



Response to the Procedure Committee

Exiting the European Union: scrutiny of delegated legislation inquiry

Submission by UK Finance

1. UK Finance welcomes the opportunity to respond to the Committee's scrutiny of delegated legislation inquiry. UK Finance is a new trade association which was formed on 1 July 2017 to represent the finance and banking industry operating in the UK. It represents around 300 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.
2. This response focuses only on certain key aspects of the EU (Withdrawal) Bill process from the perspective of the banking and finance sector¹.

Certainty and continuity

3. We have previously endorsed the approach set out in the Government's White Paper 'Legislating for the United Kingdom's withdrawal from the European Union' of not reproducing in UK legislation all EU regulations. We also agree with the position of codifying the continued application of the EU regulations and the remainder of the EU acquis onto the UK statute book at the point of exit, subject to defined points or principles of construction or interpretation. In this regard, it needs to be borne in mind that when transposing the EU acquis into UK law, the Government's objective is to ensure legal continuity and to avoid disruption to businesses, customers, markets and the economy. This is diametrically opposite to the normal objective of the legislative process in that the purpose is to preserve the continuity of law, rather than to change the law. We understand that the Government will not be introducing new legislation as part of the transposition, rather it will be ensuring the continuation of existing law.
4. The approach to transposition over reproduction achieves the following: reduces the scale of the exercise; reduces the scope for omission; reduces the possibility of a legal vacuum after exit; provides greater certainty for businesses, customers, markets and the economy; provides the basis for a considered review of policy subsequently over time; maintains close alignment between the UK and the EU in the first instance; and maintains the framework most likely to facilitate a transitional arrangement proposed by the PM as part of her Florence speech.
5. UK Finance's principal concern is to avoid market disruption that would impact the sector's ability to serve retail and business customers. A key element of any strategy to ensure market stability and an orderly transition is that there is a continuation of the legislative and regulatory framework governing the markets and the services they encompass. Whilst UK Finance appreciates the wider constitutional concerns surrounding delegated powers and the use of secondary legislation, a critical factor in the

¹ See also UK Finance Brexit Quick Brief: The Repeal Bill – providing certainty and continuity. <https://www.ukfinance.org.uk/wp-content/uploads/2017/09/BQB7-Repeal-Bill-1.pdf>

short term is the need for legal certainty as the UK exits the EU and that this is accompanied by appropriate mechanisms to adjust the legal environment as we move forwards after exit².

Scrutiny

6. To ensure that the transposition of the acquis proceeds smoothly, particularly when secondary legislation involves the decoupling of a cross-border approach, and to ensure a meaningful opportunity for businesses and customers to be consulted that sits at the heart of a good decision-making process, the proposed approach to the content of legislation and a draft of the legislation itself should be provided in good time to relevant stakeholders for consultation.
7. Proactive and meaningful engagement with businesses and customers at an early stage would ensure that the secondary legislation produces the intended result at the first time of asking, particularly since such legislation can only be withdrawn and not amended during its passage through Parliament; and would facilitate the appropriate allocation of time and resources for amendments to a business' systems and processes.
8. Whilst UK Finance appreciates that there will be compressed timeframes in the creation, drafting and settling of a significant number of secondary legislative instruments, this emphasises the need for a tailored, responsive and effective engagement and consultation process. UK Finance is in a position to engage in, and work closely with, the drafting process and we recommend the publication of a central plan of proposed secondary legislation to facilitate effective engagement. We would draw attention to the Home Office [plan of secondary legislation](#), which serves as a useful example.

Parliamentary Procedure

9. UK Finance appreciates that in view of the compressed timeframes coupled with the large number of secondary legislative instruments to be made, there would be benefit in Parliament considering a triage or sifting process to determine whether an instrument should be negative, affirmative or if there is such urgency, expedited. We believe that such a mechanism would ensure the best use of Parliamentary time.

Capacity and resourcing

10. In addition to the external expertise that can be provided and tailored as a result of the publication of a plan for secondary legislation, Parliament may need to reflect on its Standing Orders and resourcing as the workload is likely to increase given the volume and the size and complexity of delegated legislation.
11. UK Finance would recommend that consideration be given to empowering the relevant Select Committee to scrutinise the legislation within its purview because this would share the workload whilst ensuring a holistic review and scrutiny can be undertaken. UK Finance would also recommend the development of a scrutiny process that includes members with legal and operational expertise to ensure that the need for further amending legislation to remedy errors or omissions is kept to a minimum. UK Finance has already established an EU (Withdrawal) Bill steering committee of members and is also part of the cross sectoral financial services group with representatives from other trade bodies. We see scrutiny as an integral part of our regular dialogue on the development and implementation of industry policy.

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² See also: Submission made by the British Bankers' Association to the House of Lords' Constitution Committee Inquiry: The Legislative Process. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/legislative-process/written/45967.html>