

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT JUSTIFICATION DECISION POWER  
(AMENDMENT) (EU EXIT) REGULATIONS 2018

*Wednesday 16 January 2019*

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**The Committee consisted of the following Members:**

*Chair:* SIR HENRY BELLINGHAM

- |  |   |
|--|---|
| † Bacon, Mr Richard ( <i>South Norfolk</i> ) (Con)   | † Jayawardena, Mr Ranil ( <i>North East Hampshire</i> ) (Con)         |
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)  | † Jones, Susan Elan ( <i>Clwyd South</i> ) (Lab)                      |
| † Clarke, Mr Simon ( <i>Middlesbrough South and East Cleveland</i> ) (Con)   | McMorrin, Anna ( <i>Cardiff North</i> ) (Lab)                         |
| Cryer, John ( <i>Leyton and Wanstead</i> ) (Lab)   | † Metcalfe, Stephen ( <i>South Basildon and East Thurrock</i> ) (Con) |
| † Day, Martyn ( <i>Linlithgow and East Falkirk</i> ) (SNP)   | † O'Brien, Neil ( <i>Harborough</i> ) (Con)                           |
| † Glindon, Mary ( <i>North Tyneside</i> ) (Lab)  | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                          |
| † Harrington, Richard ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) | † West, Catherine ( <i>Hornsey and Wood Green</i> ) (Lab)             |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )   | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)               |
| † Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> ) (Con)   | Mike Everett, <i>Committee Clerk</i>                                  |
|  | † <b>attended the Committee</b>                                       |

# Sixth Delegated Legislation Committee

Wednesday 16 January 2019

[SIR HENRY BELLINGHAM *in the Chair*]

## Draft Justification Decision Power (Amendment) (EU Exit) Regulations 2018

2.30 pm

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington):** I beg to move,

That the Committee has considered the draft Justification Decision Power (Amendment) (EU Exit) Regulations 2018.

It is a great pleasure to be here under your chairmanship, Sir Henry—in my case for the first time, but given the number of regulations due to be considered over the next few weeks, possibly not the last time. The Justification of Practices Involving Ionising Radiation Regulations 2004, which I will call the “justification regulations” to simplify matters, provide a framework within which justification decisions regarding ionising radiation are made. It may not surprise you, Sir Henry, to learn that those decisions are an important part of our regulatory regime that surrounds ionising regulations, as they determine whether a practice involving ionising radiation is justified in advance of its first being adopted or approved. In addition, it may be determined as a result of a review that a class or type of practice is no longer justified, so it works both ways.

The power to make those decisions is currently provided by section 2(2) of the European Communities Act 1972. It is possible that only yourself, Sir Henry, the shadow Minister, the hon. Member for Southampton, Test, and I were around to witness the passage of that Act; it did pass me by at the time, but I have concentrated on the matter for the purpose of today’s statutory instrument. Given the United Kingdom’s exit from the European Union and Euratom, and the repeal of the 1972 Act, the justifying authority will not retain the power to make justification decisions regarding practices involving ionising regulation. This instrument corrects that inoperability by providing the authority with a replacement power to make justification decisions involving ionising regulation. The powers to make this secondary legislation are found in the European Union (Withdrawal) Act 2018, which received Royal Assent in June 2018.

I will briefly explain the background to our position in relation to the 2004 regulations. The Committee should be aware that we are committed to maintaining an up-to-date and internationally concurrent justification regime, because we are a world leader in radiological safety and that needs to continue. We also have an international reputation as a trusted partner, with other countries trading nuclear skills, services and materials with us. These regulations are the first step towards regulatory approval for a new class or type of practice involving ionising radiation—for example, medical treatments and new designs of nuclear reactors that may be proposed. The regulations provide that framework.

The bit of the framework that the regulations provide is how Government determine whether the practice is justified in this context, rather than the general word “justified”. In this more narrow sense, “justified” means that the individual or societal benefit of a practice involving ionised radiation outweighs its potential detriment to health. It is a balance, which any Government need to have a system to be able to recognise. Those decisions are taken by the justifying authority, which could be the Secretary of State of the relevant Department or the devolved Administrations, in the form of regulations.

I will quickly mention the devolved Administrations, because they have been involved a lot in this process, and have been content for us to establish and make changes to the justification regime using UK-wide regulations. The instrument allows us to make UK-wide justification decisions in reserved areas, but also allows the devolved Administrations to make their own justification decisions using regulations covering their own geographical areas for activities that fall within the devolved subject matters. I can confirm that we have received letters of consent from each of the devolved Administrations agreeing that they are happy for us to proceed.

Let me briefly expand on the draft regulations. Further to the invocation of article 50, the 2018 Act will repeal the 1972 Act when we exit the EU. However, to ensure continuity for the UK, the 2018 Act will preserve EU-derived domestic legislation so that it continues to have effect in domestic law. That will leave our statute book with several EU-related inoperabilities, including the power to make justification decisions; there are others, but they are not the subject of this debate.

The draft regulations will provide the justifying authority with a replacement power, created under section 8 of the 2018 Act, to make justification decisions under the 2004 regulations once the existing power ceases to be available as a result of the repeal of the 1972 Act. It is important to note that the draft regulations will not allow the Secretary of State or the devolved Administrations to make decisions in any other way, nor will it give them any extra powers or competencies that they did not have under the 2004 regulations. The replacement power is narrower than the power under the 1972 Act: it is limited to the making of justification decisions for the purposes of the justification regulations.

Looking forward, the Department is aware of several potential justification applications that may require a decision by the Secretary of State in the normal way. A functioning justification regime is necessary to ensure that those applications are subject to the appropriate scrutiny procedures. To give just one example, the HPR1000 reactor, intended for use at Bradwell, is a new nuclear reactor design that will require a justification decision before it can be deployed.

I hope Committee members will confine their remarks to specific technical points related to the draft regulations and agree that the regulations are necessary to ensure a functioning statute book on exit day, regardless of the outcome of the negotiations. I commend the draft regulations to the Committee.

2.37 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Sir Henry. It will be a pretty brief pleasure today, because my

understanding is that the draft regulations are simply a device to place into UK law what was previously determined by European provisions. As the Minister outlined, that is necessary because forthcoming justificatory decisions—most notably the decision on the new reactor design for Bradwell—will need to be made within UK rules. If those rules are not in place, the justification process obviously cannot get under way.

As the Minister says, the draft regulations have a pretty obscure title, but they are about taking a cost-benefit approach that ensures not only that new reactor designs are safe, but that the overall environmental effect of ionising radiation from the operating activities of reactors and other devices is justified. Those activities are important, and it is important that we regulate them properly so that in the event of an abrupt Brexit, or even a Brexit that includes a considerable period of adjustment, we have a regime that is fit for purpose. This statutory instrument is part of that; it is not exactly in the same mode as our recent discussions about the future of Euratom, but it is nevertheless in the general area of requiring proper provisions within UK powers after Brexit.

As far as I understand it—I would be grateful if the Minister formally confirmed this—in this instance the justificatory powers themselves are essentially contained in the justificatory powers secondary legislation of 2004, and no malfeasance has been done to those regulations; this process just shifts the operation of those regulations into a UK position. That is my understanding, and I trust that it is the Minister's as well.

2.40 pm

**Martyn Day** (Linlithgow and East Falkirk) (SNP): It is a pleasure to be here, and I am grateful to the Minister and the Opposition spokesperson for their comments. I, too, do not see the measure as particularly controversial: it simply replaces EU-derived law so that the regulation of ionising radiation can continue, which I would welcome.

I have said before in other meetings that it is a shame we are wasting so much time doing such things, but I recognise why we have to. It is quite nice, in all the chaos going on around us today, to find ourselves in what is probably the most consensual part of Parliament.

2.41 pm

**Richard Harrington:** I am pleased to confirm, Sir Henry, that you have presided over peace and tranquillity this afternoon. I thank the shadow Minister and the Scottish National party spokesman. [*Interruption.*] I thought the Whip was bringing out more sweets.

In response to the shadow Minister's question, I happily confirm that the regulations are absolutely a replica of the previous ones. He used the word "malfeasance". I confirm for the record that there has not been any, and there will not be.

*Question put and agreed to.*

2.42 pm

*Committee rose.*

