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Public Bill Committee

FINANCIAL SERVICES BILL

Ninth Sitting

Tuesday 1 December 2020

(Morning)

CONTENTS

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Saturday 5 December 2020

The Committee consisted of the following Members:

Chairs: Philip Davies, † Dr Rupa Huq

† Baldwin, Harriett *(West Worcestershire)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Davies, Gareth *(Grantham and Stamford)* (Con)
† Eagle, Ms Angela *(Wallasey)* (Lab)
Flynn, Stephen *(Aberdeen South)* (SNP)
† Glen, John *(Economic Secretary to the Treasury)*
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Millar, Robin *(Aberconwy)* (Con)
† Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Richardson, Angela *(Guildford)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Williams, Craig *(Montgomeryshire)* (Con)

Kevin Maddison; Nicholas Taylor, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 1 December 2020

[Dr Rupa Huq *in the Chair*]

Financial Services Bill

9.25 am

The Chair: Before we begin, I have a few preliminary points to make. Please switch electronic devices to silent. Tea and coffee are forbidden during sittings, but I will allow Members to take their jackets off, as Chris Clarkson politely asked at the start, so feel free to remove outer layers if you wish.

I remind Members of the importance of social distancing. Everyone is sitting in the right place, but if necessary, people will have to sit in the Public Gallery. *Hansard* reporters have asked for speeches to be sent to hansardnotes@parliament.uk. Today we will continue with line-by-line consideration.

Clause 25

Individually recognised overseas collective investment schemes

Question proposed, That the clause stand part of the Bill.

The Economic Secretary to the Treasury (John Glen): Thank you for your continued chairmanship of this Committee, Dr Huq.

The clause makes changes to section 272 of the Financial Services and Markets Act 2000, which allows individual investment funds from other countries and territories to be marketed to the general public, including retail investors, in the United Kingdom. Although we have separately introduced a new overseas funds regime to allow specified categories of overseas funds to market to retail investors, section 272, the existing provision, will remain and will be available for investment funds that do not fall within the scope of an equivalent determination under the OFR, but still wish to market to retail investors in the UK. Investment funds that are eligible to apply under the OFR will not be able to make an application under section 272. This is to ensure that funds always apply through the most efficient route possible.

We have proposed simplifications to section 272 and sections relating to it, which are supported by both the Financial Conduct Authority and industry. First, the changes will streamline the FCA's assessment of individual investment funds from other countries. In making its assessment, the FCA would now need to consider only issues that are subject to existing rules on UK authorised funds rather than potential laws that do not yet exist. Secondly, we will simplify when the fund operators have to notify the FCA of changes to their funds and, thirdly, we will make wider changes so that section 272 is compatible with the new OFR.

Also, provisions are added to FSMA, mirroring the ones in the OFR, to enhance consumer protections and ensure consistency in comparability between the two regimes. This includes requiring fund operators to notify such persons as the FCA may direct, such as investors, if the fund's permission to market is suspended or revoked. The FCA will also have the power to make public censure if certain rules and requirements are breached. Finally, we are also making it clear that sub-funds can be recognised under section 272 if investment funds are part of an umbrella and sub-fund structures.

As I noted earlier, an umbrella fund is a legal entity that groups together different sub-funds where each sub-fund has a separate pool of assets that typically has its own investment strategy. The changes set out in clause 25 will improve the process in section 272, reducing the administrative burden for the FCA and asset management firms. I therefore recommend that the clause stand part of the Bill.

Mr Pat McFadden (Wolverhampton South East) (Lab): It is a pleasure to serve under your chairmanship, Dr Huq.

I want to ask the Minister where the clear water is. In simple terms, is this about granting equivalence recognition to individual companies from countries where we do not grant the overall country the equivalence recognition? The Minister nods, so perhaps that is what it is about. That implies that those firms might need a higher level of monitoring or observation, given that they are from countries that have not been granted equivalence recognition—presumably, we think that the regulatory system in the country in which they are based is perhaps not quite of the standard of some other countries. Will he tell us a little more about how that would work? Will there be a set of firms that the FCA keeps an extra eye on? If the FCA decided that equivalence recognition permission should no longer be granted to an individual firm, how would the process work? Is it something that can be withdrawn quite quickly if we think things have changed?

John Glen: I thank the right hon. Member for Wolverhampton South East for his questions. His characterisation of what this is about is absolutely right: the clause provides a mechanism to ensure that funds that are not eligible for the new overseas fund regime may still apply and secure access. In terms of the FCA, monitoring and protection, it is important to point out that the FCA's online register shows that there are currently four stand-alone funds, seven umbrella funds and 27 sub-funds that have permission to be marketed to UK retail investors under section 272. Some of those funds have been carried over from a previous regime for overseas funds marketing to the UK, set out in section 270 of FSMA.

To give some comfort about investor protection, the FCA is required to examine whether the fund gives adequate protection to investors in the scheme. It will examine whether the fund's arrangements for constitution and management are adequate; the powers and duties of the fund's operator, trustee or depositary must also be adequate. It is another mechanism to be applied in conditions where a country as a whole is not given the adequacy equivalence decision.

Under the clause, the FCA has suitable powers to verify the full context of the fund's operations and to take account of the risks associated with the fund. It would make a determination based on the full range of factors available to it.

Mr McFadden: We will be discussing a couple of similar clauses very soon, but it strikes me that quite a big role is envisaged for the FCA in advising the Government on equivalence recognition and regulation in other countries. It has not performed such ongoing monitoring up until now. It is quite easy to go through the Bill clause by clause, subsection by subsection, and think that each change is a nothing more than a small change here and a small change there that do not add up to much, but the impression gained is that the Bill creates a big job for the FCA. Is it properly resourced and equipped to carry out that role?

John Glen: As ever, the right hon. Gentleman makes a very reasonable point. In this context, the obligations on the FCA and the Prudential Regulation Authority will continue to be considerable. They will have significant responsibilities. In previous sittings, we talked about the necessity of having a clear framework for the regulator to be accountable to Parliament, subject to Parliament's determination of what that will be. The resourcing of the FCA with the right sort of skills to carry out the proposed functions will be an issue that its new chief executive will consider in due course. We will seek to co-operate with him to ensure that he has those resources.

The section 272 provision is extant and I outlined the number of funds that are using it, but I accept the right hon. Gentleman's general point about the FCA. It is something of which we are very aware.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

MONEY MARKET FUNDS AUTHORISED IN APPROVED COUNTRIES

Question proposed, That the clause stand part of the Bill.

John Glen: Clause 26 is a core element of the overseas funds regime, the equivalence regime for money market funds. As I am sure a number of colleagues know, money market funds are a type of investment fund that invests in liquid assets such as cash, Government bonds and corporate debt. They are considered to be a low-risk, short-term and high-liquidity investment. Many organisations in the UK, such as local authorities, use money market funds to invest their cash in the short term as an alternative to bank deposits, and the vast majority of money market funds currently available to UK investors are domiciled overseas. UK investors need continued access to those overseas money market funds to use for cash management purposes. Money market funds are subject to separate regulations for other types of funds, and the Government therefore believe it is necessary to have a separate equivalence regime for money market funds that allows the Government to consider the additional factors and regulations.

Clause 26, and the new article 4A equivalence regime that it creates, will ensure that overseas money market funds that wish to become recognised in the UK must be from a country or territory where the relevant regulations have equivalent effect to the MMF regulation in the UK. I therefore recommend that the clause stand part of the Bill.

Mr McFadden: We have met the capital requirements regulation, we have met undertakings for collective investment in transferable securities, and now we meet the money market funds regulation. I have a couple of questions for the Minister on this issue. First, new article 4A(2) of the money market funds regulation says that the Treasury must be satisfied that the requirements on money market funds

"have equivalent effect to the requirements imposed by this Regulation."

The key phrase here is "have equivalent effect". That is the yardstick by which judgments will be made. How will this be assessed? What exactly will the Treasury be looking for when it makes such an assessment? How are we judging equivalent effect?

Secondly, article 4A(4) says that when considering the revocation of equivalence,

"the Treasury may ask the FCA to prepare a report on the law and practice of the country"

that is involved. That harks back to what I said a moment ago. Will preparing reports on the law and practice involved be a new task for the FCA? The Bill states only that the Government "may" ask the FCA, but I would have thought that if the Treasury were to consider the revocation of one of the equivalence recognitions, it would be pretty essential that the FCA be involved in that.

Thirdly, there is nothing in new article 4A that requires the UK to continuously monitor the law and practice of other countries once equivalence has been granted. That is important, because we grant the equivalence recognition on the basis of a view at the time that a country's regulations have equivalent effect. However, how can we guarantee that there might not then be a process of regulatory or deregulatory change in the country that had been deemed equivalent, with consequential risks for UK consumers if—to put it in lay terms—the rules become a lot more lax in that country? Really, I am asking how this will all be monitored again in the future, and I would be grateful if the Minister has some comments on that.

John Glen: I thank the right hon. Gentleman for those questions. Essentially, there are two parts. The first is about how the assessment will be made. The UK is committed to what we describe—I have said it before—as an outcome-based approach to equivalence. That is based on the principles of FSMA, which means acknowledging how different regulatory practices can combine to achieve the same outcomes, as opposed to the prescriptive rule-by-rule-based approach that our friends in the EU have often preferred. We would not expect to see identical line-by-line regulations.

The OFR does not require countries to have those exact rules and regulations, but they must have laws and practices that have an equivalent effect in terms of the outcomes achieved. Obviously, there is considerable expertise involved in evaluating that and a particular group of people who are capable of doing that within the FCA. We believe that that outcomes-based equivalence can provide a high level of consumer protection while also allowing the UK to maintain a competitive market for overseas funds.

The second part of the right hon. Gentleman's question addressed the issue of future evolution and divergence in standards, and how that would be monitored. The

[John Glen]

monitoring would be conducted in line with the equivalence guidance document that the Government published on 9 November. It sets out the framework for ongoing monitoring, recognising this outcomes-based approach, but being cognisant of changes in the underlying regulatory regime. This would not be a question of going through a gateway, gaining approval and that would be it forever. There would be some monitoring proportionate to the nature of the risks and the assurance that we had around the regime. I hope that answers the right hon. Gentleman's question.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

Provision of investment services etc in the UK

Question proposed, That the clause stand part of the Bill.

John Glen: Clause 27 gives effect to schedule 10 and amends the markets in financial instruments regulation. MiFIR is a piece of retained EU legislation that will continue to have effect in the UK after the end of the transition period, with amendments made under the European Union (Withdrawal Agreement) Act 2020 to ensure that it continues to operate effectively.

In summary, the amendments that the Bill makes to MiFIR broadly reflect the changes that the EU has introduced to its own third country regime, so it makes sense for us to do so. The third country regime in MiFIR established the basis on which overseas investment firms will be able to offer investment services and undertake investment activities in the UK. It allows overseas firms to apply for recognition that will allow them to provide cross-border services to more sophisticated clients, without establishing a local branch, if there has been an equivalence in respect of their home jurisdiction.

The changes made in this Bill will ensure the effective operation of the equivalence assessments and the subsequent operation of the recognition regime. That will mean that we can access the EU and treat EU investment firms in the same way that the EU will assess the UK and treat UK firms in the future. I will detail the specific amendments that this Bill makes to MiFIR during my explanation of schedule 10. I recommend that the clause stand part of the Bill.

Mr McFadden: I have two questions about schedule 10. The Minister has set out what it is intended to do, but I want to ask a few questions on the theme of monitoring and compliance.

New paragraph 5A of article 46 of the regulation defines reverse solicitation, and therefore an exemption from the equivalence rules, as when a business is not initiated at a client's own initiative. Is the Minister confident that this is a tight enough turn of phrase to mean that firms cannot solicit business in the UK while dodging the stricter regulations that come within such marketing activity?

Secondly, and more important, new paragraph 1C of article 47 of MiFIR says that when making an equivalence determination the Treasury must take into account whether a country is classed as high risk for money laundering. Surely that is not strong enough. We will talk more about money laundering shortly. Why do we not say outright that the UK should not consider any such jurisdiction as equivalent until it is no longer considered a high-risk location for money laundering?

New article 48A of the regulation gives significant powers to the Treasury to impose additional requirements on third-country firms, but there are no details of what those requirements might be. Again, I would be grateful if the Minister said a bit more about that.

9.45 am

The amendments to article 49 of the regulation mean that it no longer says that the FCA "shall withdraw" recognition in circumstances where a country's firms have acted in a manner clearly prejudicial to the interests of investors, but only that it "may withdraw". Again, if someone has acted in a manner clearly prejudicial to the interests of investors or to the orderly functioning of markets, having seriously infringed provisions and requirements, that looks like a softening of our stance and I am not quite clear why we would want to do that.

Finally, what is the rationale for exempting rules made under MiFIR from the action for damages provisions of the Financial Services and Markets Act 2000? Is that not an important consumer right? I am sorry, that was quite detailed, but it looks as if there is some loosening here of what we might do when people are breaking the rules or when countries are at high risk of money laundering, and that does not seem to me to be the right direction of travel.

John Glen: I thank the right hon. Gentleman for his comments. He raises a number of specific points around drafting, and if there is anything that I cannot answer, I shall write to him today.

On the first point, the FCA needs to register overseas firms, which will give the right oversight, and also needs to monitor the overseas framework on an ongoing basis. From June 2021, the EU will be able to assess the UK and treat UK firms under a new regime. These changes are necessary to ensure that the Treasury is well equipped to assess the EU and that the FCA can exercise the appropriate level of oversight over overseas investment firms operating in the UK under this regime.

The core thrust of the right hon. Gentleman's questions relates to the apparent weakening of the UK's position. The Treasury has not yet determined which additional requirements, if any, would apply to overseas firms; that will be done when an equivalence determination is made, after the Government have fully considered the views of the FCA and other relevant matters.

The point the right hon. Gentleman makes about protection for consumers is obviously a critical one. Firms operating on a cross-border basis under this regime are not allowed to service UK retail consumers. The regime only applies to more sophisticated professional clients such as other financial services firms. None the less, I recognise that it is clear that we need to ensure that firms that are accessing UK markets from overseas are subject to similarly robust regulatory standards to those we place on our firms at home, and these amendments will do exactly that.

The Treasury will be able to determine whether a third country has a regulatory framework that has an equivalent effect to the UK's, meaning that we can be confident that these third-country firms are regulated to the same level as our own. For firms that do not play by the rules, it is important that we have the right mechanisms to call that out, and the FCA will be able to step in where needed to protect UK investors and the integrity of our financial system.

On the right hon. Gentleman's last point about money laundering specifically, we need to assess a jurisdiction's regulatory framework as equivalent. That provides a high bar for anti-money laundering risks, and that is reflected in the guidance document that I referred to earlier. I will make the general point, though, that I understand the sensitivity to this fear and anxiety around wilful divergence to have a less regulated and less secure environment. I want to put it on the record that the Government do not see the changes as a mechanism to achieve some loosening. However, we will need to take account of the new directives that the EU continues to develop without our being at the table, and we will also need to develop our own response. Even though it will not be identical, that does not mean that we will not observe the high standards.

Mr McFadden: I think the Minister is getting to the heart of it. I asked detailed questions, but at the core of them is this one: is there a policy intent in these little changes of words, when we transpose the regulation, to have a loosening in some way, or are those little changes almost incidental—with no policy intention to have a less rigorous regime than MiFIR proper would apply to money laundering, recognition or any of the other things that I asked about?

John Glen: There is no intention to moderate or significantly alter the effect of the regulation. This is about doing what is necessary to ensure that we regulate the services and activities of overseas investment firms following an equivalence determination. The changes are designed to be consistent with the direction of travel that we have pursued within the EU, but making changes that are necessary for the different outcomes-based approach that we have always taken in the UK.

Ms Angela Eagle (Wallasey) (Lab): Just briefly to add to the questions from my right hon. Friend, why on earth is there all this faffing about when we are having total equivalence and companies will want the rules to be the same? Is this just another obtuse obsession with sovereignty, which will cost a hell of a lot more money because we will have to have our own bespoke regime that is meant to do exactly the same thing?

John Glen: I think the hon. Lady's point goes back to the decision made to leave the EU and the implications of that. I recognise that we had a conversation in the previous sitting about the nature of the regimes that have been mooted as a possible solution.

I did an extensive session with the Lords EU Services Sub-Committee yesterday morning dealing with the issue of equivalence. We see this as a technical process. We have filled in several thousand pages of forms across 17 questionnaires for the EU, and it has not made those determinations, so we moved forward and made our determinations of the EU and are seeking to bring as much clarity as possible. This is another example of our bringing clarity to industry in as straightforward a way as possible, and the changes reflect that.

Ms Eagle: I praise the Minister for his diplomacy. Having been a Treasury Minister myself, I know that diplomacy is extremely important when he sits in his bivouac. Has he made any assessment of the extra red tape that he is putting on our own financial services sector by insisting, for reasons of sovereignty, on a different but hopefully equivalent route? He and I both know that the minor differences between what is allowed and what is not can turn into weaknesses and reasons for arbitrage and rule breaking if those who regulate are not extremely careful.

John Glen: I acknowledge the hon. Lady's deep experience in this matter and I am grateful for her empathy with the need to be diplomatic as a Treasury Minister. The measure is about extending limited supervisory powers to replicate EU powers. Her general point about the additional costs that can accrue to industry is something that we are very concerned about. We have always had within the UK a different approach to onshoring regulations, and that will continue.

FSMA 2000 gives us that outcome-based approach. When we downloaded the directives that we participated in creating in the EU and the Commission process, we always did it in our own way as per those principles. The hon. Lady's main point is a key concern for the Government. That is why we are anxious to give assurance of continuity where it is plainly necessary and illustrate how we can do things as smoothly as possible, to minimise disruption to industry in a time of prolonged uncertainty, which I hope will come to an end soon.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Schedule 10

Amendments of the Markets in Financial Instruments Regulation

John Glen: I beg to move amendment 18, in schedule 10, page 164, line 7, leave out "services" and insert "investment services, or performing investment activities,".

This amendment provides that the Treasury's regulation-making power under new Article 48A of the Markets in Financial Instruments Regulation applies to third-country firms performing investment activities, as well as to third-country firms providing investment services.

The intention of this amendment is to make a correction to article 48A for the markets in financial instruments regulation by replacing the word "services" in line 7 of page 164 with

"investment services, or performing investment activities,".

This will mean that the Treasury may impose requirements on overseas firms performing investment activities in the UK in addition to overseas firms providing investment services in the UK.

Amendment 18 agreed to.

Question proposed, That the schedule, as amended, be the Tenth schedule to the Bill.

John Glen: Schedule 10 amends the retained Markets in Financial Instruments Regulation. This regulation will continue to have effect in the UK after the end of the transition period. In part, it regulates overseas firms

[John Glen]

that provide investment services and activities in the UK, following an equivalence determination, as I described in relation to clause 27.

Under MiFIR, investment firms in a jurisdiction the regime of which has been found to be equivalent can provide a specified range of services in the UK under a recognition regime. The amendments the Bill makes to MiFIR broadly reflect the changes that the EU introduced to its own overseas regime for investment firms where those changes make sense for the UK. These changes will ensure that we can assess the EU and treat EU firms seeking to operate in the UK in the way the EU will assess the UK and treat UK firms in the future.

Schedule 10 provides the FCA with a power to specify reporting requirements for overseas firms that register under the regime. As the expert regulator, the FCA is best placed to specify that level of detail. Schedule 10 also updates the assessment criteria for equivalence to reflect the latest changes in the UK's prudential regimes, as updated by this Bill. Countries will be required to have provisions in place that are equivalent in effect in areas such as prudential rules, business conduct, market transparency and other areas. That means that overseas firms accessing UK markets will be subject to the same level of investor protection and prudential regulatory standards as that which we place on UK firms.

The process of equivalence is a dynamic one. Indeed, we need to ensure that equivalence can be monitored, not only now but in the future—that speaks to the point made earlier by the right hon. Member for Wolverhampton South East. That is why the FCA will be required to monitor the regulatory and supervisory developments and enforcement practices of an overseas country that has received an equivalence determination and report its findings to the Treasury. By doing that, we will be able to ensure that we can continue to protect UK consumers as much now as in the future.

Schedule 10 also enables the FCA to temporarily restrict or prohibit an overseas firm from accessing UK markets if the firm does not co-operate with the FCA. In some cases, the FCA may withdraw an overseas firm's registration. These important tools need to be exercised carefully and, as such, schedule 10 also specifies the procedures that the FCA must follow when using them.

Finally, schedule 10 will enable the Treasury, where appropriate, to impose specific requirements on overseas firms that register under the MiFIR regime as part of the equivalence decision. That will allow the FCA to account for the specific nature of overseas firms providing services across borders to UK markets. The schedule therefore provides the Treasury and the FCA with the appropriate powers to ensure that the UK remains open to global investment, while upholding the highest standards of investor protection and ensuring the effective functioning of UK markets.

10 am

Mr McFadden: I asked some questions about this matter in relation to clause 27, so I do not intend to speak again.

Ms Eagle: The powers are necessary to prevent not only exploitation that might pose some systemic risks to the financial system, but catastrophic loss to UK investors due to rogue investors or investments. Regulators are reluctant to use the more draconian end of their powers, and there is little evidence that they actually go there.

Is the Minister satisfied that the practical effect of the changes will be that the FCA is determined to use those powers, if need be? It seems to be reluctant to go to the stage of closing firms down. That would be a huge decision that may involve considerable disruption. Is he convinced that the FCA has the resources, the aptitude and the determination to do that if necessary?

John Glen: The hon. Lady makes a good point. This goes to the heart of the evolution in the FCA's responsibilities in an environment where it is being asked to do things differently and to account to Parliament for its actions. The future regulatory framework discussions through the next six months will allow us to solidify what those responsibilities will be.

The hon. Lady is right to say that the FCA will be required to make significant judgments on regulatory and supervisory developments, enforcement practices and other relevant market developments in third countries. The Treasury will request reports from the FCA with regards to overseas jurisdictions. We will consider those reports and other sources of information and take appropriate action, which would involve reviewing and equivalence determination or withdrawing equivalence.

Resourcing is a matter for the FCA itself, which it reflects on and establishes a levy for. I have conversations every six weeks with the FCA's chief executive and chairman, and such matters are under ongoing review. Clearly, in the light of these changes, the FCA will need to update its provision. The FCA has a new chief executive officer who is undertaking a significant transformation project. I welcome his appointment and his plans, but reviews will be ongoing, and I am confident that he and his organisation will rise to the occasion.

Ms Eagle: I am sorry to press the Minister again, but this area is crucial to ensuring that our financial services industry is properly and appropriately regulated. We will be discussing crime, money laundering, and market abuse later today, I think, but the powers arranged against a regulator wanting to take drastic action, particularly in the form of disruption, trouble, lawyers, threats and all that, can mitigate decisive action. With Action Fraud and the failures in some of these areas, we have seen that even when criminal liability and offences are in the mix, rather than just regulatory offences, we do not seem to have developed a system that is as effective as it needs to be.

To what extent does the Economic Secretary think that the FCA's use of levies to finance that activity is good enough given their volume and the drastic effects of some decisions, especially considering the funding of other regulators? Across the pond—we will increasingly have to look across the Atlantic—regulators are much better resourced than our own. Is he convinced that he has got the balance right for capacity and resources?

John Glen: The hon. Lady is taking me further and further away from the Bill. Her core point is about the suitability and sufficiency of the FCA's capability. The FCA has provision to take account of consumer and market conditions and intervene, and I am clear that it has the capacity and the experience to do that work.

The broader economic crime challenges that she mentions are why the March Budget contained an additional £100 million economic crime levy to support existing public investment and levies.

These are an ongoing, challenging, evolving and changing set of risks across that market, with the application of new technology—I have mentioned cryptocurrencies—and new ways of doing business that mean that the nature of crime is also evolving. I would never be complacent about the capacity of the FCA, and I recognise that it needs constant review and refresh to ensure that it is aligned with the other agencies involved in monitoring and dealing with threats to market integrity.

Question put and agreed to.

Schedule 10, as amended, accordingly agreed to.

Clause 28

Part 4A permissions: variation or cancellation on initiative of FCA

John Glen: Clause 28 introduces schedule 11, which amends the Financial Services and Markets Act 2000 to put in place a new process so that the FCA can more quickly cancel the authorisation of firms that it believes are no longer continuing regulated activity.

Since the existing grounds and method for cancellations were introduced, the FCA-regulated population has expanded, such that the FCA now regulates approximately 59,000 firms. Under the current cancellation process, it can take considerable time for the FCA to build its evidential case that the firm is no longer carrying out authorised activity, even when it is likely that the firm is no longer doing so. That means that there is a delay between the firms being identified as inactive by the FCA, and the FCA being able to remove or vary their authorisation.

The FCA estimates that at any point in time, the number of firms no longer carrying on FCA-regulated activities but which have not sought cancellation to their authorisation is about 300 to 400. Although that is a small proportion of the 59,000 FCA-regulated population that I mentioned, the Government nevertheless consider that it creates a risk, particularly in regard to the financial services register. Fraudsters can take advantage of inaccuracies in the register to their benefit by cloning inactive firms to scam consumers. That involves impersonating a firm that is on the register to give people the impression that they are dealing with a regulated entity.

Alison Thewliss (Glasgow Central) (SNP): What is the interaction between that register and the Companies House register? If we removed an inactive business from one register, it would make sense to remove it from the other.

John Glen: As far as I am aware, the Companies House register is a separate entity run from the Department for Business, Energy and Industrial Strategy. A considerable amount of work is going on at the moment to look at how the data around Companies House registration works, reflecting concerns raised in the December 2018 Financial Action Task Force report. The hon. Lady makes a very reasonable point about the alignment of the two registers, and I will need to come back to her on that matter. Clearly, it would be perverse to remove an FCA-registered entity but not have a forfeit of registration from Companies House. I shall write to the Committee and to the hon. Lady on that matter.

I want to ensure that consumers can take informed financial services decisions. To achieve that, we need to ensure that the financial services register is accurate and that consumers are not exposed to unnecessary risk. This new process will sit alongside the existing process, to allow the FCA to streamline cases in which it suspects that a firm is no longer carrying on an authorised activity, enabling the FCA to more quickly cancel the firm's authorisation and update the financial services register accordingly. In cases in which the FCA is looking to cancel a firm's authorisation for another reason, this will continue to pass through the existing process.

I therefore recommend that this clause stand part of the Bill.

Mr McFadden: I suspect that I am going to follow up on the question from the hon. Member for Glasgow Central. As the Minister has explained, the problem that this clause and schedule are intended to resolve is dormant companies that no longer do the things that they were doing when originally registered with the FCA. Regulation is sometimes described as a needle-in-a-haystack problem, because there are so many companies and there is so much going on. Okay, it is not a massive number; it is 300 or 400 among 59,000 companies, but if we can strip those out, we make the job of the regulator that little bit easier because it is monitoring fewer companies and there is less danger of the cloning activity that the Minister described.

However, this does prompt a question: if 59,000 companies are regulated by the FCA and some 4 million to 5 million are registered with Companies House—we will come on to this under other clauses shortly—surely the process that the Minister has just outlined for clause 28 and schedule 11 should apply to companies there, if we find that they are simply paper organisations that may be designed as much to deceive as to actually carry out any business. Where they are engaged in activities that they should not be, they should be taken off the register, too, but that would of course imply a change in job description for Companies House. It has traditionally regarded itself more as a register and library rather than a real regulator or what might be called a partner in law enforcement. Therefore, can the Minister at least—he will hear this more than once today—talk to colleagues in BEIS to encourage a parallel approach with Companies House? It seems to me that what is being done in clause 28 is sensible, but it is only part of the picture of clamping down on illegal activity.

John Glen: The point here is that clearly a business could be registered at Companies House, could historically have done regulated activity under the FCA and that regulated activity could have ceased; it may have other business activities that are completely compliant with Companies House law, but it should not be registered for doing financial services regulated activity. The question would then be this: what would be the obligation on Companies House to make an interaction so that, as the right hon. Gentleman said, the definition of its activities would be amended?

[John Glen]

Obviously, there are complex legal issues here. This is associated with the review that BEIS will be coming back to, responding to. I think it is important that we acknowledge that issue about not doing a regulated activity but continuing to trade legally in other realms. But the point that I hear and recognise needs to be clarified is this: what is the interaction between the two processes? I undertake to examine that and to make clear to my colleagues in BEIS what the risks are and what the view of this Committee is.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Schedule 11

Variation or cancellation of Part 4A permission on initiative of FCA: additional power

Question proposed, That the schedule be the Eleventh schedule to the Bill.

John Glen: I have already explained why we are acting to create a new process so that the FCA can more quickly cancel the authorisation of firms that it believes are no longer continuing regulated activity. Schedule 11 amends the Financial Services and Markets Act 2000 to give the FCA the necessary power to do that If it appears to the FCA that an FCA authorised person is no longer carrying out a regulated activity, it can vary or cancel that firm's permissions. Examples of where the FCA might pursue this approach could be when the firm has failed to pay its fees or levies or provide information to the FCA as is required in the FCA handbook.

10.15 am

The schedule sets the conditions that must be met for the FCA to vary or cancel the authorisation, which include giving written notice to the firm that appears to be no longer carrying out a regulated activity and allowing the firm an opportunity to respond. It also includes a process for annulling any cancellation or variation and establishes a right of appeal for the firm.

As I have said, I want to ensure that consumers can take informed financial services decisions and, to achieve that, we need to ensure that the financial services register is accurate and that consumers are not exposed to unnecessary risk. I therefore recommend the schedule stand part to the Bill.

Question put and agreed to.

Schedule 11 accordingly agreed to.

Clause 29

Insider lists and Managers' Transactions

Question proposed, That the clause stand part of the Bill.

John Glen: Clause 29 makes two small technical changes to the market abuse regulation. The first concerns insider lists, which are lists of all persons who have access to inside information and are working for firms that issue financial instruments or those acting on their behalf. They are a crucial tool for regulators and for firms themselves in controlling the flow of inside information. Currently, the market abuse regulation requires issuers or any person acting on their behalf or on their account to maintain an insider list. This has created uncertainty as to whether third parties acting on behalf of an issuer should be holding their own list or sending it to the issuer to hold, leading to a risk that some of the parties are not maintaining insider lists. These lists are vital. In this clause, we are acting to remove this uncertainty by making it clear that both issuers and any person acting on their behalf or on their account are required to maintain an insider list.

The second part of the clause concerns the timetable within which issuers are required to disclose transactions by their senior managers in the issuers' own financial instruments to the public. Under the market abuse regulation, senior managers—referred to as persons discharging managerial responsibilities, or PDMRs—need to notify the issuer and the FCA of any transaction undertaking in financial instruments related to the issuer. This notification must be made within three working days of the transaction and the issuer must also notify the public within the same three working days of the transaction. This means it is possible that an issuer may only receive the notification from the PDMR on the day that they are required to publish the transaction. We are changing this to require notification to the public within two working days after the issuer receives notification of a transaction. This introduces a more practical and sensible timetable for observing timely and transparent disclosure of PDMR transactions to the market. I therefore recommend that the clause stand part of the Bill.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

Maximum sentences for insider dealing and financial services offences

Question proposed, That the clause stand part of the Bill.

John Glen: Clause 30 concerns the penalty for criminal market abuse. Market abuse undermines integrity, reduces public confidence and impairs the effectiveness of the financial markets. Market abuse is comparable to other types of economic crime, such as fraud, so it should carry an equivalent penalty.

The clause will increase the maximum prison sentence for such crimes from seven to 10 years, demonstrating that the Government take criminal market abuse offences just as seriously as other types of economic crime offences. In 2015, the findings of the fair and effective markets review were published jointly by the Treasury, the FCA and the Bank of England. This report assessed market standards in the financial services industry, looking for ways to improve fairness and effectiveness in fixed income, currencies and commodities markets. The report contained 21 recommendations to improve market standards assigned to a number of public bodies. The Government are committed to delivering the improvements to the body of financial services legislation that were recommended in the report, and the clause follows the recommendation of the report. I therefore recommend that the clause stand part of the Bill.

Mr McFadden: The clause before us increases the penalty for insider dealing, and I do not think any Opposition members of the Committee will have a problem with that. The obvious point to make is that sentencing is effective only if there is a reasonable chance that someone will get caught, and if there is a proper and effective system of enforcement of the rules, as well as an overall regulatory system that properly polices such activity.

The *Financial Times* reported last year that the FCA had prosecuted only eight cases of insider dealing, securing just 12 convictions over a five-year period between 2013 and 2018. There is a big contrast between the prosecutions and the investigations, because the same newspaper, reporting on the figures ending in March this year, said that there were a relatively high number of ongoing investigations—more than 600. However, only 15 resulted in financial penalties or fines.

There are few prosecutions and few fines. Why does the Minister think so few of those 600-plus investigations lead to any kind of punishment? Can we conclude that, after all, there is little insider dealing and only a handful of people do it? Alternatively, would the conclusion be that there are flaws in the investigatory process or, perhaps, resource issues that make it difficult to pursue a case to an unquestionable conclusion?

We should acknowledge that the regulator's task is difficult, because the people doing insider dealing will be clever, and will take every step they can to cover their tracks. For example, they might not trade in their own name. They might trade in a relative's name. They might set up a company to trade, and register it either here or somewhere else, which would make the paper trail all the more difficult for the regulator to follow. They might try all sorts of things to blow the regulator off the scent.

There is no problem with increasing the sentence from seven to 10 years, but it strikes me the relevant provisions of the Bill might be too narrow in scope for the problem that we are dealing with. It would be a big mistake to think that approving the clause is job done on insider dealing, and we can tick the box, thinking it will make a big difference. The low rate of prosecutions suggests that there is a need for a much deeper look under the bonnet.

Does the Minister accept that general premise, and will he undertake to carry out that deeper look? Will he make sure that the increased sentences are matched by the resources that the regulators need and, probably more importantly, by other changes in their powers or the regulatory system or the legal basis? That will ensure that more cases are brought to some sort of action at the end and that we do not carry on with such a huge contrast between the number of investigations launched and the small number resulting in a fine or prosecution.

Alison Thewliss: I want to come in briefly, on the back of what the right hon. Member for Wolverhampton South East has said. What analysis have the Government done on whether the increase will be any more of a deterrent than the current seven-year maximum? I note that that is a maximum, and relatively speaking not a huge amount of time, given the severity of some of the crimes that may have been committed. What is the average sentence handed out at the moment? Is it closer to seven years, or is it closer to a couple of years and just a slap on the wrists?

As the right hon. Gentleman mentioned, few cases get to that stage anyway. To help increase the number of people who are prosecuted, what additional resourcing will be put into the policing of financial crime? It is clearly an area that needs significant expertise. If we are going to catch people who are looking to circumvent the system, we need to have people at least as good on the other side of the balance sheet to make sure that they are catching up with them. What recruitment schemes are being put in place to attract the kind of people who will be able to investigate, prosecute and see processes through to the end, to make sure that there is a proper deterrent and people feel that they are going to get caught, fined and locked away? There needs to be sufficient expertise to make sure that that really does happen.

Ms Eagle: My concerns mirror the comments that were made by my right hon. Friend the Member for Wolverhampton South East and by the SNP spokesperson, the hon. Member for Glasgow Central. Financial crime and fraud are areas of crime that have been under-played and under-resourced for enforcement in recent years. We know about the effects of Action Fraud and its almost minuscule levels of successful prosecutions over the years. It is one of the areas that I feel most worried about as a constituency MP. When constituents come to me with issues of fraud, they have often been given the run-around for many years and I know that, realistically, justice for them is often very far away.

Financial crime is somehow regarded as less worrisome than other forms of crime. It seems always to be at the back of the queue in terms of enforcement resources. It is almost as if some people think, "If you can get away with it, more power to your elbow." That introduces attitudes and approaches to the rules, regulations and law that are, at the very least, unfortunate and, probably more accurately, dangerous. It is particularly worrisome given the size of our financial services sector and the number of jobs associated with that sector, and the impact if it were to be destabilised by that kind of attitude getting a grip. It is extremely important that, as a jurisdiction, we clamp down on these crimes.

Is the Minister as worried as I am? Is he satisfied that this form of levy approach is the right one? It makes it look like the state does not worry so much about financial crime—that it does not worry enough to finance the prosecution and policing of it, and that the industry has to somehow pay for its own policing and prosecution. That is an issue.

We would all welcome the increase in sentencing from seven to 10 years that clause 30 contains, but is not the real deterrence to be found in much more rigorous enforcement and financing of enforcement, rather than simply increasing the likely sentences if someone is caught? If people feel that there is not much of a chance that they are going to be caught, an increase in sentencing from seven to 10 years is not really much of a deterrent to bad behaviour. The other thing that worries me is that the risks to those individuals who might be tempted are quite small, when we consider the number of prosecutions, but the rewards, should they get away with it, can be huge. Such a risk-reward assessment does not exactly imply the sort of the deterrence that we all want to protect the integrity of our markets.

10.30 am

The snapshot reaction is to increase the criminal sentence by three years, but we should also consider what goes on in a more dynamic manner. Someone who is tempted to insider deal or to abuse market regulations may not behave as such at the beginning of their tenure in a company. But what if they subsequently see others getting away with that, or hear rumours that such stuff goes on, is not regulated and the authorities do not come down on people like a ton of bricks? What if they see others flaunting the profits derived from such behaviour? Let's face it, the City can sometimes be a bit like that, although not at the moment because all the bars are closed. The Minister knows what I am talking about. In those circumstances, over time the temptation grows and the deterrence is not enough. The enforcement needs to be beefed up.

Will the Minister outline the reasons for clause 30, and why and how the Treasury plan to change the balance of the risk-reward assessment? If enforcement is to be stricter, how will deterrence be strengthened? If we got answers to those questions, many of us would feel better than we do about how market abuse will be regulated in future.

John Glen: I thank Opposition Members for the last three speeches. I think that they expressed a broad understanding of and agreement with the measure, but more general concern about the capacity for implementation and the need to ensure that the issue is addressed more broadly. I am happy to try to respond to those points.

The right hon. Member for Wolverhampton South East started the conversation about enforcement and prosecution. The terms of the clause will help to ensure that market abuse is recognised as serious misconduct in the same way as fraud is currently judged, and that will send a clear message to individuals who break the law: they will be held to account.

The hon. Member for Glasgow Central spoke about the length of sentencing. Since 2009, there have been 36 successful prosecutions for market abuse offences—the average sentence is 1.7 years, and the longest sentence was 4.5 years. To date, no criminal market abuse case has been tried that resulted in a seven-year sentence. That does not preclude the possibility of convictions in future cases that require a longer sentence as a result of aggravating factors, such as a significant breach of trust by senior individuals or sophisticated criminality by organised criminal groups.

In the light of the comments of the hon. Member for Wallasey about the challenges faced, I also want to add that in last week's spending review an additional £63 million was allocated to the Home Office to boost Action Fraud. I also mentioned the economic crime levy in an earlier response, although that is anti-money laundering specific, and will not cover fraud. But a number of other activities are relevant to the points raised by Opposition colleagues.

A significant amount of work is going into the reform of suspicious activity reporting, where banks highlight transactions that give reasons for concern. That reform will be integral to our response to economic crime, and it is vital in uncovering and combating wider criminal activity. The Home Office is leading on that work.

The hon. Member for Wallasey made a point about the £100 million levy and the outsourcing, essentially, of capacity. It is important that we have joint working between the Home Office, the Treasury and the private sector on this matter. Just last week, I had a conversation with the payments regulator and UK Finance about push payment scams and the need to increase the confidence in the way those matters are treated. They are complex and involve sophisticated fraud against many of our constituents. I completely empathise with the hon. Lady's frustration regarding the apparent lower prioritisation of this area. Across my 12 broad areas of responsibility, it is this that I find most challenging to move forward on definitively because the nature of the challenge is evolving. However, the work going on there and the payments regulator's imperative to act, which it will do following the consultation, is significant.

However, with respect to the questions on this particular clause, I hope that the value of that enhanced sentence, which reflects the 2015 report, is understood. We will not bring the broader measures to a conclusion now, but I hope that I have signalled some of the ongoing efforts to try to deal with what is a particularly challenging area.

Ms Eagle: To some extent, this is illustrated by the fact that the enhanced sentence was in a 2015 report but we are only just legislating for it now. Five years later, we are still only talking about a sentence that is highly unlikely ever to be used, based on the past record—the Minister just quoted it himself. I wonder whether he might increase the confidence that some of us have that this is being tackled in a coherent way—we will get on to some of this later—by talking about the fragmented supervisory system and what he is doing to help bring that together so that the fragmented regulation of this whole area can actually be done more coherently, so that we can get enforcement on abuse. We all know that, prior to the big bang in the City, this was all done informally anyway, by gentleman in their clubs. It seems to me that we never really got a grip, after the big bang, in dealing with that informal networking that goes on, where a lot of the gaps and a lot of the potential insider dealing actually lurks. Perhaps he could give me a little bit more confidence about that.

Mr McFadden *rose*—

John Glen: I give way to the hon. Gentleman.

Mr McFadden: I want to double check something that the Minister said a minute ago. I think he said that there have been 36 prosecutions since 2009.

John Glen: I did.

Mr McFadden: That might illustrate the point that we are making, because by my rudimentary maths, that would suggest—

John Glen: Three a year.

Mr McFadden: Something between three and four a year, which is hardly the sign of a system that is working, unless we think that only three or four people a year are doing insider dealing. However, for those who do not believe that, and who believe that hundreds of investigations go on but only three or four people are prosecuted a year, that illustrates the point that increasing the sentencing alone will not deal with this problem.

John Glen: I would never say that the measure was a panacea for economic crime or the complexity of the evolving and changing nature of the risks that we face in financial services. It is obviously an interconnected world across different jurisdictions. I empathise with the frustration around which of the multiple agencies will get a grip on this. It is necessarily complex because of the sophisticated nature of the way that data flows are reported and the way that different specialist agencies of crime enforcement and regulators need to work together.

I do not think I will give satisfaction to the Committee on this matter. The right hon. Member for Wolverhampton South East makes a reasonable point about the implied annual number of successful prosecutions. It is impossible for me to comment on what is lost, because it is counter-factual; I cannot prove what is not there. However, I recognise that there is more work to be done and that this is one step, amid others in other Departments—particularly the Home Office—to move this forward.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31

Application of money laundering regulations to overseas trustees

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

New clause 30—*Application of money laundering regulations to overseas trustees: review of effect on tax revenues*—

'(1) The Chancellor of the Exchequer must review the effects on tax revenues of section 31 and lay a report of that review before the House of Commons within six months of the date on which this Act receives Royal Assent.

(2) The review under sub-paragraph (1) must consider—

(a) the expected change in corporation and income tax paid attributable to the provisions in this Schedule; and

(b) an estimate of any change attributable to the provisions of section 31 in the difference between the amount of tax required to be paid to the Commissioners and the amount paid.

(3) The review must under subparagraph (2)(b) consider taxes payable by the owners and employees of Scottish Limited Partnerships.'

This new clause would require the Chancellor of the Exchequer to review the effect on public finances, and on reducing the tax gap, of section 31, and in particular on the taxes payable by owners and employees of Scottish Limited Partnerships.

New clause 35—*Money laundering and overseas trustees: review*—

'(1) The Treasury must, within six months of this Act being passed, prepare, publish and lay before Parliament a report on the effects on money laundering of the provisions in section 31 of this Act.

(2) The report must address—

(a) the anticipated change to the volume of money laundering attributable to the provisions of section 31; and

(b) alleged money laundering involving overseas trusts by the owners and employees of Scottish Limited Partnerships.'

This new clause would require the Treasury to review the effects on money laundering of the provisions in section 31 of this Act, and in particular on the use of overseas trusts for the purposes of money laundering by owners and employees of Scottish Limited Partnerships.

John Glen: This amendment to the Sanctions and Anti-Money Laundering Act 2018 ensures that the Government have the power to change, and Her Majesty's Revenue and Customs has the power to enforce, elements of our anti-money laundering regime relating to extraterritorial trusts. Enacting this amendment will cement HMRC's power to access information on who really owns and benefits from overseas trusts with links to the UK. This is part of our wider reform efforts to improve beneficial ownership transparency.

It is important to stress that this merely ensures the continuation of existing powers. After the end of the transition period, the Sanctions and Anti-Money Laundering Act will take over from the European Communities Act 1972 as the statutory framework for implementing sanctions and anti-money laundering policy in the UK. Changes introduced by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 provide for the expansion of the HMRC trust registration service. Some non-UK express trusts with a connection to the UK, including those buying UK land or property, will need for the first time to register with HMRC's trust registration service. The number of registered trusts is expected to increase from 120,000 to an estimated 3 to 6 million as a result of those changes made by the money laundering regulations.

The amendment made by the clause will confirm the Government's ability, after the end of the EU exit transition period, to make regulations applying to trustees of overseas trusts with links to the UK, even where they are non-resident. It also confirms HMRC's ability to take enforcement action against those trustees. I therefore recommend that the clause stand part of the Bill.

Alison Thewliss: New clauses 30 and 35 are the result of long-standing concerns that I and my hon. Friend the Member for Aberdeen South have about money laundering in the UK. That was accentuated by what the Minister said about increasing the number of trusts. It goes some way to reflect the evidence we took during prelegislative scrutiny of the draft Registration of Overseas Entities Bill, where a witness suggested that if he were going to hide some money, trusts are pretty much where he would go to do so. The Government should be doing an awful lot more on this, because with this increase in trusts and the Government's response, it feels as though the Government are pursuing a Whac-a-Mole strategy. However, Whac-a-Mole is not a mole-eradication strategy; it just makes them pop up somewhere else. The Government need to be wiser to that.

Our new clauses would require the Treasury to review the effects on money laundering of the provisions in clause 31, and in particular on the use of overseas trusts for the purposes of money laundering by owners and employees of Scottish limited partnerships. The Minister will be fed up with me talking about Scottish limited partnerships, because I and the colleagues who preceded me have never shut up about them, but they remain a problem. The number of people fined for misuse of SLPs remains pretty much at zero, as far I am aware. The Government need to do a huge amount more.

It beggars belief that the Sanctions and Anti-Money Laundering Act left an oligarch loophole, allowing money laundering by overseas trusts to buy UK property with impunity. That Act contains the framework that the UK will use to implement sanctions and anti-money laundering policy after leaving the European Union

[Alison Thewliss]

single market. However, as the Government have observed, it is not clear that under the current drafting anti-money laundering regulations can be made in relation to non-UK trustees of trusts based outside the UK. Even though a trust may be based outside the UK, and the trustee may be a non-UK corporate or individual, the trust may have links to the UK—for example, because it owns UK property. We start to see the very complexity of the web that exists here, and the difficulty in dealing with it and finding who is really in control. New clause 31 would amend schedule 2 to the 2018 Act to ensure that regulations can be made in respect of trustees with links. Without this, any powers HMRC sought to exercise to access information about such trusts are at risk of being held invalid under legal challenge.

The Government, for their part, believe that the change will reaffirm the UK's global leadership in the use of public registers of beneficial ownership, as identified by the Financial Action Task Force mutual evaluation of the UK in 2018. They will further support public and private sectors sufficiently and effectively target resources towards potential criminal activity using trusts, maintaining the resilience of the UK's defences against economic crime. That is quite a joke; it really is not good enough. Trusts are the largest gaping loophole that we have. We want the Government to accept our amendments and come clean on how little impact this measure, as with many others previously, has had on money laundering.

In June 2019, HMRC published revised estimates that put the tax gap at £35 billion for 2017-18, representing 5.6% of total tax liabilities. While welcome action has been taken and that gap has had some impact, no Government have yet created a comprehensive anti-avoidance rule, because at the moment people are allowed to move around in different ways and find different loopholes and different mechanisms to avoid paying their tax.

10.45 am

We need a workable general anti-avoidance rule that tackles tax avoidance in all its forms; does not exempt existing and established abuse from action being taken; includes within its scope international tax abuse; gives the right to a tax authority to take action against tax avoidance, which it defines in an objective fashion capable of being numerically assessed without the consent of any unelected authority; and places the burden of proof of this issue on the taxpayer. The UK Government need to introduce a robust and transparent system of company registration in order to combat money launderers' attempts to register entities for illicit purposes. As has been highlighted previously, Companies House is not responsible for anti-money laundering responsibilities, and the FCA register does not link up with the Companies House register. There are huge gaping holes that the Government do not seem interested in properly addressing.

I appreciate that the Department for Business, Energy and Industrial Strategy has had consultations upon consultations, but the gaps have been evident for quite some time. The extent of the abuse in the current system was laid bare in the Global Witness report "Getting the UK's house in order", which highlights the severe deficiencies at Companies House in compliance with ownership regulations. I have particularly looked at the extent of missing information and the accuracy through the persons of significant control register, which is a mechanism that ought to be collecting information on all persons and corporate entities with significant control of a business or company.

The current system allows those with intent to conceal or deceive to easily do so by registering effectively in secret as a Scottish limited partnership. Unlike English limited partnerships, those financial vehicles have legal personality, which means that agreements can be made by individuals in the name of the financial product without ever having to name the person or people who control it, and they can hold property as well. The abuses of SLPs have been well documented by Richard Smith and David Leask, formally of *The Herald* in Glasgow. There have been all kinds of criminality, such as arms running, money laundering and theft from overseas Governments. The Government really need to clamp down on that. SLPs have been used for years to funnel millions of pounds of dirty money created by illicit business activities, enabled in no small part by a lack of proper checks at Companies House. The Government have consistently failed to take the tough action needed to stop that.

We know for sure that the links between SLPs and criminality pose a threat to combatting organised crime, yet nothing really has happened. Every time I table parliamentary questions on SLPs and the number of people prosecuted or fined for not having persons of significant control registered, it comes back as nothing, because Companies House is not an enforcement body; all it does is collect information, and it does not check if it is good information or absolute guff. A lot of the times with these organisations, it is absolute guff. The only person to be prosecuted was a whistleblower, who was doing so in order to expose the nonsense of Companies House, which is absolutely bizarre.

In the last Parliament, we secured support for a Finance Bill amendment seeking a review into the impact of UK tax avoidance measures and forced the Government to accept the need to tackle the use of SLPs. We were also strongly involved in the Magnitsky amendments in the Sanctions and Anti-Money Laundering Act 2018. But there is much still to be done. Our new clauses are a further suggestion of what more the Government could and should be doing if they are serious about the scourge of dirty money on our doorstep. I move these amendments in my name and hope that the Government will at some point listen, enforce these things and act to deal with this, because it should not be this way. I have been here for five and a half years, banging on about SLPs, as did my former colleague Roger Mullin, yet the issue is still not resolved. The Government must do better.

The Chair: Just a note of caution: these amendments have not been formally moved yet, but on Thursday, when we reach that point, the hon. Member can move them.

Mr McFadden: Sometimes, when I look at this Bill and all the different things it attempts to deal with, I have an image in my head of somebody cleaning out a cupboard in the Treasury, finding lots of policy things and looking for a legislative truck on which they can be loaded.

John Glen: It is described as a portmanteau Bill.

Mr McFadden: Otherwise known as a portmanteau Bill. It is a shame that they could not find more in the cupboard. A couple of small measures are not objectionable in themselves, but we have to ask whether they are up to the challenge. This measure deals with money laundering and trustees based overseas. I do not think that Opposition members of the Committee will object to that, but we must ask, given the scale of money laundering, whether the Government could not have done more.

The membership of this Bill Committee includes a few illustrious members of the Treasury Committee, which has looked into this issue. In fact, it reported on it last year. In compiling that report, it took evidence from witnesses who suggested that the scale of the problem could run to hundreds of billions of pounds. Of course, by definition, as the Minister said a few minutes ago, it is difficult to pin down the size of an unknown, and we cannot be certain, but these were credible witnesses. Even the Government's then Security Minister, the right hon. Member for Wyre and Preston North (Mr Wallace), told the Committee in his evidence that the figure of £90 billion was probably "a conservative estimate".

The Treasury Committee's report highlighted that in a post-Brexit situation, new trading opportunities could also

"provide opportunities to those wishing to undertake economic crime in countries that are more vulnerable to corruption."

That is why I am asking the Minister how these things will be monitored and how we will insulate ourselves against the temptation to strike trade deals here, there and everywhere and, in so doing, perhaps not always looking as deeply as we would into the regulatory systems and so on. The Committee pointed out in its report:

"There is a clearly identified risk that company formation may be used in money laundering."

The Treasury Committee heard evidence that there had been no fines or criminal proceedings relating to the issue of beneficial ownership. As the hon. Member for Glasgow Central pointed out, the one Companies House-related prosecution that took place was simply intended to show how weak the system of scrutiny was. In discussing the role of Companies House, the report concluded that it represented "a weakness". That is quite a damning conclusion for a very eminent Committee of this House to reach, and it painted a picture of an organisation that saw its role as keeping a register—being a librarian rather than a partner in law enforcement.

There is a history to this, of course. We have always prided ourselves on being a country where it is easy to set up a business—it is a fast process and there are not many barriers. That approach has a lot of strengths, but given that only a few individuals control literally thousands of companies on the register, we cannot afford to be so lax. The Government have to some degree recognised that. In September, just before this Bill was published, the Department for Business, Energy and Industrial Strategy in September made an announcement, in which it recognised the problem with the current structure of Companies House and proposed some changes.

The three most important proposals were compulsory identity verification, which has not been happening up until now, a greater power to query false information, and powers on data. The Minister for Security, the right hon. Member for Old Bexley and Sidcup (James Brokenshire), said that those changes would make it easier

"to crack down on dirty money and financial exploitation, to protect our security and prosperity."

That is all good, but the Royal United Services Institute, a respected think-tank, had a look at the Government announcements and tested them against the problem, noting also that 3,000 potentially suspicious UK company structures were cited in what was leaked from the recent Financial Crimes Enforcement Network files.

Let us look at the proposals, starting with mandatory ID verification for the directors of companies or persons of significant control. It would be good if that is done, but there is a big, gaping loophole in it. The proposal will apply only to those incorporating companies directly with Companies House, rather than to the estimated 60% that choose to incorporate via third-party agents. It is a good measure, but it applies only to the minority of companies that register with Companies House.

The second proposal is to give the registrar and CEO of Companies House the power to query information. Up until now, the registrar has had no legal power to do that and has had to accept all information on trust. It is simply astonishing that that has been the case up until now, given that they hold a register of 4 million companies. The scope of the power and how it will be operationalised remain subject to future consultation, so we do not really know how far it will go in allowing the Companies House registrar to probe what they are being told when people come along to register a company.

Thirdly, the proposals about data sharing are welcome, including for bulk data sharing between Companies House and other public sector datasets. The reason that they are important relates to what I asked earlier about the job description of Companies House: is it a register, or is it an organisation that sees itself like any kind of regulator?

The Government proposals are stark. A big hole has been identified in them, but they are also a recognition of the scale of the problem and that we cannot adequately crack down on the big money laundering problem unless we do something about Companies House, too. Global Witness, a charity that the hon. Member for Glasgow Central referred to, estimates that more than 336,000 companies have not disclosed their beneficial owner. It also found that 2,000 company owners had been disqualified directors. The September proposals are a start, but what more can the Minister tell us about how they will be taken forward?

I have mentioned the Treasury Committee, but we also have the Intelligence and Security Committee's report on Russia, which referred to "the London laundromat". That report exposed the weaknesses in unexplained wealth orders and, in particular, their applicability to people who may have been here for some time and invested in property. Property is at the heart of clause 31, because it is through investment in property that those who may not have come by their money legitimately can cleanse their property and say that their wealth is explained, after all. In evidence to the Intelligence and Security Committee's inquiry, the National Crime Agency called for amendments to the Sanctions and Anti-Money Laundering Act 2018, specifically using serious and organised crime as a justification for sanctions.

[Mr McFadden]

Reference has also been made to the draft Registration of Overseas Entities Bill, and I would be grateful if the Minister could update us on where we are with that, because that is another important piece of this jigsaw. As I said, since the Russia report, we have had the FinCEN files, which once again place a number of British financial institutions at the centre of further allegations of money laundering.

11 am

In the face of all that, we have before us a clause that deals with one specific part of this. We certainly do not object to it, but given what the Treasury Committee and the Intelligence and Security Committee have said about it, and given what the Government themselves have said about the weaknesses in Companies House, the Bill seems to miss the opportunity to do more about it. Where is the broader plan to tackle corruption and money laundering, especially as we are on the cusp of moving from European regulation to a post-Brexit situation? We will return to some of these issues when we debate the new clauses on Thursday, but it is important to put that on the record and to put this clause in some kind of context, given the size of the problem we face.

The Chair: A couple of boring things: first, I have been told that I am being too generous with interventions—I do not think there are any at the moment. Secondly, that last oration was good on the generalities of money laundering, but I think clause 31 focuses tightly on overseas investors, so if it happens too often, knuckles will be rapped. However, it was interesting and I learned a lot, so thank you, Pat McFadden.

Ms Eagle: I suspect you have just wiped out most of my speech, Dr Huq. We want to hear from the Minister about the adequacy of having just this clause, and not a lot else, to deal with the issue in this portmanteau Bill. In the debate on clause 30, we heard that it had taken the Treasury five years to increase from seven to 10 years the potential sentence for market abuse. The Treasury Committee's 2019 report—I am now a member of that Committee—was excoriating about the scale of the problem, with between tens of billions and potentially £100 billion lost. As we have discussed in relation to other parts of the Bill, we know that small weaknesses in the defences can be ruthlessly targeted and become much bigger if they are not closed off.

We are reassured about the point that the Minister is trying to make with clause 31, but given that our country has been described as a laundromat for money laundering, perhaps the Government could have used this Bill as a suitable legislative opportunity to make other changes to the money laundering legislation that this clause amends. Perhaps the Minister could explain why that action has not been taken and give us an idea of what will follow. He has already referred to a reform of the suspicious activity reports regime. Why is that not included in this Bill, given that an analysis of it has found that over 80% of the reports are from banks, and very few from other places where there might be suspicious activity, such as property ownership in the UK? As we know, that is how money can be laundered.

We seem to have got ourselves into a situation where the banking structures just produce suspicious activity reports in massive numbers—three quarters of a million of them in a year, I think. Among those, the real ones are perhaps hidden, but the regulators are trying to get through them all and do very little. At the same time, we know that when the FinCEN papers were actually leaked, that involved, between 2000 and 2017, the transfer of close to $2 trillion of transactions, which were included in these suspicious activity reports.

Many transactions laundered money through our systems—many from overseas, in terms of what we are dealing with in clause 4. HSBC allowed fraudsters to move millions of dollars of stolen money around the world even though they knew it was a scam. J.P. Morgan allowed a company to move more than one billion through a London account without knowing who owned it. I could go on.

It seems that clause 31 is a tiny little attempt to stop an abuse, given that the abuse going on is of that scale. There is also the husband of a woman who donated £1.7 million to the UK's Conservative party, secretly funded by a Russian oligarch with close ties to President Putin. Again, I could go on. I hope that the Minister is going to at least give us some view about what is going on here and whether clause 31 is the be-all and end-all of what the Government intend to put in place to deal with this issue.

On victims of fraud, criminals have successfully stolen £1.2 billion from individuals through banking fraud; in an earlier debate, the Minister was talking about his own frustrations with trying to get a grip of that issue. That figure on scams comes from 2018. It is also estimated that £5.9 billion a year is defrauded from businesses in the public sector.

The issue is not just about oligarchs running their money around the world and laundering it into property and other things. It is not just about mafiosi or corrupt political leaders doing the same, although all that is happening. This involves your constituents, Dr Huq, and my constituents, who are losing money through banking scams. Our public sector is losing money through other scams, which bleeds away the resources available to us to do the other things we need to, especially when these resources are scarce.

This issue can sometimes look very technical—it is about overseas investors and is only little clause 31. But it is not only about corrupt laundromats, Russian reports and corruption on a scale we can only think about. It is also about some of our well-known high street banks indulging in such activity and covering it up somehow, because having the business is so profitable for them—and, again, the risks of being caught and fined are outweighed by the profits that can be made by turning a blind eye. It involves all of the major banking and investment institutions. It involves estate agents, lawyers and accountants who are facilitators—wittingly or unwittingly—to all these activities.

We had better get a grip: the more this kind of money is present, the worse and dirtier it makes our structures and systems and the more cynical it makes our constituents. It makes all of us less likely to follow the rule of law and agree that the right thing should be done. It changes the balance that people calculate between the risks of doing something wrong and the rewards of not being caught. None of that helps the rule of law; none of it helps honesty; and none of it helps those of our constituents who strive their whole lives to do the right thing and yet see others profit massively from scams and reprehensible behaviour—criminal behaviour, in a lot of cases.

Dr Huq, I have ranged a bit wider than the terms of clause 31, but I think that it is the start of a fightback on money laundering regulations. Even though it represents a tiny, tiny little step, the Government have yet to persuade me that they want to get a grip of the situation and intend to do so through the Bill.

John Glen: I thank Members for their contributions, although at times as I listened I thought that I was in the wrong place, given the wider conversation about economic crime. However, I greatly respect the sentiments and points expressed and I will try to address the questions put.

The right hon. Member for Wolverhampton South East spoke of a mental image of a cupboard being cleared out. I will not deny that in my three years as Economic Secretary I needed to legislate on a number of matters, and the Bill necessarily brings together a number of them. However, there will be more legislation if I can persuade the authorities in this place to grant me that opportunity. I assure him that the Bill does not represent the end point on a number of matters. The clause, however, merely ensures the continuation of, and ability to vary in future, existing powers and requirements with respect to overseas trusts.

New clause 30, proposed by the hon. Member for Glasgow Central, would impose a requirement on the Treasury to report on the impact of the provisions of clause 31 on the expected change in corporation tax and income tax paid, and the expected change in the difference between the amount of tax required and the amount tax paid in relation to overseas trusts and Scottish limited partnerships. I reiterate that the Government are committed to ensuring that the UK's corporate structures are not exploited by those seeking to avoid or evade tax. For reasons that I will outline, however, the Government cannot support the proposed new clause.

As I have said, the Government have introduced changes through amendments to the money laundering regulations that directly aim to improve the transparency of the ownership of trusts. In particular, those changes significantly expand the requirement for non-UK trusts to register with the HMRC trust registration service. Trusts will have to provide evidence that they are registered before entering into business arrangements with regulated firms under the money laundering regulations. HMRC needs clear powers to take enforcement action against those who do not comply with registration requirements, and the Government need to maintain the ability to amend those requirements in future.

The powers in the Sanctions and Anti-money Laundering Act 2018 will ensure that the UK Government can continue to make and amend their regulations. The proposed new clause would require the Treasury to publish a report on the effects of clause 31 on the amount of taxes paid, but it is not in line with effects of that clause, which does not make changes to taxes. The provision is not expected to bring about any changes in the amount of corporation tax and income tax paid nor any change to the tax gap in relation to Scottish limited partnerships or otherwise. Neither is it envisioned that it would be possible to attribute any variation in taxes paid, nor the tax gap, to clause 31.

New clause 35 imposes a requirement on the Treasury to report on the impact of the provisions in clause 31 on money laundering volumes involving overseas trusts and Scottish limited partnerships. I understand that it seeks to measure the impact of our efforts to prevent money laundering through trusts, but may I remind hon. Members that the current Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 and the 2017 regulations that they amended, namely, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, already require the Treasury to carry out a review of its regulatory provisions and publish a report setting out the conclusions of its review by June 2022? That wider review will provide a more meaningful evaluation than simply reporting on the narrow provision of the clause, and provide continuity in the Government's powers to make changes in the UK's anti-money laundering regime.

I also remind colleagues that Scottish limited partnerships are not specifically within the scope of the trust register, and point them towards separate legislation that deals with transparency for those vehicles. In June 2017, Scottish limited partnerships were brought into scope with the public register of beneficial ownership maintained by Companies House. Since the Government introduced new reporting requirements for Scottish limited partnerships in 2017, new registrations of Scottish limited partnerships have greatly reduced, with registrations falling from 4,932 in 2016-17 to 2,689 in 2017-18, and falling further to 657 in 2019-20.

I want to take this opportunity to address some of the broader points on the alleged failures, and the work in progress, with respect to anti-money laundering and trusts. I think it reasonable to say that the UK is recognised as having some of the strongest controls internationally for tackling money laundering and terrorist financing. In recent years, we have taken a number of steps, including creating a new National Economic Crime Centre, passing the Criminal Finances Act 2017, and establishing the Office for Professional Body Anti-Money Laundering Supervision.

The hon. Member for Wallasey referred to the challenge of suspicious activity reports processing. The economic crime levy, in working with industry, is a direct attempt to invest in that reform. She asked specifically why legislation on that is not included in the Bill. That is continuing work that urgently needs to move forward, but provision for extra investment to process SARs more efficiently is being conducted at pace.

Last year, the Government published the landmark economic crime plan, which brought law enforcement and the private sector together in closer co-operation than ever before to deliver a whole-system response to economic crime. This year, we completed the transposition of the fifth anti-money laundering directive into domestic law. That remains comprehensive and responsive to emerging threats, in line with the evolving standards set out by the Financial Action Task Force—the international body that monitors such matters.

The expansion of the trusts registration service referenced today will bring millions more trusts in scope, including overseas trusts that purchase land or property in the UK. We will ensure that information on the register is made available in certain circumstances to those with a legitimate interest. We do recognise—I acknowledge the sentiments that have been expressed—that more needs to be done, and we are committed to making further progress, building on that made so far, to lead the global fight against illicit financial flows.

[John Glen]

New clauses 30 and 35 make small amendments to clarify that the Government can enforce extraterritorial trust registration in relation to non-UK resident trustees and update those requirements in future. On why we are not doing more in the Bill, I have mentioned a number of the activities that the Government are undertaking, but I recognise that more needs to be done.

I should also mention the overseas entities Bill. In line with the ongoing commitment to combatting illicit finance, we intend to implement a register of beneficial owners of overseas entities that buy or own land in the UK as a measure of the economic crime plan 2019 to 2022. The register will be the first of its type in the world. The Government published a draft of that legislation, which accepted many of the subsequent recommendations by the Joint Committee that carried out that pre-legislative scrutiny. As the hon. Member for Glasgow Central knows, the Queen's Speech last year committed to this Bill and to the continuing progress of that draft legislation. Lord Callanan's written ministerial statement in July outlined the progress to date of that draft Bill.

On Companies House register reform—another matter mentioned by several colleagues—the Government are currently considering a broad package of reforms to Companies House to boost its potential as an enabler of business transactions and economic growth, but also giving it a bigger role in combatting economic crime. Following last year's consultation, the Government issued our response to the corporate transparency and register reform on 18 September. The response summarises the views received and sets out how the Government will take forward those plans.

The Government will legislate when the parliamentary calendar allows and intend to deliver more reliable information on the companies register—reinforced by the verification of the identity of people who manage, control or set up companies, as has been referenced—and greater powers for those at Companies House to query and challenge information, so they are not just librarians, as I think they were described.

We will bring effective protection of personal information provided to Companies House and a more effective investigation and enforcement regime for non-disclosure and false-filing; the removal of technological and legal barriers to allow enhanced cross-checks on corporate data with other public and private sector bodies; continued investment in technology and in the skills of Companies House staff to make that register more efficient, effective and resilient; and broader reforms to clamp down on the misuse of entities I hope that my answers have done some justice to the questions asked, and I ask the hon. Member for Glasgow Central to withdraw the new clauses.

The Chair: Actually, new clauses 30 and 35 will not be decided until Thursday because of where they are on the amendment paper, so the hon. Member for Glasgow Central can decide then whether to press or withdraw them. For now, we are on clause 31 stand part.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(David Rutley.)*

11.20 am

Adjourned till this day at Two o'clock.