ARTICLE

Regulating the regulations

How will parliament scrutinise post-Brexit financial regulation?

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A deal – the state of play

The days are counting down until the UK's transition period ends on 31 December and the main sticking points to reach a trade deal continue to be fisheries, state aid and governance. Excluded entirely from the negotiations is financial services; a sector which, as things stand, will no longer benefit from the rules and regulations it has relied upon for decades come January.

The City is now holding its breath for 'equivalence', whereby the EU and UK recognise each other's regulatory regimes as sufficiently similar. In November 2020 the UK granted equivalence to the EU for 22 areas of financial services but the bloc has so far only reciprocated on one (clearing houses, which the EU judged too important for financial stability). From January, depending on agreements reached with Brussels (a deal is still important if only for providing momentum to a financial services-specific arrangement), the UK will have a choice between aligning closely with EU rules or diverging to better reflect the British financial markets and make its environment more business friendly.

Regulating the regulators

Whilst the future UK-EU relationship when it comes to financial services remains unclear, what is certain is that central to the success of the UK's financial sector will be a robust regulatory environment. As an EU member state the UK was a rule-taker – even if it was often at the forefront of new financial regulation thanks both to its hard power within the bloc and the size of its financial services sector. With more autonomy outside the EU, this leaves open the question of how parliament will scrutinise and perhaps even influence future regulatory policy, a field in which until now it has played a limited role.

As things stand, financial services regulation is a mishmash of responsibilities across parliament, the Treasury and regulators, and the UK needs a consolidated regulatory framework. In light of this the government is conducting a root-and-branch review of the UK's regulatory system through the Future Regulatory Framework Review (FRFR). The first phase of the review was carried out last year and in October the government published the second phase.

In phase II the government is proposing that parliament and the Treasury be responsible for setting the policy framework for financial services regulation, whilst the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) be responsible for "designing and implementing regulatory standards". The hope is that this structure will ensure as much as possible that there is one coherent source of rulemaking for firms to follow. With that source being the regulators themselves, the consultation recognises that the proposed approach will involve delegating to them a "very substantial" level of policy responsibility. The consultation therefore also reviews the existing framework arrangements for parliamentary accountability, scrutiny and public engagement in the policymaking process, and notes that parliament "will also wish to consider how its scrutiny of financial services regulation may need to adapt, particuarly in relation to the financial services regulators".

A new role for the Treasury Committee?

The Treasury Committee (TSC) is arguably the most powerful select committee in the House of Commons, reflecting its role in scrutinising the work of the most powerful government department, HM Treasury. Made up of backbench MPs, its responsibilities are broad, covering everything from taxation to economic crime and to decarbonising the economy. When it comes to its regulatory functions, it at best has the chance to quiz representatives of the main financial regulators, the FCA and PRA, a couple of times a year and even then it holds no direct influence over either. The Pensions Regulator, which reports to the Department for Work and Pensions, rarely appears in front of the TSC, if ever. Other criticisms often pointed the TSC's way are that it focuses too much on the topic du jour and is by its very nature driven by political considerations, and that perhaps it lacks the necessary expertise to understand complex financial policy issues.

In the FRFR the government notes that the existing TSC "will continue to be effective in holding ministers to account for the work of HM Treasury and the financial services regulators", but the Labour Party disagrees and has called for stronger select committee involvement in the formation of regulation. Pat McFadden, the Labour Party's spokesman on the City, recently inserted an amendment to the Financial Services Bill – currently making its way through the legislative process – calling for a new committee "allowing representations to be made during [policy] development rather than simply after the fact". He referred to the European Parliament's Committee on Economic and Monetary Affairs (ECON),

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>
> *Bim Afolami MP*

which oversees regulation of financial services and which is often cited as a model for parliamentary committee oversight. He went on to say that without an ECON-style committee, the UK would be "in the paradoxical situation that, after onshoring all this regulation in the name of taking back control, we end up with less scrutiny of these kinds of regulations…when we at least had British MEPs on the ECON Committee."

Labour is not unique in taking an interest. In fact, the TSC itself has launched an inquiry, the Future of Financial Services, bringing together a number of issues of interest to the sector and parliament. One of these is the role of parliament in influencing new financial services regulation and how new financial regulations should be scrutinised – likely an attempt to mark its territory against any potential land grab. The TSC is inviting firms to comment by January 2021, after which it should hold oral evidence sessions and discuss proposals further.

Finally the all-party parliamentary group (APPG) on financial markets and services – chaired by the Tory MP Bim Afolami – is carrying out its own inquiry looking at the future regulatory framework for financial services. An APPG is an informal group made up of parliamentarians interested in a particular topic. There are in excess of 600 APPGs and they typically do not hold inquiries, so this one demonstrates the interest across Westminster in having more influence over financial services regulation post Brexit. Afolami appears to err on the side of more checks and balances, writing recently: "As the heart of British democracy, parliament should play a key role in keeping the regulators on the right path." Key questions to be examined include whether there should be a joint committee of the House of Commons and House of Lords for financial services, and how the legislative process can be optimised for the sector.

There is broad industry support for change. In a report published in January this year, the industry trade body TheCityUK and the City of London Corporation recommended that there be "a parliamentary committee with a mandate specifically focused on the regulators and with formal mechanisms to ensure regulators regularly report to it on the exercise of their functions". It suggested a sub-committee of the TSC as one way of doing this.

Creating a new select committee requires a motion to be put forward, normally by the Leader of the House of Commons – currently Jacob Rees Mogg – and consequently a financial services-focused select committee is unlikely to take shape without government support, which does not appear to be forthcoming. At the end of November John Glen, the City Minister, was asked by a House of Lords committee how he sees parliament exercising its role to hold regulators accountable. Glen was vague in his response, noting that would be a matter for parliament rather than ministers, but did make what appeared to be misgivings against granting enhanced scrutiny powers to MPs. Whilst noting the importance of the select committee process, he said: "We have to get a balance between delegating appropriate activities to those who know how to do them [i.e. the regulators] while retaining oversight of the strategic objectives…otherwise it will be an empty conversation that is misinformed or unequal in its understanding".

From that we can judge that in the near term, at least, the chances of a new financial services committee in parliament are low, but with momentum on backbenches increasing it may yet take hold, particularly once the Brexit dust settles and the UK-EU financial services trading environment is crystallised. particularly once the Brexit dust settles and the UK-EU financial services trading environment is crystallised.

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