any applications.

Secondly, the SI will amend the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, which in turn make provision for the onshoring of the EU credit rating agencies regulation. The amendments will onshore the powers to enter into co-operation arrangements currently held by the European Securities and Markets Authority to the Financial Conduct Authority.

The amendments also make provision for the existing EU equivalence determinations that will form part of retained EU law by operation of section 3 of the European Union (Withdrawal) Act 2018. Finally, a minor but necessary amendment is also made to the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 that relates to a provision within the regulations to ensure that they work in a UK-only context.

In summary, the Government believe that the proposed instrument is necessary to ensure that there is an appropriate equivalence framework for financial services during the transition period and to complement that already put in place by the equivalence regulations 2019. I hope that Committee members will join me in supporting the regulations and I commend them to the Committee.

2.38 pm

Mr Pat McFadden (Wolverhampton South East) (Lab): It is a pleasure to serve under your chairmanship, Ms McVey. The regulations are intended to put in place an equivalence regime for financial services during and at the end of the transition period. They mirror the equivalence regulations put in place last year in case we left the EU without a withdrawal agreement. As the old saying goes, it is déjà vu all over again.

The aim is to ensure minimal disruption at the end of the transition period and a suitable UK regime for functions currently carried out by EU bodies such as the Commission or the European Securities and Markets Authority. In most cases, those functions will transfer to the Treasury or regulators such as the Financial Conduct Authority. The Minister might confirm my understanding that the aim of the regulations is not to change policy other than that necessary to recognise the legal fact of the UK's having left the European Union.

To put the Committee's mind at rest, I will say that we do not intend to divide the Committee on this matter today. It is clearly in the national interest to have a robust regulatory system in place and to have a mechanism for making equivalence determinations for the financial services industries and the regulatory systems in EEA countries, and that is what the regulations aim to achieve.

However, I do have a couple of questions for the Minister, and I would be grateful if he addressed them in his summing-up speech. Determining equivalence is of course a two-way street. It is of just as much relevance to our financial services industry—and all the jobs, investment and tax revenue associated with it—to know what the situation is with equivalence determinations in EEA countries for our financial services industry as it is to design our own regulatory system for theirs.

The Minister will be aware that paragraph 36 of the political declaration that we signed last year said that the UK and EU should endeavour

“to conclude these assessments before the end of June 2020.”

We are well beyond that now, in mid-September, and perhaps it is a bit much to expect the Government to stick to the non-legally binding political declaration when they do not even intend to stick to the withdrawal agreement, but could the Minister give an update on how the process of determining equivalence with EEA countries is going? That has of course become a more serious and urgent question with the controversy about the United Kingdom Internal Market Bill, currently being debated in the House.

Let us say that no free trade agreement is reached in the coming weeks. What is the Minister's assessment of the impact of that on our financial services industries? The regulations—they say it throughout—are all about co-operation arrangements, but what if there is not much co-operation in place? What will that mean for this important sector of the UK economy? What will it mean for jobs? And what will it mean for associated industries such as law, consultancy, accountancy, insurance and so on? What does the Minister think are the prospects for equivalence agreements if the good will is being destroyed in the way that we have seen in the last couple of weeks? What representations, if any, has the Minister received from the financial services industry on this question in recent weeks, since the Government's intentions on the internal market Bill became clear?

We can replicate the regulations currently in place; we can transfer responsibility for these determinations to UK bodies, and that is what the regulations before us today do, but what we cannot do is replicate the market access that we currently have, because the Government have chosen their direction in the negotiations in a way that inevitably lessens market access for these UK-based firms. Of course, quite what the full implications of that are only time will tell, but particularly in the light of the last couple of weeks, I would be interested in the Minister's assessment of that before we conclude.

2.43 pm

John Glen: I thank the right hon. Gentleman for his points, which I will address in turn. To reiterate, this SI is needed to ensure that we continue in the UK to have a robust and functioning equivalence framework for financial services after exit. As the right hon. Gentleman acknowledged, these regulations make minor amendments to modify errors in onshored legislation.

[John Glen]

The right hon. Gentleman asked me to confirm initially whether there was any intention to change policy. There is no intention to change policy. But he then asked a series of questions related to the broader negotiation of equivalence in financial services. I am happy to address that and to acknowledge that we returned all 17 questionnaires received from the EU as part of its assessment process. Our returns totalled more than 2,500 pages. We received the first questionnaire in late March, and the last 250 pages of questions reached us only at the end of May. Our belief, as I have said previously, is that many, if not most, of those questions relate to explaining the detailed rules and regulations in the UK—ones that we share with the EU. I am happy to confirm that, although decisions on equivalence are autonomous and unilateral in many areas of financial services, it is essential that we understand the approach of the other party when deciding how to approach an area of cross-border activity. Although the UK has undertaken its assessment of the EU, we will not be

making equivalence decisions at this stage; we will make decisions when and where we determine that it is in the UK's interests to do so. Our ambition remains to achieve reciprocal equivalence, supported by effective regulatory co-operation and an ambitious free trade agreement. We continue to work towards that goal.

The right hon. Gentleman asks about broader engagement with the industry. Obviously, I have deep and regular contact with representative bodies from the different parts of the financial services industry. Just last week I chaired the tenth meeting of the asset management taskforce, and I obviously hear the concerns about these unresolved matters. With respect to the specific arrangements in this SI, however, I hope the Committee is assured that these modest changes are fully necessary. I welcome the right hon. Gentleman's agreement on that.

Question put and agreed to.

2.46 pm

Committee rose.

