PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2000 (FINANCIAL PROMOTION) (AMENDMENT) (NO. 2) ORDER 2023

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (BENCHMARKS AND CAPITAL REQUIREMENTS) (AMENDMENT) REGULATIONS 2023

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

Tuesday 5 December 2023

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Saturday 9 December 2023

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The Committee consisted of the following Members:

Chair: PETER DOWD

† Afolami, Bim *(Economic Secretary to the Treasury)*
Blomfield, Paul *(Sheffield Central)* (Lab)
Champion, Sarah *(Rotherham)* (Lab)
† Clarke, Theo *(Stafford)* (Con)
† Costa, Alberto *(South Leicestershire)* (Con)
† De Cordova, Marsha *(Battersea)* (Lab)
† Elphicke, Mrs Natalie *(Dover)* (Con)
† Jones, Gerald *(Merthyr Tydfil and Rhymney)* (Lab)
† Largan, Robert *(High Peak)* (Con)
McDonnell, John *(Hayes and Harlington)* (Lab)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Milling, Dame Amanda *(Lord Commissioner of His Majesty's Treasury)*
† Richards, Nicola *(West Bromwich East)* (Con)
† Robinson, Mary *(Cheadle)* (Con)
† Siddiq, Tulip *(Hampstead and Kilburn)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Whitley, Mick *(Birkenhead)* (Lab)

Dominic Stockbridge, *Committee Clerk*

† attended the Committee

Fifth Delegated Legislation Committee

Tuesday 5 December 2023

[PETER DOWD *in the Chair*]

Draft Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023

2.30 pm

The Economic Secretary to the Treasury (Bim Afolami): I beg to move,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023.

The Chair: With this it will be convenient to consider the draft Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 and the draft Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023.

Bim Afolami: In addition to being snappily names, each of these three statutory instruments makes updates to financial services regulation to ensure that it remains effective. Let me first turn to the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No. 2) Order 2023. This instrument amends the exemptions from the financial promotion regime for both high net-worth individuals and self-certified sophisticated investors. The purpose of these exemptions is to help small and medium-sized businesses to raise finance from high net-worth individuals and sophisticated private investors—often known as business angels—without the cost of having to comply with the financial promotion regime. This is a long-standing way we have operated in respect of financial services. The exemptions were last substantively updated in 2005, even before I ever dealt with this in the City, before I came to this House, so it was a very long time ago.

Economic, social and technological changes since then mean that many more consumers now fall within the eligibility criteria to use the exemptions. In addition, there have been concerns about misuse of the exemptions, including the risk of businesses using them to market investments inappropriately to less sophisticated ordinary retail investors because of the drift, since 2005, of the thresholds.

The Treasury Committee therefore recommended that the Government re-evaluate the exemptions, and this instrument raises the monetary thresholds to qualify for the exemptions to £170,000 for income and £430,000 for net assets, which takes account of inflation over the past two decades. The instrument also amends other eligibility criteria to reduce the risk of capturing ordinary consumers. This should all ensure a better understanding of the protections that individuals lose when receiving financial promotions under these exemptions.

Furthermore, the instrument amends separate exemptions to the financial promotions gateway, ensuring that those exemptions apply as intended. To sum up, the changes being made by this instrument should reduce the risk of consumer detriment, while ensuring that small and medium-sized businesses can continue to raise capital as a result of financial promotions made under these exemptions.

I will move on to the other two instruments, both of which are made under powers in the Financial Services and Markets Act 2023, which, to avoid the risk of garbling it, I will now refer to as FSMA 2023. The Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023, which I will now refer to as the benchmarks and capital requirements SI, make two targeted changes to financial services retained EU law. As you know, Mr Dowd, FSMA 2023 repeals retained EU law in respect of financial services, allowing the Government to deliver a smarter regulatory framework for the United Kingdom. The repeal of each individual piece of retained EU law will commence once the Government and the regulators have made appropriate arrangements to replace it with our own rules or, indeed, determined that no regulation is necessary. While that process is under way, FSMA 2023 ensures that retained EU law can be kept up to date and effective.

I said that there were two changes. The first change made by this instrument reintroduces a discount factor into the UK capital requirements regulation. "What is the purpose of the discount factor?", I can hear you thinking, Mr Dowd. I can tell you: the discount factor reduces the amount of capital that small and medium-sized financial services firms are required to hold for certain derivatives activity. Derivatives activity might include, for example, a foreign exchange product. The Government removed the discount factor in April 2021 through the Financial Services Act 2021. The EU also removed the discount factor from its own version of the capital requirements regulation.

After industry raised concerns with the Government about the discount factor not being in UK law, the Government acted to address the issue through this instrument. This will align UK legislation with best practice globally and reduce uncertainty for our firms. The instrument also amends article 51(5) of the benchmarks regulation, extending the transitional period for the third-country benchmarks regime to the end of 2030. It is currently 2025 and will be extended to 2030.

UK users currently have continued access to non-UK benchmarks—continued since we were in the European Union—without administrators of the benchmarks having to pass through one of the three access routes, broadly summarised as: equivalence, recognition or endorsement. There is a variety of issues with the current third-country regime. Indeed, the European Union itself has not yet brought its equivalent regime into force in its own jurisdiction.

If the transitional period were to end with the third-country regime in its current form, many administrators might be unable or unwilling to use the regime for continued UK market access. That is something that we are trying to avoid. It would risk reducing the number and variety of important benchmarks available in the UK that are used by many of our businesses. Losing access to third-country benchmarks could undermine the UK's position as a centre for global foreign exchange and derivatives markets, and have further repercussions, so we are extending the transitional period, as I said, from 2025 to 2030.

The final SI, the Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023, makes a number of consequential amendments arising from FSMA 2023. When I say "consequential", I do not mean of huge import, but in terms of following on from the consequences of FSMA 2023. These are provisions that do a series of relatively small tidying-up things. They make consequential changes that are needed as a result of the repeal of a number of pieces of retained EU law. Secondly, they update a particular cross-reference in FSMA 2023—an oversight—to align the Bank of England's reporting requirements with its remit and responsibilities.

Thirdly, this instrument amends the Payment Card Interchange Fee Regulations 2015 to apply certain sections of the Financial Services (Banking Reform) Act 2013 to a new direction-making power, which was given to the Payment Systems Regulator. These are consequential changes, as I have said, resulting from the passage of FSMA 2023.

To sum up, the SIs deliver important changes to ensure that the financial services regulatory framework continues to function effectively for consumers and businesses alike. I hope the Committee and my wonderful shadow Minister will join me in supporting the regulations, which I commend to the Committee.

The Chair: Thank you. You had, indeed, read my mind.

2.38 pm

Tulip Siddiq (Hampstead and Kilburn) (Lab): It is a pleasure to serve under your chairmanship, Mr Dowd.

As I said during the legislative debates on the Financial Services and Markets Act 2023, when the Minister's predecessor was in post, the Labour party is supportive of reforms to replace retained EU legislation with new bespoke domestic rules where it makes sense to diverge in the interests of the UK economy.

I can confirm today that the Labour party remains supportive of the regulations amending retained EU law in relation to certain prudential requirements on credit institutions, long-term investment funds and elements of the Payment Accounts Regulations 2015. This also extends to regulations that will introduce changes to the implementation of Basel 3.1 capital rules, including extending the implementation period and reintroducing the SME supporting factor. I am also supportive of the regulations put forward to exempt crypto firms that are subject to money laundering regulations from the Financial Conduct Authority's new restrictions on the industry's ability to authorise financial promotions.

Overall, we agree with the draft regulations. I have just two questions for the Minister, on changes to capital requirements. Given that the Prudential Regulation Authority is proposing to remove the SME supporting factor when it confirms its final rule, are the Government not reintroducing a measure that the PRA plan to abolish subsequently? If so, what reassurances can the Minister give me that if the PRA goes ahead with its plan, the UK's SME lending market will not be left at a significant competitive disadvantage against its European counterparts due to the increased cost of capital?

If the Minister is happy to answer those questions—or write to me later—the Opposition are happy to give the draft regulations our full support.

2.40 pm

Bim Afolami: I thank the hon. Lady for her questions and for her support.

In essence, what we are doing here is completely separate to what is going on in Basel 3.1, which is due to be implemented in July 2025. These are separate matters, and I confirm that this measure is not intended to be superseded. The draft regulations are not something that the PRA will supersede. As I say, there is a legitimate debate about Basel, but that is separate from the SI changes. I am happy, as I always am, to talk to the hon. Lady about such issues, but I reassure her and the Committee that the changes are separate to those under Basel 3.1.

The three draft SIs bring forward important changes to ensure that financial services regulation continues to operate effectively. I am glad that the Opposition support them, and I hope that the whole Committee will do so as well.

Question put and agreed to.

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (BENCHMARKS AND CAPITAL REQUIREMENTS) (AMENDMENT) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023.—*(Bim Afolami.)*

DRAFT FINANCIAL SERVICES AND MARKETS ACT 2023 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2023

Resolved,

That the Committee has considered the draft Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023.—*(Bim Afolami.)*

2.43 pm

Committee rose.