

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

38th Report of Session 2017–19

**Draft Financial
Regulators' Powers
(Technical Standards etc.)
(Amendment etc.) (EU
Exit) Regulations 2018**

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

- (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
- (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Lord Chartres

Rt Hon. Lord Cunningham of Felling

Lord Faulkner of Worcester

Baroness Finn

Lord Goddard of Stockport

Lord Haskel

Rt Hon. Lord Janvrin

Lord Kirkwood of Kirkhope

Baroness O'Loan

Lord Sherbourne of Didsbury

Rt Hon. Lord Trefgarne (Chairman)

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at <http://www.parliament.uk/seclegpublications>

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Thirty Eighth Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 16 July 2018

Parliamentary procedure: affirmative

Summary: HM Treasury (HMT) has acknowledged that the UK's exit from the EU will require a significant volume of changes to the rules overseen by the UK's financial services regulators; these draft Regulations are intended to expedite the making of such changes, by proposing that the regulators perform the task of making corrections to deficiencies in existing Binding Technical Standards so that these rules operate effectively in the UK at exit from the EU. The Regulations have been laid for what HMT describes as the unlikely eventuality of a "no deal" scenario, to ensure that the UK continues to have a functioning financial services regulatory regime in all outcomes.

We draw these Regulations to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

Background—approach to financial services legislation under the EU (Withdrawal) Act 2018

1. On 27 June of this year, HM Treasury (HMT) published a document detailing its approach to financial services legislation under the European Union (Withdrawal) Act 2018 ("the 2018 Act").¹ That document said that, while the Government were confident that the implementation period, agreed between the UK and the EU earlier in 2018, would be in place between 29 March 2019 and 31 December 2020, the Government would ensure that "a workable legal regime is in operation whatever the outcome of negotiations." Among other things, it stated that HMT planned to delegate powers to the UK's financial services regulators to address deficiencies in the regulators' rulebooks arising as a result of the UK's exit from the EU, and in the EU Binding Technical Standards (BTS) that would become part of UK law. These draft Regulations, the first laid by HMT under the 2018 Act, propose the delegation of those powers.
2. In the Explanatory Memorandum (EM) to the Regulations, HMT again stresses that the Government are clear that a "no deal" scenario is in neither the UK's nor the EU's interest, and do not anticipate that it will arise. However, "to prepare for this unlikely eventuality", HMT intends to use powers under the 2018 Act to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.

¹ HM Treasury *HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act (June 2018)*, 27 June 2018: <https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act> [accessed 17 July 2018].

Binding Technical Standards and UK financial services regulators

3. HMT explains that BTS set out very specific requirements and standards in order to ensure that financial services institutions are able to comply with the EU's financial regulation. While European Supervisory Authorities are currently responsible for drafting BTS, an appropriate UK body will need to take on responsibility for these standards after the UK's exit from the EU.
4. The UK's financial services regulators are the Bank of England, the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR). HMT says that these UK regulators have played an important role in the EU to develop these standards and have the necessary expertise and resource to maintain BTS after the UK's exit; and that this allocation of responsibility would be consistent with the general rule-making responsibilities already delegated to the FCA and PRA under the Financial Services and Markets Act 2000.
5. HMT states that, as it proposes to transfer ongoing responsibility for BTS to the UK regulators, it also makes sense that the regulators perform the task of making corrections to deficiencies in existing BTS so that these rules operate effectively in the UK at exit. These draft Regulations therefore propose that the power to correct deficiencies in BTS arising from EU withdrawal should be delegated to the UK's financial regulators, as well as the power to correct deficiencies in their existing rules that arise as a result of the UK's withdrawal from the EU. HMT says that, while the PRA and FCA already have powers to amend these rules under existing legislation, the procedures to use these powers were not designed to deliver the volume of rule amendments that will be needed as a result of leaving the EU and these procedures may not always be appropriate for the task. HMT would be required to approve all instruments which the regulators used to correct deficiencies in BTS or regulator rules, and would ensure that all such corrections were within the powers sub-delegated to the regulators, and were consistent with corrections to other parts of retained EU law which Parliament has approved.

Format of Explanatory Memorandum—Ministers' statements

6. The EM to these Regulations follows the revised format that has been adopted by the Government in order to address more specifically issues that bear on secondary legislation related to the UK's exit from the EU. This format incorporates an Annex on statements under the 2018 Act; and Part 2 of the Annex includes a statement from the Economic Secretary to the Treasury that the Regulations "do no more than is appropriate. Nothing has been done to alter the role that BTS or regulators' rules perform in the regulation of financial services. They will continue to apply to UK firms as they do now, save for any correction of deficiencies which is necessary to ensure these rules continue to operate effectively after exit."

Conclusions

7. As noted above, HMT has acknowledged that the UK's exit from the EU will require a significant volume of changes to the rules overseen by the UK's financial services regulators; these draft Regulations are intended to expedite the making of such changes—an approach which has been described

as addressing the risk of “UK legislative sclerosis”.² The Regulations have been laid for what HMT describes as the unlikely eventuality of a “no deal” scenario, to ensure that the UK continues to have a functioning financial services regulatory regime in all outcomes.

2 ‘Onshoring EU financial services legislation under the European Union (Withdrawal) Act 2018’, Clifford Chance (6 July 2018): <https://www.cliffordchance.com/microsites/brexit-hub/briefings/onshoring-EU-financial-services-legislation-under-the-European-Union-Withdrawal-Act-2018.html> [accessed 17 July 2018].

INSTRUMENTS OF INTEREST

Draft Armed Forces (Terms of Service) (Amendments Relating to Flexible Working) Regulations 2018

8. The terms of service for enlisted members of the regular Armed Forces are set out in regulations made under the Armed Forces Act 2006 (“the 2006 Act”). The Armed Forces (Flexible Working) Act 2018 amended the relevant provisions of the 2006 Act to include a new power to make regulations enabling part-time service, and to expand the existing power to restrict service to a particular area so as to enable service to be restricted geographically in other ways.
9. These draft Regulations, laid by the Ministry of Defence, are the first use of the amended power. They introduce two new types of flexible working:
 - part-time service, which will enable enlisted members of the regular Armed Forces to apply to serve part-time for a specified period of time, up to a prescribed maximum, meaning that there will be agreed times when they are not required to be available for duty; and
 - service on a restricted separation basis, which will enable enlisted members of the regular Armed Forces to have restrictions placed on the number of days that they can be required to perform duties away from a specified place, meaning that they must spend at least part of every day on which they are required to perform duties at their duty station or residence.

Draft Code of Practice no. 15: Authorisation and supervision of master trusts

10. When the Occupational Pension Schemes (Master Trusts) Regulations 2018 (“the 2018 Regulations”) were debated, this Code was mentioned as an important part of the scheme.³ In issuing it, the Pensions Regulator (“the Regulator”) described the draft Code as representing a significant change in the way they regulate, as, for the first time, the Regulator will be directly authorising and supervising Master Trusts. The draft Code provides trustees with a central point of reference in relation to the law introduced by the 2018 Regulations and the Pension Schemes Act 2017, which also introduced a prohibition on operating a Master Trust scheme without authorisation by the Regulator. The draft Code provides detail of the process by which Master Trusts should apply for authorisation; the matters the Regulator will take into account in deciding whether they are satisfied that a Master Trust should be authorised at the point of application and throughout supervision; the legal requirements that apply once a scheme is authorised, notably in respect of significant and triggering events; and the procedure that will apply in deciding whether or not to grant authorisation.

Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 (SI 2018/852)

11. These Regulations implement EU Directive 2016/2102 which aims to offer citizens, particularly those with a disability, better access to public services by ensuring the websites and mobile applications of public sector bodies are accessible. Many of the Directive’s requirements are already covered in

³ HL Deb, 18 July 2018, [cols GC 101 -113](#).

whole, or in part, by the requirement of the Equality Act 2010 (in Great Britain) and Disability Discrimination Act 1995 (in Northern Ireland) for service-providers to make reasonable adjustments for people with disabilities. However, the Directive clarifies the standards that the websites have to meet (including definitions of the criteria: Perceivable, Operable, Understandable and Robust) and requires public sector bodies to provide an accessibility statement and keep it under regular review. Cabinet Office, through the Government Digital Service, also gains a new responsibility to monitor such sites for compliance and enforce requirements where necessary.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Armed Forces (Terms of Service) (Amendments Relating to Flexible Working) Regulations 2018

Freedom of Information (Designation as Public Authority and Amendment) Order 2018

Draft instruments subject to annulment

Code of Practice no.15 Authorisation and supervision of master trusts

Instruments subject to annulment

- | | |
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| Cm 9663 | Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part |
| Cm 9666 | Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part |
| SI 2018/816 | Cableway Installations Regulations 2018 |
| SI 2018/819 | M1 Motorway (Junctions 23A to 25) (Variable Speed Limits) Regulations 2018 |
| SI 2018/825 | Trade Marks Regulations 2018 |
| SI 2018/827 | Combined Authorities (Spatial Development Strategy) Regulations 2018 |
| SI 2018/833 | Financial Market Infrastructure Administration (England and Wales) Rules 2018 |
| SI 2018/834 | Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2018 |
| SI 2018/844 | National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2018 |
| SI 2018/847 | Criminal Procedure (Amendment No. 2) Rules 2018 |
| SI 2018/852 | Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018 |
| SI 2018/858 | Financial Market Infrastructure Administration (Designation of VocaLink) Order 2018 |
| SI 2018/861 | Republic of Maldives (Asset-Freezing) Regulations 2018 |

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 24 July 2018, Members declared the following interests:

Draft Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018

Lord Janvrin

Senior Adviser, HSBC Private Bank (UK) Ltd

Cableway Installations Regulations 2018 (SI 2018/816)

Lord Faulkner

President, Heritage Railway Association (a company limited by guarantee)

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Lord Haskel, Lord Janvrin, Lord Sherbourne of Didsbury and Lord Trefgarne.