# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

## First Delegated Legislation Committee

# DRAFT INTELLECTUAL PROPERTY (EXHAUSTION OF RIGHTS) (EU EXIT) REGULATIONS 2018

*Monday 21 January 2019*

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**not later than**

**Friday 25 January 2019**

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

*Chair:* Mrs Madeleine Moon

† Bradshaw, Mr Ben *(Exeter)* (Lab)
† Burns, Conor *(Bournemouth West)* (Con)
† Cowan, Ronnie *(Inverclyde)* (SNP)
† Double, Steve *(St Austell and Newquay)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Drax, Richard *(South Dorset)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Hughes, Eddie *(Walsall North)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Mackinlay, Craig *(South Thanet)* (Con)
† Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Skidmore, Chris *(Minister for Universities, Science, Research and Innovation)*
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Smith, Owen *(Pontypridd)* (Lab)
† Thomas, Derek *(St Ives)* (Con)

Hannah Bryce, *Committee Clerk*

**† attended the Committee**

# First Delegated Legislation Committee

*Monday 21 January 2019*

[Mrs Madeleine Moon *in the Chair*]

## Draft Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2018

4.30 pm

**The Minister for Universities, Science, Research and Innovation (Chris Skidmore):** I beg to move,

That the Committee has considered the draft Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2018.

It is a pleasure to serve under your chairship, Mrs Moon. The draft regulations, which were laid before the House on 27 November 2018, ensure that the UK domestic rules for the exhaustion of intellectual property rights will continue to function in a predictable manner in a no-deal scenario.

UK businesses are very reliant on IP rights, with IP-intensive industries generating more than one quarter of UK employment and 43% of UK GDP in 2013. The UK is recognised for its strong IP regime. It was ranked No. 3 in the world by Taylor Wessing's global intellectual property index for 2016, with the enforcement regime specifically ranked No. 1 by the US Chamber of Commerce in 2017.

The IP framework is designed to provide a balance. It should reward creators of IP and encourage innovation while balancing the needs of other businesses and consumers by managing the scope and duration of and exceptions to existing IP rights.

What is exhaustion of IP rights? The intellectual property framework provides rights holders with the right to control distribution of a protected product. However, once a product has been placed on the market within a specified territory by, or with the permission of the rights holder, the IP rights cannot be used to prevent the further distribution or resale of that product—the IP rights are considered to be exhausted.

The UK is currently part of a regional European economic area exhaustion regime, meaning that IP rights are considered to be exhausted once the products that they protect have been put on the market anywhere in the EEA with the rights holder's permission. That facilitates the free movement of IP-protected goods across borders within the EEA.

The UK laws that currently provide for that regional exhaustion regime need to be amended to ensure that they continue to function appropriately after exit. Doing nothing is not a desirable option in this instance, as the legal uncertainty that would ensue would expose business to the risk of mitigation and the development of legal principles that could constrain future policy making in this area.

The draft instrument provides a solution. The rules relating to exhaustion for UK businesses and others importing goods into the UK will remain the same until such time as a future decision is made on what exhaustion regime is best for the UK in the future, for which the Government are considering options. Although extensive research is under way, I stress that such an important decision should not be rushed. We will ensure that we have a robust evidence base and that we have consulted fully with stakeholders before any decision is made.

While that evidence is gathered, the continuity provided by the statutory instrument will be welcomed by stakeholders, who are very much in favour of maintaining the status quo of the regional EEA regime. The SI ensures that there will be no change to the position on the exhaustion of rights in relation to the parallel importation of goods from the EEA into the UK. There may, however, be restrictions on what can be exported from the UK to the EEA on the same parallel basis, but that is a matter for the European Union legal system and not something that the Committee can control.

The practical effect of the no-deal SI is that traders based in the UK can continue existing parallel trade into the UK from other EEA states. That is important across several sectors, including medicines and food. Beneficiaries include the NHS, which will continue to have the ability to maintain security and diversity of the supply of medicines from the EEA. By sourcing medicines at the best price from within the EEA under the regional exhaustion regime, the NHS currently saves about £100 million a year.

The draft instrument is therefore extremely important to support the movement of goods and the supply of central commodities such as medicines. It provides clarity and legal certainty for businesses and consumers by preserving the status quo as far as possible. This is a necessary technical fix for UK laws to prepare for our exit from the EU, and I commend the draft regulations to the Committee.

4.34 pm

**Bill Esterson** (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mrs Moon. We now know what the £171,000 an hour is being spent on. I wonder how much the Committee will contribute towards that sum and whether we will get as far as an hour's worth.

The draft regulations are yet another example of a no-deal preparation SI, which the Prime Minister could rule out at any time she wanted by announcing that she was taking no deal off the table. *[Interruption.]* I am being interrupted from a sedentary position, Mrs Moon. How strange.

The Prime Minister could have ruled out no deal in her statement earlier. I just checked what she said, and yet again she has chosen not to. It seems that the Chancellor and the Business Secretary are keen on doing so, and why on earth the Prime Minister cannot is beyond me. Frankly, if she wants to work across the parties, that is exactly what she will do, and she will find a majority in this Parliament for an alternative to no deal, if and when she eventually does that. *[Interruption.]* More muttering from a sedentary position. How strange, again.

The SI raises a number of issues and challenges. It raises the prospect of the import of cheap products that would undercut domestic producers and drive a coach and horses through our consumer arrangements in the event of no deal. Reasons abound for ruling out

no deal, and that is one of them. I shall go through some of the points that were debated at great length in the House of Lords.

The draft regulations say that in the event of no deal, existing arrangements will continue. Those arrangements are at present in the area of EU trade where IP protection within the EU has ended or been exhausted. The Minister set that out fairly, I thought. Products from anywhere in the EU can be traded across the EU without restriction once IP protection has ended.

That so-called regional exhaustion applies within the EU but not to products from outside. EU case law largely uses an example from 1999 relating to an Austrian company called Silhouette, which produced sunglasses. Older designs from the company were sold to Bulgaria, which at the time was outside the EU. Another Austrian company chose to import those older models back into Austria and sell them at substantially lower prices than the current models were being sold for.

After lengthy legal consideration, the European Court decided that that contravened EU regulations. That is the case law currently relied on for this country's arrangements, as it is in the other EU27 and EEA member countries across the continent of Europe. Significant concerns have been raised in the sector, and by the Alliance for Intellectual Property, about the potential for legal challenge under the draft regulations, and about whether EU case law will continue to be relied on once we have left the EU. Those concerns relate to leaving with or without a deal. However, the draft regulations are about leaving with no deal.

The potential for such legal challenges raises concerns about the continuation of arrangements. A competitor could try to import a product and say that EU case law no longer applies. I know that the Government's intention is that the situation should not cause a problem. However, legal advice has been given to the sector that such legal action could last several years and hold up a final decision. There is nothing in the SI to state whether EU case law will continue to apply to maintain the arrangements that the Minister said he wants in the event of no deal.

The question is what would happen in the situation in question. The problem would be that competitors could challenge each other, imports could be held up, and all sorts of problems and delays could arise, leading to significant concern and difficulty for businesses and consumers in this country. In the House of Lords debate, Lord Stevenson described the draft regulations as creating a "dripping roast" for lawyers. Having looked at that debate and at the representations I have been given, I am afraid I have to agree. The draft regulations are very good news for lawyers, but not much use for businesses, consumers or workers.

**Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): I debated some of these issues at length a number of years ago, when the Intellectual Property Act 2014 was going through the House and during debates on some of the subsequent secondary legislation. This is an interesting issue and my hon. Friend makes some important points. Does he agree that there is great concern out there, particularly among those in smaller creative sectors such as musicians, self-employed people and people in the video games industry, about the chaos that will be created by the kind of Brexit the Government are pursuing and the risk that poses to their businesses?

**Bill Esterson:** That is exactly right. This is a challenge for all sectors, and it is a particularly big problem for smaller firms in the creative and digital sectors, for the reasons my hon. Friend gives. There is a real absence of guidance—the European Union (Withdrawal) Act 2018 is silent on the issue, and the withdrawal agreement is, too—and I am afraid the lack of clarity in the SI leaves open the real problem of whether EU case law will apply. As he said, that is a problem with regulations right across the economy and Departments. It affects many of the regulations we have considered in the past weeks and months, and those we still have ahead of us while no deal remains an option.

At present, brands have protection against cheaper imports from outside the EU. I had an example of that drawn to my attention, which Members may remember. About 15 years ago, Tesco chose to import cheap Levi's jeans. It was challenged, and because those Levi's were produced outside the EU, it was required to withdraw them from sale because they disrupted Levi's arrangements in the EU. Under the draft regulations, in the absence of clarity about the applicability of EU case law, a case where someone wanted to import from outside the EU could take years to resolve. I do not know whether Tesco has plans to take a similar approach—I certainly do not make that accusation of it—but no doubt someone may want to try their luck in the absence of certainty in the draft regulations.

In paragraph 12.2 of the explanatory memorandum, the Government describe the prospect of "some costs" for exporters. The Minister's colleague in the Lords was not able to say in great detail what it would mean for our exporters if the EU did not reciprocate the arrangements that the Government propose to put in place. Perhaps the Minister has had time following the Lords debate to come up with an answer. What will those costs be? What is their likely scale?

On trade outside the EU, it has been drawn to my attention that pharmaceutical companies in this country, for example, sell drugs to developing nations significantly below the price charged in the EU, so there is a problem with parallel trading. Without the certainty of EU case law as a protection, a parallel trader may buy up the stock of medicines and sell them back within the UK, thereby directly competing with the producer of those medicines. Again, that could take years to resolve, there is nothing in the draft regulations or the withdrawal Act, and there are serious implications for the withdrawal agreement. I come back to the comment my hon. Friend the Member for Cardiff South and Penarth made in his intervention: there is no protection there against that kind of activity.

The likely consequences are that a pharmaceuticals firm would then stop providing lower-cost medicines in a developing country, which would be a loss for people who need cheaper drugs and a loss for that company, with consequences for its production and workforce here. That could apply in a number of other sectors, too. There are serious implications for consumers of goods being sold cheaply here. It sounds very attractive—we all want cheap goods—but until that legal situation is resolved, there are real concerns about compliance with UK regulations.

*[Bill Esterson]*

I have been given information on this subject by the Alliance for Intellectual Property, which points out that cheaper prices for goods do not necessarily reach the consumer and are often

"swallowed up by traders, wholesalers and retailers."

Even if there are cheaper prices, the cost is

"not borne by the importer",

which leads to other consequences and lower regulatory enforcement. AIP notes:

"Products may not comply with UK regulation (eg languages on labels; sector regulations (eg cosmetics). This increases the costs of enforcement…by Trading Standards".

Where products do not meet consumer expectations, which might be due to slight differences in the product, deterioration during transit or poor customer service support, it undermines trust in a brand. We have a very high level of regulations and highly regarded brands in this country. As AIP state, undermining that brand quality affects not only

"the competitiveness of the products in the UK market",

but our ability to sell overseas, because if the UK brand is undermined, one of the reasons why people like to buy British is likely to be lost.

AIP continues:

"Where an imported product replaces the sale of a domestic product, the brand owner loses revenue and thereby the ability to invest in innovation, quality, choice, reputation, salaries, jobs, etc."

Those are all real concerns, raised by businesses for which intellectual property protections and reliance on the existing system are of great importance.

I mentioned the Silhouette case, the key European Union case law on which we currently rely. The legal opinions that the Alliance for Intellectual Property relies on suggest that the Silhouette case will not

"necessarily become retained EU case-law under the EU Withdrawal Act 2018 ('Withdrawal Act') and therefore the UK Courts will not have to apply it when interpreting retained EU law on exhaustion of rights. Secondly, even if the case-law does fall within the definition of retained EU case-law under the Withdrawal Act, it is only relevant to retained EU law which is unmodified on or after exit day. Arguably, the retained EU law on exhaustion of rights will be materially modified on exit day, as a result of the amendments in the Exhaustion SI because the government is changing an EEA-wide exhaustion regime of which the UK is currently part, to a one-way exhaustion regime only."

AIP's concern is that the arguments would be tested at length and at great expense in the UK courts, should we leave with no deal, which would lead to huge uncertainty for anyone who relies on intellectual property protection for their business and products.

That point was covered at length in the Lords and I do not think a satisfactory answer was given to Lords from across the Chamber. I believe that the Minister in the Lords was going to write to Members there to answer some of their questions. Perhaps the Minister will tell the Committee whether that letter was written, and whether we might have a copy.

That brings me to a topic that we have discussed quite a lot in some SI Committees—impact assessments, or the lack of them. Incidentally, when I was discussing the matter this morning with a member of the Alliance for Intellectual Property, I asked what he thought the financial impact of the draft regulations would be, should they ever be needed. He answered that it would be in the hundreds of millions of pounds at least, because it is so important to so many businesses. Yet we are told yet again:

"A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen."

Such statements accompany every such set of regulations, although they all have significant impacts. The Government are reluctant to produce assessments of the impact on businesses, consumers and workers. They argue that it is only the narrow, direct and immediate effect of such regulations that is relevant. I am sure that the Minister will confirm that. It would not be the first time I had heard a Minister say it. In reality there will be a massive impact on businesses and the economy, because implementing the draft regulations will have wider consequences. The legal challenges will last for years.

I thought I would discuss how impact assessments might be carried out, and how such an assessment might have been done for the draft regulations we are considering. When regulations are introduced in the EU, an impact assessment is carried out, and the process is described in this way:

"IAs must set out the logical reasoning that links the problem (including subsidiarity issues), its underlying causes, the objectives and a range of policy options to tackle the problem. They must present the likely impacts of the options, who will be affected by them and how.

Stakeholders must be able to provide feedback on the basis of an inception impact assessment which describes the problem, subsidiarity related issues, objectives, policy options and an initial consideration of relevant impacts of these policy options.

IAs must compare the policy options on the basis of their economic, social and environmental impacts (quantified costs and benefits whenever possible) and present these in the IA report.

Certain elements must be included in the final IA report. These include…a description of the environmental, social and economic impacts and an explicit statement if any of these are not considered significant"—

There's an idea. The report must also include

"a clear description of who will be affected by the initiative and how",

as well as

"impacts on SMEs following the 'SME test'"

in what the EU describes as its "toolbox",

"impacts on competitiveness; and…a detailed description of the consultation strategy and the results obtained from it."

Lack of consultation is another gap in the way in which the draft regulations have been brought before us, which we will return to.

The outline goes on:

"Initiatives supported by an impact assessment (IA) must have a validated entry in Decide, an inception impact assessment published for stakeholder feedback."

I understand that Decide is the EU's process for making decisions. The outline continues:

"An interservice group (ISG) must also be established to steer the preparation of the IA.

This ISG may be chaired by the lead DG or by the Secretariat-General for politically important files. A 12-week internet-based public consultation covering all of the main elements of the IA as part of a broader consultation strategy to target relevant stakeholders and evidence.

The draft IA report must be presented to the Regulatory Scrutiny Board for its scrutiny.

A positive opinion of the Board is necessary before formal interservice consultation can be launched. The RSB will generally only issue two opinions.

The IA report must be complemented by a 2 page executive summary sheet available in all languages."

Presumably—three of my colleagues today are Welsh—that would include the Welsh language. What a good idea. What a comprehensive description of how an impact assessment could, should and might have been carried out by this Government on these draft regulations and on so many others. I remind the Minister again: those who know what they are talking about and who are experts in this field believe that there is a serious and very comprehensive impact to be experienced as a result of the draft regulations. I know that the Minister will not agree. Perhaps that is because so many on his side of the House do not like the fact that this is being done by the EU. Anyway, having looked at how the EU carries out its impact assessments, we can see that it is somewhat different. Perhaps we can look forward to an improvement in future.

I mentioned consultation. Again, we had only informal consultation on the creation of the draft regulations. It seems that that consultation came about only where the sector approached the Intellectual Property Office, which drew up the explanatory memorandum. There was no formal request for consultation before the draft regulations were drawn up. Had there been, the feedback about the need for a provision on the use of EU case law may well have come back from the sectors. What they are saying now is that a further SI may well be needed. This could have been avoided with proper consultation. I think that the Minister confirmed in his opening remarks that consultation will take place as a new exhaustion regime is developed in time, but we will see the problems I have outlined in the event of no deal and these draft regulations being necessary.

There are real problems with one-way agreements like this one. The lack of symmetry in the arrangements is bound to cause a big problem. There have been significant changes. There is a suggestion, by the way, that we go back to relying on case law from about 40 years ago, before we were in the Common Market. But times have moved on. It would take years to establish reliance on such case law, and business practices have changed. The overwhelming use of online sales in retail is a significant change in the nature of business, and it would be very difficult to compare two such different eras in relying on case law. Those are points that have been put to me about the difficulty in dealing with such a difference.

The pinning of all our hopes on a deal that may be negotiable in the future, which is what the Minister is proposing, is not a satisfactory business proposition. It will send shivers down the spine of the community we are talking about here. I know this because it has been telling me so. They need the full protection of the law in defending their intellectual property, and they are contributors to one of the most productive areas of our economy, on which Opposition Members certainly pin great hopes as part of an industrial strategy. The Government say they do, too, but without the certainty of the arrangements that should have been put in place, had proper consultation been carried out, and had those discussions taken place earlier, it is difficult to see how this will work in the event of no deal. We need certainty so that we can create a climate for those creative industry specialists working with intellectual property and seeking to export, but the prospects now seem extremely damaging.

I hope that the Minister will reflect on the challenges for importers and exporters, and on the undesirability of such uncertainty for the whole economy. I hope that he will take urgent steps to address the shortfall—an exhortation that is coming not just from my words, but from the sector, which I think is putting forward a very important case about the need for far greater certainty in these draft regulations.

5.1 pm

**Chris Skidmore:** I thank the hon. Member for Sefton Central for the points that he has raised. I will endeavour to respond to some of the points that are specific to the statutory instrument.

The draft SI is clear that it will maintain the status quo. Regulation 2 ensures that the domestic exhaustion framework is the same after exit as it was before exit. The provision delivers, as far as possible, a continuation of the current regional exhaustion regime. This approach simply ensures that what happens currently will continue after exit day, and allows for IP-protected goods in the secondary markets to continue to be imported from the EU. We are not rushing to any alternative international exhaustion system; the draft regulations simply maintain the current regional exhaustion regime. This will ensure continued consumer choice and resilience in the supply of goods into the UK. As this will be a continuation of the current system, there is no reason to anticipate any increase in parallel-traded goods after exit. Indeed, this will ensure that the NHS continues to save £100 million a year as a result of being part of the regional exhaustion regime.

The hon. Gentleman asked about pharmaceutical innovation. The Government have done a lot of work to promote innovation in their creative industries, which represent the backbone of our business community. They give great emphasis to promoting businesses that create value. Our industrial strategy and sector deals are a great example of that, but of course the Government pursue a balanced economy that also promotes trade and the movement of goods. This plays an important part in developing a balanced economy for all types of business across the UK.

I want to turn to the Silhouette ruling from the Court of Justice of the European Union and the requirement to implement a regional exhaustion regime. It is clear that EU case law before exit will continue to apply in relation to the interpretation of EU-derived domestic law after exit under the withdrawal Act. EU case law before exit relating to the effects of this law will continue to apply under section 6(3) of the withdrawal Act, and this draft SI should provide legal clarity for businesses. For the purposes of the Committee, I note that an article was published on 14 January by the law firm Bird & Bird LLP on the Government's draft SI stating that Silhouette

"will be 'retained under EU case law" under section 6 of the European Union (Withdrawal) Act 2018. As a consequence, the principles laid down in these cases will continue to apply after exit day unless and until the Supreme Court or Parliament decides otherwise".

*[Chris Skidmore]*

It adds:

"The Government have done what can be done to preserve the status quo in the draft SI."

**Bill Esterson:** The legal opinion demonstrates exactly what the problem is. The Minister said, "until the Supreme Court or Parliament decides otherwise". Perhaps he will acknowledge that he has confirmed that this can be challenged or changed, and that we cannot just rely on retained EU case law. Perhaps he could comment on the request by one of the Lords for a sunset clause to time-limit the period during which he and his colleagues develop alternatives.

**Chris Skidmore:** I will speak about alternatives later, but I have already made the point that there is no rush to develop alternatives. As Bird & Bird made clear, there will be no change to international exhaustion or aversion to a concept of implied licence, or some of the fears that the hon. Gentleman has raised—*[Interruption.]* No, because this Government will look at all alternatives—I will turn to those in a moment—but this SI is intended to preserve and protect the current regime, not to change it. He mentioned the impact on business, and that is what this SI is for: to protect and preserve the current business regime.

The hon. Gentleman made an extensive contribution on impact assessments in other countries. The impact assessments that we follow in this Parliament are intended to look only at the impact of the legal instruments to which they are attached. This SI maintains the status quo within the UK, and hence there is no anticipated impact on business. The impact assessment for this SI followed the better regulation framework and is in line with Her Majesty's Treasury's Green Book guidance. The impact was assessed and compared with the static acquis baseline—that is, by reference to existing EU regulations and directives. The SI simply fixes deficiencies in law that will be retained under the European Union (Withdrawal) Act 2018, allowing current systems or regulatory provisions to continue to operate in a no-deal scenario. The impact analysis therefore focuses on the direct impact of the relevant SI alone. Analysis of the wider impact of the UK's exit from the EU has previously been published, in the form of the long-term economic analysis published in November 2018.

The hon. Gentleman also asked about the cost to export. Clearly, no data is available on the potential impact on parallel exports from the UK to EEA countries, and any loss to UK businesses is hypothetical. It will depend on how rights holders wish to assert their rights in relation to parallel goods crossing from the UK to the EEA. All I can say is that this SI obviously provides the maximum possible certainty in maintaining our relationship across exhaustion rights in a regional sphere. Failure to pass this SI would therefore create significant difficulties.

The hon. Member for Cardiff South and Penarth mentioned the technical notices and the impact on small businesses. The technical notices are part of the support that we are providing to businesses. Given that this is a complex area of law, we are also encouraging businesses that engage in parallel trade, especially those that export, to seek legal advice on the actions they should take following the UK's exit from the EU.

**Stephen Doughty:** Does the Minister appreciate that there are genuine concerns, particularly among self-employed musicians—I draw attention to my entry in the Register of Members' Financial Interests—and small creative companies and games companies? They are deeply concerned not only about the impact of Brexit, but about what this chaos will cost them, whether or not there is a deal, in getting such legal advice, which those in what are often low-pay industries could do without.

**Chris Skidmore:** Passing this SI today will provide the maximum possible certainty by creating the national exhaustion regime, allowing companies and creators to have that security by keeping the status quo. That is what this SI is about. We are not having a wider debate about Brexit today; this is about ensuring that, when it comes to changing this technical apparatus in law, the regime continues as it has done previously. The SI simply ensures that we can continue to tick on as we have done in the past. Its implementation is essential to ensuring that the current arrangements continue. Failing to pass this legislation before we exit would leave a period of legal uncertainty, during which businesses could incur significant litigation risks. The SI maintains arrangements that continue to support the movement of goods to the UK. For example, this could help with NHS resilience in the supply of medicines at a cheaper cost.

The hon. Member for Sefton Central also talked about the potential consequences of an international exhaustion regime. I have already stated that this is about extending the legal framework to ensure that we protect the current regional exhaustion regime. When it comes to any further alternatives, the legal and economic arguments for various options are complex, which is why the Government are conducting research on the best exhaustion regime for the UK. Were there to be a change, the Government would introduce it only following evidence gathering and analysis, alongside engagement with a wide cross-section of stakeholders. The Government are conducting a feasibility study that will look into the levels of parallel trade between the UK and the EU. That study is ongoing and the evidence from the report will form part of the next steps in the Government's decision-making process. I believe it will be published by Ernst and Young in 2019. Obviously, the response to the report and any further policy measures will take time. There is no compelling reason to rush to an alternative system until we have seen the evidence and listened to businesses and consumers.

The hon. Gentleman mentioned public consultation. Since the referendum result, the Intellectual Property Office has engaged with businesses in several sectors about the implications of exit. I visited the IPO's offices in Newport on Friday and found an excellent organisation whose workforce have high morale and are determined to deliver maximum possible certainty as we approach the EU withdrawal day of 29 March. I have seen the charts and I reassure the hon. Gentleman that the IPO is doing all it can to engage with stakeholders.

The usual wide engagement with businesses and individuals was not possible on a draft no-deal instrument when the Government were in the middle of sensitive negotiations on the withdrawal agreement. Public consultation on no deal would also have risked prejudicing the ongoing discussion with the EU about our future

membership. However, as I said, the IPO engaged with stakeholders across a wide range of sectors, including rights holders. That was consistent with the approach to no-deal legislation across Government, as I mentioned last week in our previous discussion on statutory instruments.

**Bill Esterson:** The Minister has read out a comprehensive note. From reading Lords *Hansard*, it appears to me that the only person who had spoken to the IPO was a member of the Grand Committee. The feedback I have had suggests that there has been engagement only when people have taken the initiative and called the IPO. The Minister made the extraordinary comment that there should not be public consultation on the SIs because of sensitivities—that is what I heard him say. However, without proper consultation, how can the SI be accurate? How could it have been drawn up in a way that ensures that the draft regulations do the job they need to do? Perhaps that explains why the problem of EU-retained case law is so prominent and has been criticised so much in the Lords and in the correspondence that I have received.

**Chris Skidmore:** The consultations that have taken place at IPO level are clear that the overwhelming number of stakeholders believe that the preservation of the status quo is in the best interests of all the sectors at the moment. If the hon. Gentleman decides to vote down the SI, he will send a clear message to those sectors that, with 60 or 70 days to go, he wants to ensure maximum possible instability. I ask him to think carefully as we go through these no-deal SIs. He has described the industries in the creative sector as vital to the UK economy and our global brand, and I entirely agree with him about that. I urge him not to vote down an SI that simply provides certainty, stability and the maximum possible opportunity for those businesses to carry on their day-to-day operations without any change.

The hon. Gentleman mentioned the Lords debate. The Government have written to Lords who participated in it and I am happy to provide him with a copy of the letter. It gives a clear response to their queries, which the hon. Gentleman mentioned. He can also see the evidence of the letter with regard to the points that he made about the sunset clause and the consultation.

I hope that I have satisfactorily addressed the points that have been made. To summarise, the Government are preparing for all scenarios and the SI is essential in preparing the UK for the possibility of leaving the EU without a deal. The draft regulations ensure a continuation of current systems as far as possible, delivering the status quo for imports into the UK. Many stakeholders have endorsed that approach.

The draft regulations aim to ensure as much continuity and certainty as possible in the immediate period after no deal. A long-term decision on the exhaustion regime will need to be informed by careful assessment of the balance of interests, and the Government will undertake a comprehensive programme of economic analysis and consultation to achieve that. For now, it is important that the draft regulations are in place to ensure that there is a clear, predictable and legally defined exhaustion regime in the UK in the event of no deal, and to maintain a regime that continues to protect IP holders' rights while giving choice to consumers in the UK across a range of goods, including essential commodities such as food and medicines.

In addition, the draft regulations provide certainty in the immediate term for businesses and consumers, and limit friction in the trade of goods between the UK and the EEA. I hope that the Committee will support the draft regulations.

*Question put.*

*The Committee divided:* Ayes 9, Noes 8.

**Division No. 1]**

**AYES**

| | |
|---|---|
| Burns, Conor | Mackinlay, Craig |
| Double, Steve | O'Brien, Neil |
| Drax, Richard | Skidmore, Chris |
| Harris, Rebecca | Thomas, Derek |
| Hughes, Eddie | |

**NOES**

| | |
|---|---|
| Bradshaw, rh Mr Ben | McGinn, Conor |
| Cowan, Ronnie | Mahmood, Shabana |
| Doughty, Stephen | Smith, Nick |
| Esterson, Bill | Smith, Owen |

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2018.

5.16 pm

*Committee rose.*