



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Karen Anderson
The City Of London Law Society
4 College Hill
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31 May 2022

Dear Karen,

Thank you for your letter of 30 March about the onshoring of the Central Securities Depositories Regulation (CSDR), with respect to provisions on settlement discipline. I am replying as the minister responsible for this policy area.

In your letter, you express concerns that the Amending Regulations (SI 2018/1320) may have had the effect of bringing into force in UK law the CSDR's settlement discipline provisions on preventing and addressing settlement fails (Articles 6 and 7). As you say, the Government has explicitly said that it has chosen not to implement the EU CSDR settlement discipline regime, because of concerns about how the regime would impact the liquidity in and effective functioning of the market. I know that on 27 April 2022 you also met with my officials to discuss these points following your letter.

As my officials explained, the relevant issue here is Section 3 of the EU (Withdrawal) Act 2018 Act, which as you will know is the key provision for understanding which parts of CSDR became retained EU law on completion of the Implementation Period (IP). Articles of EU Regulations were retained as domestic law only if they were operative before the end of the IP.

Articles 6(1) to (4) and 7(1) to (13) of the CSDR did not form a part of retained EU law under the 2018 Act, because the relevant regulatory technical standards made by the Commission did not come into force before the end of the IP. This meant that they were not retained by the 2018 Act, and therefore there was no need for the Treasury to omit the above paragraphs of the CSDR under the Amending Regulations. However, paragraphs in Articles 6 and 7 made references to ESMA and the Commission that were operative before IP completion day, and therefore became retained EU law on IP completion day; Regulation 9 of the Amending Regulations addressed these deficiencies and omitted these references.

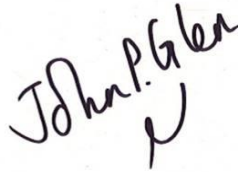
This means that – in our view – the relevant articles on settlement discipline have not inadvertently been brought into effect in UK law. You will appreciate this represents HMT's view of the legislative position, but that ultimately the interpretation of legislation is a matter for the UK Courts.

The explanatory memorandum published to support the regulations that onshored the CSDR, available at:

www.legislation.gov.uk/uk/si/2018/1320/pdfs/ukSIem_20181320_en.pdf, also explains this and provides more detail about how CSDR was intended to be onshored.

I very much appreciate your bringing this to my attention, and my officials would be happy to discuss any further questions you may have on this. More broadly, I want to express my appreciation for your and your Committee's continued engagement, to help us ensure that the UK's legislative framework is operating effectively.

Yours sincerely,

A handwritten signature in black ink that reads "John P. Glen" with a stylized flourish underneath.

JOHN GLEN