

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (REGULATED ACTIVITIES)
(AMENDMENT) (NO. 3) ORDER 2015

DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (RELEVANT AUTHORISED PERSONS)
ORDER 2015

DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (MISCONDUCT AND APPROPRIATE
REGULATOR) ORDER 2015

Thursday 22 October 2015

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STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR DAVID NUTTALL

- | | |
|---|---|
| † Baldwin, Harriett (<i>Economic Secretary to the Treasury</i>) | † McDonald, Andy (<i>Middlesbrough</i>) (Lab) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † Mann, Scott (<i>North Cornwall</i>) (Con) |
| † Burns, Conor (<i>Bournemouth West</i>) (Con) | † Nokes, Caroline (<i>Romsey and Southampton North</i>) (Con) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | Redwood, John (<i>Wokingham</i>) (Con) |
| Clwyd, Ann (<i>Cynon Valley</i>) (Lab) | † Sandbach, Antoinette (<i>Eddisbury</i>) (Con) |
| † Cunningham, Mr Jim (<i>Coventry South</i>) (Lab) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| Dowd, Jim (<i>Lewisham West and Penge</i>) (Lab) | † Wilson, Sammy (<i>East Antrim</i>) (DUP) |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | |
| † James, Margot (<i>Stourbridge</i>) (Con) | Matthew Hamlyn, <i>Committee Clerk</i> |
| † Law, Chris (<i>Dundee West</i>) (SNP) | |
| † McGinn, Conor (<i>St Helens North</i>) (Lab) | † attended the Committee |

Sixth Delegated Legislation Committee

Thursday 22 October 2015

[MR DAVID NUTTALL *in the Chair*]

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015

11.30 am

The Economic Secretary to the Treasury (Harriett Baldwin): I beg to move,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015.

The Chair: With this it will be convenient to consider the draft Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 and the draft Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015.

Harriett Baldwin: It is customary to say what a pleasure it is to serve under your chairmanship, Mr Nuttall, but in this case I genuinely mean it because of our previous close association when I was your Whip. For the sake of brevity, I shall refer to the orders as the Relevant Authorised Persons Order, the Misconduct and Appropriate Regulator Order and the Regulated Activities (Amendment) Order.

The Relevant Authorised Persons Order and the Misconduct and Appropriate Regulator Order are related, so I am glad that the Committee has agreed to consider them together. It might be helpful for me to start by outlining the background to the legislation. In December 2013, Parliament passed the Financial Services (Banking Reform) Act 2013. Among other things, it provided the legislative framework for implementing the recommendations of the Parliamentary Commission on Banking Standards. That included making provision for introducing the senior managers and certification regime for the banking sector—banks, building societies, credit unions and certain systemically important investment firms. As right hon. and hon. Members may be aware, the Government have now included in the Bank of England and Financial Services Bill provision to extend the regime to all other types of financial services firm, but the two orders I am describing are part of the original programme to apply the new regime to banking.

When the Parliamentary Commission on Banking Standards reported in June 2013, it made a number of recommendations for reforming how individuals who work in banks are regulated. Those recommendations formed the basis for what is now the senior managers and certification regime and include a tougher regulatory approval regime for a small number of the most senior individuals in a bank; an annual certification by banks that other key individuals are “fit and proper”; and rules of conduct covering a wider range of bank employees, not just those subject to regulatory pre-approval.

The Relevant Authorised Persons Order will extend the scope of the senior managers and certification regime to include UK branches of foreign banks. It was initially decided to confine the senior managers and certification regime only to UK institutions—that is, businesses incorporated in the UK. That includes those global financial institutions that operate here through a UK subsidiary company, because such a company is incorporated here so counts as a UK institution in its own right. Not included are global banks that operate here through a UK branch, because a branch is not a separate legal entity from its parent and so is not incorporated in the UK. Nevertheless, a branch can have senior managers and staff who might be subject to annual certification or required to comply with the rules of conduct.

The fact that a branch is not separate from its parent was bound to raise a number of issues that could not be considered fully at the time. A power was therefore included in the Financial Services (Banking Reform) Act 2013 to enable the Treasury to bring branches of foreign banks into the senior managers and certification regime, after appropriate consultation. The consultation document was published last November and the Government announced in March that they would make the necessary order. Subject to parliamentary approval, from 7 March 2016 all parts of the senior managers and certification regime will apply to all foreign banks that operate in the UK through branches, the same date on which the senior managers and certification regime comes into force for UK banks.

It might be helpful to clarify two further points for the Committee at this stage. First, the 2013 Act also includes a new criminal offence relating to decisions that cause a bank to fail, which is sometimes called the reckless mismanagement offence. That offence was also recommended by the parliamentary commission and was included in the Act along with the senior managers and certification regime provisions. It can be committed only by persons who are senior managers in banks, building societies and systemic investment banks. The offence, however, is not part of that regime and I want to make it clear that the order does not extend the new offence to UK branches of foreign banks. There is no power in the 2013 Act to do that and it would also not be appropriate to do so. The offence concerns decisions that cause a bank to fail and, as a branch is not a separate legal entity from its parent, it can fail only if the parent fails. The failure of a branch, and any action arising from that, can be taken only by the authorities in the parent’s home state.

Secondly, I assure the Committee that the UK regulators have the powers to ensure that the regime can be applied flexibly and appropriately to different types of branch. They can also differentiate, where appropriate, between “passporting” branches from other European economic area states, “non-passporting” branches from countries outside the EEA, subsidiaries and UK-owned banks.

I turn now to the Misconduct and Appropriate Regulator Order, which makes some necessary technical changes to legislation before the senior managers and certification regime comes into operation in the banking sector next March. The first of those simply ensures that the revised provisions relating to enforcement action by the Financial Conduct Authority will cover cases where an approved person has been knowingly concerned in a breach of

regulatory requirements imposed by the Alternative Investment Fund Managers Regulations 2013, which implement the EU alternative investment fund managers directive in the UK.

The second group of technical amendments make some consequential changes to section 204A of the Financial Services and Markets Act 2000. Section 204A sets out which of the Financial Conduct Authority and Prudential Regulation Authority is responsible for enforcing certain requirements in that Act. The order makes changes to section 204A to ensure that the PRA can enforce new requirements where it is the lead regulator for the senior managers and certification regime. If the order were not made, the FCA would have to enforce obligations that should be, in effect, owed to the PRA.

I will move on to the Regulated Activities Order. In March, Parliament approved the Mortgage Credit Directive Order 2015, which ensures that the UK implements the EU mortgage credit directive on time and with a limited impact on the UK mortgage market. That order was due to come into effect in March 2016 to prevent gold-plating.

Since that order's approval, the Government have been actively monitoring the progress of the mortgage industry towards implementation, to ensure a smooth transition in which customers do not see any disruption. During the course of that routine monitoring it came to light that, owing to the complexity of layering a new wave of legislation on top of existing legislation, in some areas the order did not achieve what was intended. The Government therefore decided to act quickly and make a small number of amendments to the scope of regulation, to ensure that the regulatory framework continued to operate as intended.

The order makes a number of changes to ensure that the existing legislation delivers on previously agreed policy. The most significant of those is to ensure that mortgages dating from before 31 October 2004 that are currently regulated as credit agreements will be regulated as mortgages from 31 March 2016. That is part of the Government's widely supported aim to consolidate the regulation of mortgages within a single framework, reducing the burden on firms and ensuring that customers get a consistent experience.

Taken together, these statutory instruments are another important step in ensuring that the UK's financial system is resilient and works for the good of the nation. I hope hon. Members will therefore approve them.

11.40 am

Richard Burgon (Leeds East) (Lab): It is a pleasure to serve under your chairmanship, Mr Nuttall, not least because this is my first appearance as a member of the shadow Treasury team in a Delegated Legislation Committee. I welcome this as my first opportunity to respond to the Economic Secretary, whom I thank for her detailed opening remarks.

My remarks will be brief on this occasion because we do not seek to divide the Committee today. The Economic Secretary and I will, in the time ahead, be debating the Bank of England and Financial Services Bill. Both sides of the House wish to see a dynamic and thriving financial services sector that supports our economy and the people of this country as whole, but we are concerned to see that the necessary regulation is in place to deliver

a resilient sector on which the electorate can rely to deliver for all of us. These three orders amend the Financial Services and Markets Act 2000, which created the Financial Services Authority as a new single statutory regulator for the financial services sector.

Since the financial crisis of 2008, of course, numerous legislation on financial services regulation was initiated by the Labour Government but happily continued under the coalition and today's Government, with the Bank of England and Financial Services Bill currently in the House of Lords. We have the Independent Commission on Banking and the Parliamentary Commission on Banking Standards to thank for much of the progress since 2008.

We are not opposing the orders, so I will not detain Members long, but I have a couple of brief questions for clarification on one order and a question about another order to make a broader point. First, on the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015—this is a simple question for clarification and to bring me up to speed—will the Minister confirm why pre-2004 mortgages are being regulated differently from post-2004 mortgages? Secondly, will she explain why bridging loans are being exempted from credit agreement regulations? I suspect that is because such loans are not held for very long, but I would appreciate her clarification. I am happy if she wishes to send that clarification to me in writing.

On a wider point, the Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015 extends the PRA's oversight and approval of senior managers to UK branches of foreign banks and investment firms, as the Minister has explained. Essentially, that means that the PRA has to approve senior managers as fit and proper people to carry out their functions. Those senior managers will become subject to UK rules and regulations on conduct. The claim is that that helps to strengthen individual accountability in banks. The change was first proposed in the Chancellor's 2014 Mansion House speech in the wake of the LIBOR scandal:

"Let us not wait for the next wave of scandals in financial markets to hit us before we respond...I am also extending the senior managers regime to cover all banks that operate in this country, including the branches of foreign banks."

That move, set out more than a year ago, is undoubtedly welcome, but I suggest that the measure is a survivor of an approach in the post-crash period that was dominated by public concern about the risks in the financial sector and the lack of viable legal trial for individuals who may have caused the crash. The approach during that period, as demanded by public opinion, was to appear tough on the banks. The Bank of England and Financial Services Bill directly weakens the wider package for strengthening individual accountability in banks, of which this order forms a part.

I also note the points raised this week by the Bank's Governor, Mr Mark Carney, at the Treasury Committee. He said that

"there may need to be some adjustments"

to existing regulation. We will keep an eye on any proposals that Mr Carney might advocate.

I reiterate that we fully welcome the proposals in the draft orders to extend the PRA's oversight and approval of senior managers to those representing interests outside the UK. On the more general issue, I want reassurance

[Richard Burgon]

from the Minister that the Government will not row back from necessary regulation of the financial sector, because appropriate regulation is absolutely essential to safeguard our economic future, and to help deliver the dynamic and thriving financial services sector that we wish to see to support our economy and the people of this country.

11.45 am

Harriett Baldwin: It is good to hear from the hon. Member for Leeds East, whom I welcome to his post. I am sure that this will be only the first of many exciting box office events in which he and I will participate.

Much of the proposed legislation is technical, but he is right to emphasise the principles that we are applying to regulation of the financial sector. At the heart of our aspirations is a strong, healthy and well-regulated sector, which works for all the individuals whom we represent in this place. The aim of our regulatory regime is to ensure that we have a proportionate and appropriate balance to reflect the legal characteristics with which we are dealing.

The hon. Gentleman asked a range of specific technical questions, the first about the inclusion of pre-2004 mortgages and the decision on their regulation. They were previously included in the consumer credit regime, due to historical reasons relating to the introduction of mortgage regulation at the time, but the Government believe that legislating to combine all the mortgage regulations under one regime is more appropriate. We have been working closely and in consultation with the industry in the process of finalising the regulations, which will reduce costs for such firms, because they will be able to observe one regime. That particular change has been supported widely by the industry and ensures that consumers will continue to be protected.

The hon. Gentleman asked about the regulations' exclusion of bridging loans, which, as he knows, are short term in nature. Equitable bridging loans have always been unregulated. We did not intend the draft orders to change the status quo, so those types of

bridging loans will remain unregulated. However, as with all such legislation, we will continue to keep things under review.

The hon. Gentleman asked about the consistency of the regime and in particular the criminal offence. He will appreciate that in extending the regime across the whole financial services industry, we are replacing the approved persons regime, which was so discredited and noted to be in need of change by the Banking Commission. In the interests of fairness, we believe that it is important to deliver that consistency across the industry. The regime provides for the right balance of consistent regulation for a wide range of different firms. Given the foreign branch regime, it is appropriate to treat them as we are proposing.

In conclusion, the draft orders make some necessary, albeit uncontroversial, changes to the overall financial services regime. They strike the right balance between ensuring that consumers are protected and that firms are well regulated. The Committee has scrutinised the measures in detail and I ask it to support the orders.

Question put and agreed to.

**DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (RELEVANT AUTHORISED PERSONS)
ORDER 2015**

Resolved,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015.—(*Harriett Baldwin.*)

**DRAFT FINANCIAL SERVICES AND MARKETS
ACT 2000 (MISCONDUCT AND APPROPRIATE
REGULATOR) ORDER 2015**

Resolved,

That the Committee has considered the draft Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015.—(*Harriett Baldwin.*)

11.51 am

Committee rose.