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Public Bill Committee

FINANCIAL SERVICES AND MARKETS BILL

Third Sitting

Tuesday 25 October 2022

(Morning)

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Saturday 29 October 2022

The Committee consisted of the following Members:

Chairs: Mr Virendra Sharma, † Dame Maria Miller

† Bacon, Gareth *(Orpington)* (Con)
† Bailey, Shaun *(West Bromwich West)* (Con)
† Davies, Gareth *(Grantham and Stamford)* (Con)
† Davies, Dr James *(Vale of Clwyd)* (Con)
† Docherty-Hughes, Martin *(West Dunbartonshire)* (SNP)
† Eagle, Dame Angela *(Wallasey)* (Lab)
† Grant, Peter *(Glenrothes)* (SNP)
† Griffith, Andrew *(Financial Secretary to the Treasury)*
† Hammond, Stephen *(Wimbledon)* (Con)
† Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hart, Sally-Ann *(Hastings and Rye)* (Con)
McDonagh, Siobhain *(Mitcham and Morden)* (Lab)
† Mak, Alan *(Havant)* (Con)
† Morrissey, Joy *(Beaconsfield)* (Con)
† Siddiq, Tulip *(Hampstead and Kilburn)* (Lab)
† Tracey, Craig *(North Warwickshire)* (Con)
† Twist, Liz *(Blaydon)* (Lab)

Bradley Albrow, Simon Armitage, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 25 October 2022

(Morning)

[Dame Maria Miller *in the Chair*]

Financial Services and Markets Bill

9.25 am

The Chair: I have a few preliminary comments to make. Will Members who speak send their notes by email to *Hansard* in the usual way—it really helps? Will you ensure that you have turned off all your electronic devices, so that you do not disturb anyone? As ever, tea and coffee are not allowed during sittings—just a reminder. Everyone in Committee is experienced, but there have been a lot of changes over the past couple of years, so I will remind you about proceedings and how we run Bill Committees.

Today, we begin line-by-line consideration of the Bill. The selection and groupings list for the sitting is on the table—it is worth getting a copy—and it shows how the clauses are selected and the amendments grouped together for debate. Amendments grouped together are generally on the same or similar issues. I know you are aware of this, but decisions on amendments do not take place in the order in which they are debated; they are taken in the order in which they appear on the amendment paper. The selection and groupings list shows the order of debates. Decisions on each amendment and on whether each clause should stand part of the Bill are taken when we come to the relevant clause.

The Member who has put their name to the lead amendment in a group is called to speak first—so, I will call Peter first, because his amendment is the first listed today—and other Members are then free to catch my eye in the usual way. I urge you to make that obvious, as sometimes it is a little difficult to tell. A Member may speak more than once in a single debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, will they please indicate whether they wish to withdraw the amendment or take it to a vote? Will any Member who wishes to press any other amendment in a group to a vote please let me know in advance, because it helps the organisation of our proceedings?

Clause 1

Revocation of retained EU law relating to financial services and markets

Peter Grant (Glenrothes) (SNP): I beg to move amendment 44, in clause 1, page 1, leave out line 6 and insert—

"(1) The Treasury may, by regulations, revoke the legislation referred to in Schedule 1.

(1A) The Treasury may not make the regulations referred to in subsection (1) if the Chancellor of the Exchequer considers that the revocation of legislation provided for in the regulations would have the effect of prejudicing the interests of consumers, unless alternative and adequate legislative provision has been enacted which mitigates these prejudicial effects."

This amendment would mean that the Treasury cannot revoke retained EU law relating to financial services if such revocation would be prejudicial to the interests of consumers, unless other provision has been made to mitigate these prejudicial effects.

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

Clause stand part.

That schedule 1 be the First schedule to the Bill.

Peter Grant: It is a pleasure to see you in the Chair this morning, Dame Maria.

As Members know, the SNP group came close to voting against the Bill on Second Reading. In fact, we tabled a reasoned amendment, primarily because of our concern about how the clause intends to take matters forward, but it was not selected by Mr Speaker. A sad fact for many of us is that the United Kingdom is no longer part of the European Union and that, therefore, all European Union legislation needs to be reconsidered. My problem is that it has already been decided in the Bill that, on financial services, all European Union legislation needs to be thrown out.

We hope that someone in the Treasury will at the same time, or very quickly afterwards, replace that legislation with something at least as good, if not better. I mean no disrespect to anyone here, to any Member of Parliament, the Minister or anyone working in the Treasury, however, when I say that I can have no confidence that that process, on that scale and at that speed, will work—we need only look at the number of amendments that the Government have had to table to the Bill because of mistakes in it, as published. In Delegated Legislation Committees on which I have sat, there have been instances where we have had to correct the correction to the correction of an initial piece of secondary legislation arising from Brexit.

It is simply not realistic to believe that all the revocations and repeals proposed under the clause can be replaced with equally good regulation without mistakes being made. When mistakes are made in the regulation of financial services, people get scammed, companies that should survive go under and the United Kingdom's reputation as a dodgy place to do financial services becomes even worse. For all that I am not a big fan of the United Kingdom, I do not want to see that happen. I am not a big fan of the United Kingdom Parliament either, but I do not want to see its right to scrutinise in detail any suggested changes to legislation undermined, simply because it suits the Government of the day.

While it may be that the right thing to do with all 200-plus pieces of legislation listed in schedule 1 is to revoke and repeal every single word, Parliament should be given a choice, at reasonable speed, to decide whether that is correct. Ideally, at the same time as Parliament is asked to revoke the legislation, we should be given the chance to consider what will be put in its place.

My view on clause 1 altered slightly when we heard from the witnesses last week, especially those from the financial institutions. Some of them said that they genuinely felt that some of the existing EU legislation needs to go or to be changed significantly. I did not hear

anybody asking for a wholesale revision of all 200-plus pieces of legislation. The motivation appears to be to take the European Union sticker off the number plate and put a Union Jack on it instead. If that is the only difference that is being made, what the Government suggest here is far too risky and undermines the right of Members of Parliament, including those who are not on the Committee, and their responsibility to scrutinise legislation that is crucial not only to the wellbeing of the economy on a big scale, but to the wellbeing of the economies of hundreds of thousands of our constituents. For many of them, this legislation has come too late, because they have been ruined by financial services scams that could perhaps have been prevented if this legislation had been introduced sooner.

It is my intention to press the amendment to a Division, Madam Deputy Speaker—I mean, Dame Maria. I do not know whether I should apologise for promoting you. Accepting the amendment would not significantly delay any legislative changes that the Government intend to introduce, but it would ensure that they are scrutinised properly to increase the chance that when mistakes are made in the replacement legislation, as they will be, they are picked up and dealt with before it is too late.

Dame Angela Eagle (Wallasey) (Lab): Good morning, Dame Maria. It is a great honour to be on a Bill that you are chairing—I think it is our first time together in this iteration.

The Opposition do not have a problem with the principle of repealing some of the EU legislation, but I rise to invite the Minister to give us more detail on precisely how he envisages the wide-ranging power in clause 1 will be exercised in practice. I speak as a former member of the European Statutory Instruments Committee, which did a great deal of work in sifting all of the EU legislation to onshore it ahead of Brexit, including all the legislation covered by the Bill. We sat regularly and looked at thousands upon thousands of pieces of EU legislation, which we brought onshore ahead of Brexit. A great deal of work was done to achieve that, but a great many mistakes were made during the process in the drafting, the interpretation and the way in which powers were onshored in areas where we have not legislated directly for 47 years. This is a great accumulation of technical, but also extremely important, legislation that impacts on our constituents' experience of everyday life as consumers and on how they use financial services and insurance, banking and savings products. If we get it wrong, there can be a great deal of detriment to our constituents.

Will the Minister give the Committee an idea of how the wide-ranging power to amend a large amount of legislation that has been on the statute book for many years will be done in a way that reassures all our constituents that we have the right balance between consumer protection and consumer rights on the one hand and our financial services industry and the way that it operates on the other? How will Parliament get to look at this? It is possible to argue that clause 1 would allow Parliament to be run over roughshod, without providing proper scrutiny, so will the Minister indicate how it will work in practice? How does he propose the powers will be exercised? What can Parliament do if we perceive that an issue that has been overlooked in all the technocracy impacts on our constituents? We need to ensure we have proper accountability.

I would be less worried if, as the hon. Member for Glenrothes said, we are just taking off an EU flag and sticking on a Union Jack, but I assume the Minister is taking these powers because he wants to use them. Will he set out in his comments on clause 1 precisely how he expects that to happen?

Shaun Bailey (West Bromwich West) (Con): It is a pleasure to see you in the Chair, Dame Maria. We often cross paths in these Committees and it is great to see you once again in the Chair.

I will speak briefly about amendment 44, following the comments of the hon. Members for Wallasey and for Glenrothes. The Government need to be nimble in how they lay regulations, particularly in this transitional period. Clause 1 provides the ability to be agile, particularly as we redevelop our financial services framework following our departure from the European Union. The Government clearly need the ability to do that. We are dealing with a vast array of regulation, primary legislation and laws that will require a significant amount of time to be developed, but at speed. Clause 1 enables the Minister to do that, and I trust my hon. Friend the hon. Member for Arundel and South Downs to develop the legislative framework in the right way.

Peter Grant: If there is such an urgent need for speed, why has it taken so long for the Bill to be brought before the House?

Shaun Bailey: Perhaps I should have finished my comments, which would have led to the point that the hon. Gentleman has made. There is a need for speed and also a need to make things right. I think that is the point that he and the hon. Member for Wallasey were making, particularly as it is so vital that we get it right. I agree with the hon. Lady that there is a place for scrutiny. Drafting errors are a concern, and we have to make sure that as we build the framework, it is done in the right way. I pay tribute to the work that she did on the EU sifting Committee, because it is a thankless task to go through.

Dame Angela Eagle: It was not the most fascinating thing I have ever done in the House, but it was one of those things that one has to do, or the statute book ends up in a right mess.

Shaun Bailey: I thank the hon. Lady again for the work that she has done.

I will round up my comments by saying that I think it is right that in clause 1 the Minister has the ability to do what he needs to do, but I do ask him to consider what Members have said about the safeguards to ensure that there is the right framework, particularly around drafting amendments and suchlike, so that we get this right. The Bill is needed and the Government are absolutely right to do what they are doing. As with any piece of legislation, it is about ensuring that we iron out the creases. I hope the Minister will give us those assurances today.

Tulip Siddiq (Hampstead and Kilburn) (Lab): It is a pleasure to serve with you in the Chair, Dame Maria, especially after our time together on the Women and Equalities Committee.

[Tulip Siddiq]

The Opposition recognise that enabling the City to the thrive will be fundamental to support the country and to help people through the cost of living crisis. We need a regulatory framework that allows our country to take advantage of opportunities outside the EU, whether by unlocking capital in the insurance sector for investment in green infrastructure or supporting the vibrant UK fintech sector to thrive.

The Minister knows that the Opposition are broadly supportive of the Bill. We welcome clause 1, which will empower the UK to tailor regulation to meet our needs outside the EU, but my questions are similar to those posed by my hon. Friend the Member for Wallasey. What reassurance can the Minister provide that clause 1 will not result in the Government diverging for divergence's sake and, in the process, unnecessarily revoking rules that might boost the competitiveness of the City or protect consumers from harm? As my hon. Friend said, we want a bit more detail on clause 1.

I also have a few technical questions. Will the Minister confirm whether his Government still plan to revoke all retained EU law by the end of 2023? What assessment has he made of the impact of that date on UK financial services? The date seems a bit arbitrary and we want to know how much thought went into coming up with it. Does the Minister think there is a risk of creating uncertainty and extra costs for the sector by forcing financial services businesses to unnecessarily adapt their business models by the end of next year? A bit of information would help us gain clarity on the clause.

The Financial Secretary to the Treasury (Andrew Griffith): It is a pleasure to serve under your chairmanship, Dame Maria. The Bill is central to delivering the Government's vision for the future of the financial services sector. The hon. Member for Hampstead and Kilburn talked about some of the great opportunities that it unlocks. It seizes the opportunities of EU exit, although it is not exclusively about that. It tailors financial services regulation to UK markets to bolster the competitiveness of the UK as a global financial centre and to deliver better outcomes for consumers.

Clause 1 revokes retained EU law on financial services. That clears the way to regulate financial services in a way that works for the UK, building on the model established by the Financial Services and Markets Act 2000. In response to hon. Members who asked how it will operate in practice, the settled position for some time has been that the FSMA model delegates the setting of regulatory standards to operationally independent financial services regulators, within the framework that Parliament sets. That is an internationally respected approach that historically has had support from all sides of the House, and I hope that continues.

As a result of our membership of the EU, the UK has been left with a patchwork—the hon. Member for Wallasey talked about her assessing role as that corpus of law was brought into the UK.

Dame Angela Eagle: I wonder about the sequencing. There is a list in schedule 1 of all the legislation that applies to financial services, lock, stock and barrel. The sifting Committee had oversight of that when we onshored it. Once the schedule is law, it does not all disappear at once, does it? Surely, we keep it there and have a look at things that might cause difficulty and at where we may wish to diverge.

Andrew Griffith: I am coming to the point where I will address the hon. Lady's comments, but that is the substance of the position. The Bill enables the powers to do that, but we do not seek divergence for divergence's sake. The whole purpose of the Bill and of giving the Treasury and regulators the necessary powers is to allow a thoughtful process that provides continued certainty to the sector—so no arbitrary retirement—and that allows time for those regulatory rules to be put on the UK rulebook in a way that is appropriate for the UK. That is the substance of what we are trying to do in the clause.

As to the question asked by the hon. Member for Hampstead and Kilburn, there is no arbitrary backstop date. The technical repeal is in the Bill, but the rules will sit on the rulebook, providing valuable certainty and continuity to the sector until such time as the operationally independent regulators decide that it is appropriate to revisit the rules and tailor them to UK circumstances. That is what the clause is intended to do.

9.45 am

Liz Twist (Blaydon) (Lab): As a member of the European Statutory Instruments Committee, I wonder whether the Minister can offer any assurance that there will be parliamentary scrutiny of the clause in the future. Can he offer any suggestions as to how we might be able to ensure that that takes place?

Andrew Griffith: The hon. Lady is right to talk about the important role of Parliament. We are giving regulators a great deal more power because we are importing a large body of European laws into the UK rulebook, which is one of the reasons why the Government have contemplated the public interest intervention power in the past. The large number of rules—the hon. Member for Wallasey talked about how large that body is, and painted a graphic picture of all that sifting work—does not lend itself to Parliament being the rule setter in each case. Again, that is at odds with the approach to rule setting in the UK historically, but Parliament will continue to have a voice where it feels the need to.

Dame Angela Eagle: I apologise for intervening, but Standing Committee is the time when we can ask detailed questions, so I hope the Minister does not mind my coming back in. *[Interruption.]* I think there was a Siri outburst there.

The Chair: I am sure it will not disturb us anymore.

Dame Angela Eagle: As a member of the Treasury Committee, I can say that we are trying to get a handle on the scrutiny that will be applied as regulators come to look at these things. One assumes that they will announce that they are reviewing a particular area, and they may come up with some divergences. Regulators have their way of doing things, Government Ministers want particular things, and sometimes Parliament has a different view, particularly if something affects

our constituents in unanticipated ways. Given the structure that the Bill sets out, I am trying to get a handle on how Parliament's view on an issue would be put forward.

Andrew Griffith: I will try one more time, Dame Maria, but I want to emphasise that the approach that the Government envisage being taken is exactly the approach embedded in FSMA 2000. We should not be debating these points ab initio simply by virtue of the work that the Bill does in importing the EU rulebook into UK law. The Treasury Committee, of which the hon. Lady is a member, does valuable oversight work and spends a disproportionate amount of time interviewing the regulators. All the regulatory rules are required by statute to have a period of consultation.

We are straying off the clause, but the role of the Treasury Committee and its Sub-Committee is codified in the Bill to enhance the level of scrutiny. There is a Government proposal—it would be interesting to hear the views of the official Opposition on this—for a public interest intervention power, which would cover precisely the sorts of issues that the hon. Lady's constituents may be concerned about relating to regulations. I say again that there is no substantive change to the way Parliament scrutinises the independence of financial services regulation, and I hope that is something on which we can all agree on both sides of the House.

In the interest of time, I turn to amendment 44, which would, as the hon. Member for Glenrothes said, mean that retained EU law relating to financial services could not be repealed, other than where it is prejudicial to the interests of consumers, unless replacement legislation is already in place. It is not the Government's desire to sweep away retained EU law in financial services without ensuring that it is adequately replaced in UK law. I can assure the Committee that there is no arbitrary sunset—

Tulip Siddiq: I watched every minute of the Minister's appearance before the Treasury Committee. He specifically said that the Government would revoke the retained law by the end of next year, in line with the previous Prime Minister's policy. Is there now a change in that policy?

Andrew Griffith: That is not the position in the Bill, which does not contain that date. Whether or not the Government's intention at the time was different, nothing in the Bill says that that will happen. The Government will not diverge for divergence's sake, because we understand the need for continuity to give financial services companies the confidence that they seek.

Martin Docherty-Hughes (West Dunbartonshire) (SNP): It is good to see you in the Chair, Dame Maria. Does that also apply to financial organisations based in Northern Ireland, Minister?

Andrew Griffith: If I may, I will come back to that point later.

Emma Hardy (Kingston upon Hull West and Hessle) (Lab): Will the Minister give way?

Andrew Griffith: One more time. I am being generous in giving way because we are at the early stages of the Bill, Chair.

The Chair: You are being very generous.

Emma Hardy: The Minister is being generous, but as my hon. Friend the Member for Wallasey pointed out, we use Committee stage to scrutinise, question and ask for lots of detail that we would not ask for on the Floor of the House.

The Library briefing states that there is to be

"a 'transitional period' of undefined length…for each provision that is to be revoked."

How will the decision be made on which provisions are to be revoked and when? What is the justification for revoking some at a different time from others?

Andrew Griffith: The Committee will indulge me if this sounds repetitive, but the thrust of the questions is the same: there is no change in the fundamental approach to UK financial services regulation, which is that the pen is held by the operationally independent regulators—primarily under the scrutiny of the Treasury Committee, to which they regularly give evidence—and they use the established statutory consultation procedure. That is the position, and will be the position going forward.

If the hon. Member for Kingston upon Hull West and Hessle would like to table an amendment that would dispense with operationally independent regulators in the UK, so that Parliament holds the pen on rule making, the Government will consider it. That is not the Government's view of what should happen, however, and I do not believe that it is the view of the official Opposition. I understand the important role of parliamentary scrutiny, but an embedded feature, and one that I hear hon. Members pushing back on or challenging, is that regulators—in consultation with industry, following the statutory consultation process—are that ones that make the rules.

I will make some progress. To address a point made by a number of hon. Members, the Treasury will, as it does now, work closely with the Financial Conduct Authority and other regulators to ensure that the transition from retained EU law to UK regulations is orderly and meets the need of UK consumers, and that there is no gap in protections or relevant rules. As I have said, that work will be subject to the statutory consultation process in the normal way.

Amendment 44, tabled by the hon. Member for Glenrothes, is about consumer protection. I can assure the Committee that clause 3(2)(f)—we are getting ahead of ourselves—specifically enables the Treasury to modify retained EU law to protect consumers and insurance policyholders. Clause 4 enables the Government to restate retained EU law in domestic legislation for the same purpose. Consumers of financial services are already assured of appropriate protections under the UK framework for financial services regulation. Parliament has given the FCA a consumer protection objective—one of its core objectives—to ensure an appropriate degree of protection for consumers, which the FCA is required to advance when discharging its general functions. As evidence of that, the FCA has, among other things, recently introduced a new consumer duty. I hope that assures the Committee that there are already adequate consumer protections, both in the Bill and in the wider body of regulation. I therefore ask the hon. Member for Glenrothes to withdraw his amendment.

[Andrew Griffith]

I will now explain the approach that clause 1 and schedule 1 take to repealing retained EU law. Retained EU law is revoked by clause 1. Schedule 1 lists the retained EU law revoked by clause 1. Part 1 of the schedule captures retained direct principal EU legislation, which means EU regulations such as the prospectus regulation. Part 2 captures secondary legislation that was made to implement EU directives or other obligations. That includes statutory instruments made under the European Communities Act 1972, which implemented significant pieces of EU law, such as Solvency II and the markets in financial instruments directive, known as MiFID.

Part 3 captures EU tertiary legislation, including delegated regulations, implementing Acts and EU decisions. Part 4 repeals part of primary legislation that relates to retained EU law, in particular part 9D of FSMA 2000, which relates to rules defined in relation to the EU capital requirements regulation, and chapter 2A of part 9A of FSMA, which governs technical standards. Those parts of FSMA will not be necessary following the repeal of the retained EU law to which they relate. Part 5 acts as a sweeper provision: it revokes all EU derived legislation relating to financial services that is not directly listed in the schedule. That does not capture any domestic primary legislation; it simply captures the kinds of EU law covered by parts 1 to 3 but not specifically listed. I therefore recommend that clause 1 and schedule 1 stand part of the Bill.

Peter Grant: I thank all the hon. Members who contributed to the debate. I notice that the Minister did not explain why amendment 44 is a bad idea. He has not given any reason why it would make things worse. He has argued that it would not make things better, would make them only slightly better or would make them better in a way that is not needed.

I take the Minister's point that later parts of the Bill give the Treasury the power to act in the interest of consumer protection. I want to go further than allowing the Treasury to protect my constituents; I want Parliament to force the Treasury to protect my constituents. We do that by not allowing the Treasury to revoke consumer protection legislation until we, the House of Commons, are on behalf of our constituents satisfied that there is a suitable replacement for it.

I draw the Committee's attention to part 5 of schedule 1, on page 96 of the Bill. It essentially states, "We have listed 200 bits of legislation that we are going to revoke. There are probably lots of other ones that we have not found yet, so we are going to put in a catch-all clause, so that they will all be revoked as well." That does not strike me as a good way for the House of Commons to revoke legislation. The Minister has repeatedly said that the Government do not expect all the legislation to be revoked overnight. In fact, the explanatory notes to the Bill point out that the Government think that changing all that EU law will take several years. What happened to, "We got Brexit done"? We have hardly even started on the financial services part of Brexit.

As I said in my opening remarks, although I was against the suggestion that that law needs to be changed, I accept that the United Kingdom has to start to change parts of EU law. The wholesale nature of the change intended in clause 1 is not necessary and is extremely dangerous to the interests of our constituents. Amendment 44 would not necessarily remove all of that danger, and I am still concerned about what we would be left with. I have nothing but respect for the Minister as an individual, but let us face it: if recent history is anything to go by, he will not be there when decisions on revoking legislation are actually taken. Who knows? Maybe he has his phone on just now, and is waiting for that call.

Let us be honest: over the summer, this has not been a Government who have honoured their promises. They have not honoured the assurances made to their own party members so that one Member could become Prime Minister—the Prime Minister who recently resigned. Promises made at the Dispatch Box have been unmade almost before the Minister making them sat down. This Government have severely damaged the tradition that assurances given by a Minister, either here in Committee or in the Chamber, will always be honoured. That does not happen any more. I am afraid the House is entitled to ask for a bit more than might have been accepted a few years ago, when the traditions of this House were actually respected by each and every member of the Government.

10 am

Dame Angela Eagle: Clearly, Pepper *v.* Hart applies when a reassurance is given by a Minister. That is partly why we ask questions in these proceedings. We wish to have on record reassurances about the meaning of the statute in front of us, how the Government interpret it, and what the Government's intent was. If there is any subsequent doubt about that, the record can be looked at under the provisions of Pepper *v*. Hart.

Peter Grant: I am grateful for that intervention. I do not disagree with a word of it. My point is simply that whatever the conventions, traditions and proceedings of this House might tell us, in practice the doctrine of ministerial responsibility does not apply in the way that I just about remember learning about 50 years ago as a schoolchild, in what was then called modern studies. There are numerous examples of Ministers behaving in a way that would require them to go, if they believed in the conventions of the House. I am not suggesting for a second—

The Chair: Order. I remind the hon. Member that we really need to stick to the text of the Bill, rather than giving a lesson on constitutional law. That would be really helpful.

Peter Grant: Thank you, Dame Maria. I hear the Minister's assurances, but this issue is too important for us to rely on the conventions of the House, which have been broken far too often. The protection of our consumers and the financial services industry is important enough that any changes to regulations that had to be at least initially consented to by this Parliament should be made only with the consent of this Parliament, to which power was supposed to be returned by Brexit.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 10.

Division No. 1]

AYES

Docherty-Hughes, Martin	Grant, Peter

NOES

Bacon, Gareth	Hammond, Stephen
Bailey, Shaun	Hart, Sally-Ann
Davies, Gareth	Mak, Alan
Davies, Dr James	Morrissey, Joy
Griffith, Andrew	Tracey, Craig

Question accordingly negatived.

Clause 1 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 3

POWER TO MAKE FURTHER TRANSITIONAL AMENDMENTS

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

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

Clause 4 stand part.

Government amendment 2.

Clause 5 stand part.

Andrew Griffith: Clauses 3, 4 and 5 create the necessary powers to replace retained EU law, which we have just been talking about, when it is repealed through clause 1. While the Government will act quickly to repeal and reform those areas that offer the greatest potential benefits, some of the retained EU law listed in schedule 1 —this may give comfort to hon. Members—will remain in force for a period following Royal Assent.

Clause 3 creates a power for the Treasury to modify the retained EU law in schedule 1 during the transitional period—that is, the period from the Bill's receipt of Royal Assent to the point at which the revocation of the instrument is commenced, whenever that is. That allows the Government to make proportionate and targeted—Members might like to note those words—modifications to retained EU law before it is repealed. That ensures that financial services regulation continues to function appropriately for UK markets, and that UK firms are not required to comply with outdated regulations while we put in place the new UK-designed rules.

Clause 4 allows the Treasury to modify and restate the retained EU law listed in schedule 1 of the Bill. The clause gives the Government the necessary tools to move, over time, to a comprehensive FSMA model of regulation. Under that model, the UK's expert and operationally independent regulators will generally make the detailed rules for firms to follow, within a wider framework set by Parliament and Government. Under the FSMA model, the Treasury sets the regulatory perimeter through secondary legislation by specifying which activities should be regulated. Some elements of retained EU law perform a similar function and should therefore be maintained in domestic legislation. That includes provisions that set the perimeter of financial services regulation in which the regulators will operate, enforcement powers for the regulators, and the ability of the Treasury to make and give effect to equivalence decisions in respect of overseas jurisdictions.

The clause also allows the Treasury to modify the retained EU law that it restates. That is essential for the UK to seize the opportunities of Brexit, tailoring financial services regulation to UK markets to bolster the competitiveness of the UK as a global financial centre and to deliver better outcomes for consumers and businesses. The exercise of that power will almost always be subject to the affirmative procedure. The only exception is where the power is used to make transitional modifications to either EU tertiary legislation or legislation that was originally made under the negative procedure. In this case, it is appropriate to follow previous precedent and apply the same negative procedure.

Clause 5 empowers the Treasury to replace references to EU directives in domestic legislation through a statutory instrument. EU directives are EU legislative acts that do not directly have effect in the UK; however, there are various references to EU directives in domestic legislation, and those should be removed as we move to a comprehensive FSMA model of regulation. That is why the clause gives the Treasury the power to modify UK domestic legislation to replace references to EU directives. Sometimes, however, no replacement will be necessary, and amendment 2 simply clarifies that the power can be used to remove such references without replacement.

The Government will be able to exercise the powers given to them in clauses 3, 4 5 and in amendment 2 only in line with the purposes listed in clause 3(2). Those purposes have been drafted to be similar to the objectives of the FCA, the Prudential Regulation Authority, the financial stability objective of the Bank of England, and the special resolution objectives. That will ensure that, while retained EU law remains in place and constrains the action that regulators can take to further their objectives, the Government can act as appropriate.

I acknowledge that these are relatively broad powers, but they are appropriately constrained by reference to existing objectives, with appropriate parliamentary scrutiny and in relation to retained EU law. It is proportionate to the task ahead of us, which is to seize the opportunity of the EU exit to build a comprehensive model of financial services regulation tailored specifically to UK markets. I commend clauses 3, 4 and 5 to the Committee.

Emma Hardy: If I am correct, there was significant questioning of clause 3 and the powers during transition in the oral evidence sessions, particularly with Martin Taylor, who was the last person to give evidence. As the Minister may recall, he spoke about how this extra power that the Treasury will have could undermine the trust of the markets in the independence of the regulators. I was just looking to see if there was a copy of the *Hansard* of those oral evidence sessions, but I cannot seem to see one—*[Interruption.]* I have one now.

Martin Taylor's significant concerns were, as we have recently, that when the markets believe there is not independence of the regulators, they react accordingly. Has the Minister reflected on that evidence, and what reassurance can he give the markets and others that the Treasury will not exert undue influence over the regulators?

One of the points that stuck in my mind, though I cannot remember who made it, was about the Treasury having the power to intervene when something is in the public interest. One of the witnesses said that that implies that sometimes the regulators will act not in the public interest, given that the Treasury have to intervene in the public interest and exert power and control over them. I wonder if the Minister has reflected further on some of those concerns that were raised during the oral evidence session.

Peter Grant: It is interesting that we have three clauses here, each of which give the Treasury the power to amend legislation in very, very closely defined and restricted ways, and every one of them needs regulations to be approved by Parliament. Most of them require approval by the affirmative procedure. However, two minutes ago we were told we could wipe out 200 different items of legislation in their entirety without Parliament needing to have any oversight of the process. It does seem a strange contradiction.

The way the clauses are worded and the restrictions that are placed on them mean that this is one of the very few occasions where I would be comfortable in allowing regulations to be used to amend primary legislation. However, I have to say that for some of the restrictions, one wonders why they are there. Subsection (6) to clause 3 requires the Treasury to consult the regulator, and subsection (7) basically says, "But the Treasury only needs to consult the regulators if the Treasury thinks it is a good idea". Why on earth does that need to be put into an Act of Parliament?

If clause 1 had been worded in a similar way to these clauses, there would have been no need for my amendment. There would have been no question at all from my point of view about that clause being accepted. I hope the Minister can explain why it is that these very limited and restricted powers to amend legislation are subject in most cases to the affirmative procedure, whereby Parliament has to approve them, when all the legislation that was put up for repeal and revocation in clause 1 needs no further detailed scrutiny from Parliament.

As far as the concerns raised by the hon. Member for Kingston upon Hull West and Hessle, I think those comments perhaps related to an amendment that the Government have flagged that they intend to introduce that may well give the Government far too much power to direct the supposedly independent regulators. If and when that amendment comes forward, we will certainly have concerns about it. I do not think those comments were related to the clauses in the Bill as it stands. On that basis, I will not oppose the clauses today.

Dame Angela Eagle: I want to register some concern and get the Minister's reassurances on the record about what are very broad-ranging powers for the Treasury, which are then subject to constraints. Was it necessary to have such broad-ranging powers? It is not a good way of approaching things unless there are no other options. Is the Minister worried that, over time, those constraints might loosen and the broad powers will remain? The dynamic of this kind of structure is what worries me, rather than the balance that he has explained the Government have currently set.

10.15 am

Shaun Bailey: I shall be brief. Broadly speaking, I support the three clauses and particularly clause three on the qualifications it puts on how the Treasury will utilise those powers. I do not know the inner machinations of the Treasury. I know there are people in this room, particularly the hon. Member for Wallasey, who probably know it better than me, but the practical reality needs to be an important part of this as we debate the clauses too.

I hope my hon. Friend the Minister will say to me that the Treasury will not fly solo without consultation with the regulator. Clearly, the Treasury has built a partnership with the regulators, which forms a key part of any sort of work within the scope of these three clauses, particularly amendments of regulation and the qualifications under clause three. I am just keen to stress the point to my hon. Friend that as the Bill progresses and is practically applied, that discourse with regulators is a key part of its implementation.

The hon. Member for Wallasey made a fair point about the loosening of restraints. The assurances we seek from my hon. Friend are just to ensure that the frameworks that in place are robustly monitored and maintained. That will be the key to ensuring that the constraints under which my hon. Friend's Department is placed as he executes the provisions of these clauses are properly maintained.

Andrew Griffith: I welcome the contributions from the hon. Members for Kingston upon Hull West and Hessle and for Wallasey, and my hon. Friend the Member for West Bromwich West. Both sides of the House are wrestling with exactly the same issue, which is taking what is acknowledged to be an unprecedented corpus of European law, which the Westminster Parliament had no opportunity to have oversight of or change—

Peter Grant: Will the hon. Member give way?

Andrew Griffith: I will not give way at the moment. The issue is therefore about docking that corpus into an established framework of operationally independent regulators, with Parliament establishing the perimeter and ultimately having the right degree of scrutiny. That may be through the public interest intervention power that the hon. Member for Kingston upon Hull West and Hessle talked about, but which is not tabled in the Bill at the moment and is subject to continuing debate. That was the main thrust of the witness in the final session of last week's sitting.

As currently written, clause three does not interfere with regulatory independence. Repealing retained EU law means the regulators will generally, as the default position, take over setting the detailed requirements, replacing the function of the European Commission and the European Parliament. However, that will take time and so we will not repeal those rules immediately. The regulators, under direction and intervention, as currently, from the Treasury Committee, will decide on the areas of most focus.

Emma Hardy: When will the details on those intervention powers be published so we can have a good look at them?

Andrew Griffith: I have previously given the assurance to the Treasury Committee that they will be tabled during the course of the Committee stage of the Bill. That remains the intention.

I have broadly addressed the points. I do not think Hon. Members oppose the Bill's wording. I understand probing and I welcome the scrutiny of Parliament; we are here to provide precisely that function. However, I hope that I have been able to set out to the Committee's satisfaction why these powers are necessary, but also the wider context in which they will be operated.

Dame Angela Eagle: I wonder whether the Minister could be a bit more forthcoming about when the amendment will be available, because that will give us a fuller picture of the Government's decisions on the delicate balance that must be struck. Bearing in mind that the Committee sits for two weeks and at the end of today we will have had 25% of the Public Bill Committee proceedings on this Bill, I hope that the Minister will not publish the amendment at the end of next week.

Andrew Griffith: I am afraid that the hon. Lady will have to accept my previous commitment to the Committee. I also observe that mixed messages have come from the Opposition side of the House, because a lot of the thrust today is that Parliament should have greater ability to scrutinise or to intervene; previously, we have heard the opposite. But I have nothing further to add in terms of the timing.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5

POWER TO REPLACE REFERENCES TO EU DIRECTIVES

Amendment made: 2, in clause 5, page 4, line 37, after "provision" insert "(if any)".—*(Andrew Griffith.)*

This amendment clarifies that the power conferred by clause 5(1) to remove references to EU directives can be exercised so as to remove such references without replacement.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6

RESTATEMENT IN RULES: EXEMPTION FROM CONSULTATION REQUIREMENTS ETC

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

The Chair: With this it will be convenient to discuss clause 7 stand part.

Andrew Griffith: Clause 6 supports the efficient transfer of financial services regulation from retained EU law to the regulators' rulebooks. As retained EU law is revoked, the regulators will take on significant new responsibilities for making rules in areas where EU law currently exists, within the framework set by the Treasury and Parliament through FSMA and enhanced by this Bill. Part of that wider framework sets out the processes that the FCA, the PRA, the Bank of England and the Payment Systems Regulator must follow when they make rules. Those processes rightly include requirements to conduct cost-benefit analysis, to carry out a public consultation and, in some cases, to consult other regulators. Such provisions are crucial to the functioning of our regulatory system and ensure that the impact of new rules on individuals and businesses is appropriately assessed and considered.

However, there are likely to be occasions when existing rules under retained EU law do not need to be materially altered and so, when the regulators bring forward new rules, they may remain broadly similar to the retained EU law that they replace. In those cases, the rules would not require any real changes for firms, compared with the existing retained EU law. The clause therefore enables the Treasury to exempt the regulators from cost-benefit analysis and consultation in those circumstances where they make rules that are "materially similar" to those currently in retained EU law. That will ensure proportionality and will therefore enable the regulators to focus their resources on those areas where reform will unlock the benefits that arise from tailoring regulation to UK markets.

I should reassure the Committee that the clause is framed as a power rather than a blanket exemption. Even when a regulator is proposing to make rules that are "materially similar" to existing requirements, a full consultation and a cost-benefit analysis may be appropriate.

Clause 7 is a technical provision that defines several terms used in clauses 1 to 6 and schedule 1. It governs how those other provisions should be interpreted. I will briefly set out the major elements of interpretation. First, the clause defines the word "regulator" as referring to the Prudential Regulation Authority, the Financial Conduct Authority, the Bank of England and the Payment Systems Regulator. Secondly, it excludes regulator rules from the definition of EU-derived legislation, meaning that where regulator rules implemented EU directives, they will not be revoked by the Bill. That is a necessary exclusion because many parts of the regulatory rulebook would otherwise meet the definition of retained EU law, but it would not be appropriate to repeal them as they are for the regulators to determine. The regulators already have the necessary powers to delete or modify them as appropriate. I therefore commend the clauses to the Committee.

Dame Angela Eagle: Could the Minister spend a bit of time explaining what "materially similar" means?

Martin Docherty-Hughes: I asked the Minister earlier about Northern Ireland, and SNP and Labour Members would be interested to hear what he means by "proportionality" when it comes to services, EU-derived legislation and what differences there will be between the UK and Northern Ireland. He never mentions Northern Ireland—he keeps talking about the United Kingdom.

Andrew Griffith: To the question asked by the hon. Lady, my understanding is that the terms will have the common law usage. It would be inappropriate for me to try to insert my own definition.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7 ordered to stand part of the Bill.

The Chair: Members will have noted that we now come to clause 2, which the Government requested we debate in this order.

Clause 2

TRANSITIONAL AMENDMENTS

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

The Chair: With this it will be convenient to discuss that schedule 2 be the Second schedule to the Bill.

Andrew Griffith: We have already discussed the provisions the Bill delivers to allow us to replace the entirety of financial services retained EU law with domestic legislation that is in line with the established FSMA model. The Government will use the powers in the Bill and work closely with the regulators to give effect to that. However, it is important that we act now, where we can, to tailor our regulations to seize the benefits of EU exit and support our world-leading financial services sector. Clause 2 and schedule 2 do just that, making two sets of important and immediate transitional amendments to retained EU law. These are technical and important changes, so forgive me for taking some time to set them out.

First, schedule 2 makes a series of priority reforms to the UK's regulatory regime for wholesale capital markets as identified through the Government's wholesale markets review. The regime is predominantly set out in EU-derived legislation collectively known as the markets in financial instruments directive—MiFID—framework. The resilience, effectiveness and competitiveness of the UK's capital markets rest on strong and effective regulation.

However, the MiFID framework was designed for the EU and intended to ensure detailed, harmonised rules across 28 jurisdictions. Many of the rules are therefore not calibrated optimally for the UK and, in a number of areas, have not delivered the intended benefits. This has led, for example, to duplication and excessive administrative burdens for firms or has stifled innovation. Such rules clearly do not work for a global financial centre such as the UK.

Parts 1, 2 and 4 of schedule 2 deliver the most urgent reforms identified through that process. The reforms will result in a simpler and less prescriptive regime that meets the needs of UK markets while still maintaining the highest regulatory standards. Part 1 of schedule 2 removes unnecessary restrictions on firms' ability to execute transactions, deleting the share trading obligation and double volume cap. The EU argued that these restrictions would increase transparency in share trading, but evidence suggests that they have prevented firms from accessing the most liquid markets and therefore achieving the best price for investors.

10.30 am

Separately, the MiFID framework requires trading venues and systematic internalisers to publish details about bids and offers before a trade has been completed, and information about the size and volume of trades once they have been executed. That is known as pre and post-trade transparency. The Government believe that the transparency regime for equities is generally working well but is overly complex. To simplify it, part 1 revokes current requirements about when firms are exempt from pre-trade requirements and gives the FCA new powers to set conditions.

Separately, part 1 amends the definition of a systematic internaliser so that investment firms dealing on their own accounts do not have to undertake complex and costly calculations to determine whether they are a systematic internaliser. It also removes restrictions on midpoint crossing for certain investment firms, ensuring that those firms can trade at the midpoint between the best bid and offer, which will lead to better prices for investors.

Schedule 2 also makes three amendments to the derivatives trading obligation, or the DTO, which requires firms to trade certain derivatives on UK venues or recognised overseas venues that have been recognised as equivalent. The first amendment realigns the counterparties in scope of the derivative trading obligation with the clearing obligation. The second amendment gives the FCA a new rule-making power to exempt post-trade risk reduction services from the DTO, as well as the best execution requirement, to encourage firms to use those services and thereby reduce systematic risk. The Bank of England is given an identical power to exempt it from the clearing obligation. The third amendment gives the FCA a new power to modify or suspend the DTO, subject to Treasury consent, to prevent or mitigate disruption to markets.

Schedule 2 also amends the transparency regime for fixed income and derivatives markets, which is poorly calibrated. It was introduced only in 2018 and was modelled on the transparency regime for equity markets, without ever taking into account the differences in each market. That has resulted in low levels of transparency and has negatively impacted price formation.

The final reform that schedule 2 makes to the MiFID framework is set out in part 4 and relates to the position limits regime, which restricts the maximum size of a net position that a person can hold in a commodity derivative. The Government support the objective of position limits, which is to reduce risk in commodity markets, but believe the scope of the regime is disproportionate and unnecessarily prevents the build-up of liquidity. The Bill therefore revokes the requirement for the FCA to apply position limits in commodity derivatives and allows it to transfer responsibility for setting position limits to trading venues, which are well placed to identify volatility. To ensure that there is appropriate regulatory oversight, the schedule grants the FCA a power to develop an overarching framework and a power to set limits directly if certain conditions are met.

Moving on to the next set of provisions delivered through schedule 2, part 3 amends the UK securitisation regulations to increase choice for UK investors in simple, transparent, and standardised—or STS—securitisations, with all their benefits, by creating a framework to recognise non-UK STS securitisations in the UK. That follows the Government's review of the securitisation regulations, which was welcomed by industry.

Securitisation is the packaging up of assets or loans and selling them on to investors. This allows lenders such as banks to transfer risks of assets to other banks and investors. Soundly structured securitisation can be a helpful tool to ensure that lenders have enough capital to continue lending to consumers and businesses throughout economic and financial cycles.

The UK supported the international Basel Committee and the International Organisation of Securities Commissions when they developed criteria for simple, transparent and comparable—or STC—securitisations. Those were implemented in the UK as STS securitisations in the Securitisation (Amendment) (EU Exit) Regulations 2019.

The framework for STS securitisations is designed to make it easier for investors to understand and assess the risks of a securitisation investment. Bank and insurance investors in such securitisations can be eligible for lower capital requirements compared with other securitisations.

Other than some exceptions under temporary EU exit transitional arrangements, the UK securitisation regulation allows only for firms established in the UK to designate their securitisations as STS. The schedule creates a framework for the Treasury to designate other countries as equivalent to the UK in relation to STS securitisations. That will allow UK investors to receive better capital treatment, giving them greater choice of sound securitisations and, more widely, supporting the development of STS securitisation markets.

Together, the changes to the MiFID framework and the securitisation regulation are vital reforms to bolster the competitiveness of UK markets. They demonstrate the Government's commitment to work at pace to reform financial services regulation. I recommend that the clause and schedule 2 stand part of the Bill.

Dame Angela Eagle: Obviously, this is an extremely complex area of technical regulation. It requires the regulators, alongside the Basel Committee and the international authorities regulating the flow of this kind of stuff, to operate effectively. If securitisation goes wrong or if markets begin to be opaque, with transparency going down, there can serious consequences for the countries in which such firms are based. That might also engage systemic threats to the banking structures of those countries. We have been through that before, and we know what happened when securitisation went wrong in the global financial crisis and what damage that caused to the global infrastructure.

Clearly, those tasked with ensuring that that does not happen again—those in the Bank of England, the prudential regulators and the FCA who have a handle on this, as well as the international regulators trying to set standards—have to be very aware of how such regulation might change and effect firms in the markets. However, there will always be a push in these markets to move the boundaries towards something less opaque and more profitable for those doing business, hoping that the risks can be left somewhere else. When risks crystallise, however, they are left on the balance sheets of nations that have to cope with cleaning up the mess. So, while I approve of modernising such regimes, little alarm bells go off in my mind when I think about attracting more such business. That kind of business is attractive if it is safe; it is not attractive if it is unsafe.

The Minister ploughed through his speech about all the technicalities of the shift away from EU-regulated systems and about how onshoring back to the UK will be done. Given how large our banking, financial services and insurance sector is, we are clearly at systemic risk if we get this wrong. We have to get the balance right between ensuring that any new regimes are transparent and safe enough to be hosted in our country. The Minister took us through some of the technical changes, but will he reassure us about the transparency and safety issues in the new regime that I have hinted at?

Peter Grant: If the sun moves much further, I will have to sit on the other side of the room to keep it out of my eyes, so my apologies for having to move seat during the debate, Dame Maria.

I thank the Minister for doing what I hoped he would have done in the debate on the revocations in clause 1: outlining in terms understandable to a lay person why some specific items of EU legislation are no longer appropriate for the United Kingdom—in fact, it is questionable whether they are appropriate elsewhere. I would have wanted to see that before the changes proposed in other parts of the Bill. On the basis of the Minister's comments, and the fact that none of the regulators we heard from raised concerns, I am willing to accept that the changes suggested in the clause and the details in schedule 2 are appropriate.

I want to draw attention to a comment the Minister made earlier and to give him the chance to correct it. He suggested that this is EU legislation that Parliament never had the chance to scrutinise, but that is not the case. I spent several years, as other hon. Members did, on the European Scrutiny Committee. Every single piece of legislation the European Union intended to implement came before that Committee, which had the authority to call in Ministers and to put a stop on them approving things at EU Council meetings if the Committee was unsatisfied as to the impact. The House of Commons—the whole of Parliament—had the right to take action to prevent any of those directives from coming into force. The fact that Parliament seldom did that is a failing of this and previous Parliaments. The fact that Ministers had so much free rein to do what they liked, and could ignore Parliament if they wanted to, is not the fault of the European Union; it is because of the relationship between Parliament and Government. This Parliament is unfit for purpose, and Ministers from other members of the European Union would not have been allowed to agree to those directives without a vote in their respective Parliaments. I hope the Minister will be willing to correct the record. We can agree or disagree about legislation that the European Union put in place, but to suggest that this Parliament was somehow unable to have any impact on that legislation is simply not accurate.

Tulip Siddiq: Has the Minister picked up any feedback from the sector about the Government's proposed reform to the position limits—a regulation under MiFID II—and the fact that they have not been adequately assessed for commodity market speculation risks? How does he plan to keep that issue under review? If he has heard of concerns, is he planning to address them?

Andrew Griffith: I am happy to stand corrected by the hon. Member for Glenrothes, but I am not happy to relitigate matters that the British people settled, given the chance in a referendum. I hope the hon. Member will reciprocate by looking forwards, not backwards, so that we can go forward with the best financial services regulation for the UK.

The matters raised by the hon. Members for Wallasey and for Hampstead and Kilburn are precisely within the scope of the regulators, and they have been consulted on. The hon. Member for Hampstead and Kilburn raised important points about the commodity market. The regulators are aware of those, and they will remain under constant review. Parliament itself has the ability, as always, to set the perimeter within which the regulators operate. Having addressed those points, I have no further comments.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 8

DESIGNATED ACTIVITIES

Peter Grant: I beg to move amendment 34, in clause 8, page 7, line 4, after "activity" insert—

"(c) the extent to which the activity has the effect of raising finance for any business purpose by means of soliciting financial contributions other than by—

(i) an authorised issue of shares, or

(ii) borrowing from an authorised financial institution."

This amendment would allow the Treasury to designate and regulate businesses which seek to raise finance by soliciting contributions from the general public other than by an authorised share issue.

First, I welcome the intention behind the clause, because it seeks to close a number of loopholes that have become evident in the way financial regulators are allowed to regulate and in the way that activities come within or fall beyond their scope. Far too often we see dodgy operators deliberately choosing to operate in empty spaces between the remits of different regulators. Too often the regulators seem more concerned about arguing that something is someone else's responsibility than about taking responsibility themselves.

It is not clear whether the amendment falls within the scope of this Bill or that of the Economic Crime and Corporate Transparency Bill, which is about to start its Committee proceedings, so I am pleased that it has been ruled competent. Essentially, the problem that the amendment is designed to address is what Blackmore Bond and Safe Hands Funeral Plans became. Quite possibly, it was always the intention of the directors that they would move away from being businesses carrying out particular business activities, and towards being businesses of which the main purpose in life was to get the general public to fund those activities. Although Safe Hands was a funeral plan business on the face of it—that was how it was set up—it became a way for the director, who took over a few years before the company collapsed completely, to take money from people who thought their money would be kept safe to pay for their funeral when the time came. The director then used that money to speculate on wildly high-risk and potentially high-profit investments.

10.45 am

The issue for me is the way companies legislation and financial legislation has developed in the United Kingdom. There has been an assumption that the shareholders put their money at risk and the directors then manage the business with the intention of providing a return to the shareholders. That is still the assumption on which most of our companies legislation operates. The legislation has not caught up with the fact that a fairly small business will have only a small number of shareholders, and they are the directors. The directors will clearly look after the shareholders' money, because it is their money, but too often we have seen cases in which directors will find ways to put other people's money at risk instead—not through issuing shares if the company is authorised to offer shares to the general public, not through an allocation of shares, as is currently permitted in some cases under companies legislation, and not by borrowing from an authorised lender, bank or investment institution, but by effectively going out to the general public and presenting something that looks like an investment opportunity, when in fact what they are saying is, "Would you please lend us your money?"

At the moment, that activity is far too often not regulated, so my amendment has been designed to allow the Treasury to make regulations to bring within the scope of the Bill the particular loophole that has been at the heart of a lot of investment and pension scams that I have had to look into on behalf of my constituents. I suspect that every Member of the House will have constituents who have been affected by this issue.

Stephen Hammond (Wimbledon) (Con): I understand exactly what the hon. Gentleman is trying to do with the amendment, and I have a lot of sympathy, but I am not clear about its scope and extent. Is he trying to ensure that the Treasury starts to regulate crowdfunders? That is potentially what the amendment would allow. It is a very widely drawn amendment, and I seek clarification on this point.

Peter Grant: If it became clear to the Treasury or the relevant regulator that crowdfunders were using funds for illicit purposes, rather than for genuinely good causes, I would expect the Treasury and the relevant regulator to step in. My amendment is designed to put primary legislation in place to allow the regulators to step in, and to allow the Treasury to take action, if it becomes clear that there is a problem, regardless of whether that is through crowdfunding or any other method of raising finance. The important part of the amendment is about finances being raised as a way of raising capital. The amendment does not in any way imply that it would cover, for example, crowdfunding for a good cause or to raise funds for someone who has had a serious accident. That would not be covered by the wording of the amendment.

I can understand the concerns, and I am quite happy if someone can come up with better wording—possibly in an amendment to a different piece of legislation—that achieves the aim of the amendment, but I am utterly convinced that there is a serious weakness in our current regulation. As currently worded, neither this Bill nor the Economic Crime and Corporate Transparency Bill will close down that loophole sufficiently.

At Blackmore Bond, the abuse that was taking place was stopped after it was too late. At Safe Hands Funeral Plans, the abuse that was taking place was stopped after it was too late and people had lost their money. The selling of mini-bonds to the general public, which is what Blackmore Bond was up to, is now outlawed, so action has been taken on that specific kind of abuse. Funeral plans are now regulated, so action has been taken on that specific kind of abuse. I do not want the regulator or the Treasury having always to see where the next specific company disguise is going to be, however; I want them to have the power to regulate based on how businesses take money from the general public.

With those comments, I look forward to hearing the Minister's response. If he is not minded to accept the amendment, I hope that we can get an assurance that the intention behind it will be addressed at a later stage.

Emma Hardy: I have a general question on the clause and the designated activities regime. In the consultation response document produced by the Treasury—"Financial Services Future Regulatory Framework Review: Proposals

for Reform. Response to Consultation" to be precise—some consultation respondents were concerned about what activities would physically be regulated, what constraints were to be placed on the powers of the Treasury and what the consequences for failing to comply with the regulator's rules would be. I have not yet seen their concerns answered by the Minister. Will he address that?

Stephen Hammond: It is a great pleasure to serve under your chairmanship, Dame Maria. Will the Minister clarify quickly proposed new section 71S? The power in subsections (3) to (7) is an exceptional power, rather than a regular power.

Andrew Griffith: The amendment seeks to make it clear that offers of non-equity securities to retail investors—for example, as cited, retail bonds—can be brought into regulation through the designated activities regime. That is the important subject we are talking about. That regime—the DAR—has been designed to allow for the proportionate regulation of activities involving interactions with financial markets in the UK and conducted by many that are not traditional financial services firms. In essence, it is the core scope of regulation. The DAR includes a range of activities, such as an activity connected to the financial markets or exchanges of the UK, or an activity connected to financial instruments, financial products or financial investments issued or sold in the UK. Any of those can be designated under the DAR. Our contention is that it is therefore already sufficiently broad in scope. We will discuss that further when we consider clause stand part later.

Offers of non-equity securities to retail investors as proposed by the amendment would fall within the definition of the DAR should the Government wish to designate that activity in future. Indeed, proposed new schedule 6B of the Financial Services and Markets Act 2000, which is to be inserted by the Bill and which provides illustrative examples of the types of activities that His Majesty's Treasury may designate, includes

"Offering securities to the public."

I can therefore give my hon. Friend the Member for Wimbledon the comfort that he seeks, in that the provision does extend to crowdfunding, which was his specific point.

Peter Grant: I am grateful for that assurance, but does the Minister take my point that in the examples of abuses that I mentioned, people did not say that they were offering any kind of securities? They said that they were selling funeral plans. Next time, they will be selling school or university fees plans or Christmas hamper plans; it will not be presented as the selling of equities as he and I would understand it.

Andrew Griffith: We will refer to that in more detail when we return to the DAR this afternoon. The DAR is the important establishment of the perimeter. I hear the hon. Gentleman on how we set the scope and those definitions, but the position of the Government is that the Bill already enables the Government to take action to ensure that offers of retail bonds are appropriately captured by regulation.

In April 2021, the Government consulted on the future regulation of non-transferable debt securities such as mini-bonds. In response to the consultation, the Government decided to bring certain non-transferable securities, including but importantly not limited to mini-bonds, within the scope of the reformed prospectus regime. The Government confirmed that we would bring forward our reforms to the UK prospectus regime using the powers in the Bill to replace retained EU law—following commencement. I am therefore confident that the Bill as drafted can achieve what is needed to regulate such activities. I ask the hon. Gentleman to withdraw his amendment.

Peter Grant: I am still not sure that the Minister gets this. I will not push the amendment to a vote, but I sincerely hope that he will see the need for such a measure in financial services legislation or, more appropriately, in the Economic Crime and Corporate Transparency Bill on its way through the House. If the clause as worded had been in place 20 years ago, Blackmore Bond would still have happened, Safe Hands would still have happened, and my constituents and all others would still have been scammed out of hundreds of millions of pounds.

A couple of years ago, when I spoke about Blackmore Bond, I said that I had a horrible feeling—an almost certain feeling—that it was already happening again somewhere else; six months later, Safe Hands collapsed and tens of thousands of people lost all their funeral plan money. I do not know the nature of the business that is being used as a cover for the latest scam, but deep in my guts I know that it is happening now, and that it will happen again next year and the year after. Nothing in this legislation as framed adequately clamps down on that.

I will not push the amendment to a vote, not because I do not think it is important but because I would rather not put it to a vote to see it voted down, which would be a serious mistake by the Committee. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. *—(Joy Morrissey.)*

10.56 am

Adjourned till this day at Two o'clock.