PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT CIVIL JURISDICTION AND JUDGMENTS (AMENDMENT) (EU EXIT) REGULATIONS 2019

Tuesday 5 February 2019

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not later than

Saturday 9 February 2019

The Committee consisted of the following Members:

Chair: JOAN RYAN

† Benyon, Richard *(Newbury)* (Con)
Ellman, Dame Louise *(Liverpool, Riverside)* (Lab/Co-op)
Farrelly, Paul *(Newcastle-under-Lyme)* (Lab)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Frazer, Lucy *(Parliamentary Under-Secretary of State for Justice)*
† Goldsmith, Zac *(Richmond Park)* (Con)
† Hair, Kirstene *(Angus)* (Con)
† Harrison, Trudy *(Copeland)* (Con)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
† Kawczynski, Daniel *(Shrewsbury and Atcham)* (Con)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Milling, Amanda *(Cannock Chase)* (Con)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
Snell, Gareth *(Stoke-on-Trent Central)* (Lab/Co-op)
Williamson, Chris *(Derby North)* (Lab)

Anwen Rees, *Committee Clerk*

† attended the Committee

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[Joan Ryan *in the Chair*]

Draft Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): I beg to move,

That the Committee has considered the draft Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019.

The draft regulations form part of our ongoing work to ensure that if the UK leaves the EU without a deal, the necessary statutes will be in place. If Parliament approves the withdrawal agreement, which includes an implementation period, and passes the necessary legislation to implement the agreement, the Government will defer the coming into force of the draft regulations until the end of that implementation. If a deal on our future relationship is reached, we envisage that they will be revoked entirely. They will simply cover the situation if there is no deal at all.

The draft regulations will make changes to the rules in England and Wales, in Northern Ireland and in Scotland to determine which courts should have the power to hear a case with a cross-border element that could involve the EU and the relevant European Free Trade Association countries—Norway, Switzerland and Iceland. They will also change the rules on how to ensure that any judgments or decisions can be enforced across the EU and the relevant EFTA states.

Perhaps it would be helpful if I explained the application of the EU regulations that we seek to replace. The principal measure that relates to civil and commercial law is the Brussels Ia regulation. The Brussels regime provides clear and reciprocal rules on jurisdiction in civil and commercial matters to determine which court hears a cross-border case. Its application is mandatory and leaves no discretion for courts to act otherwise. For example, if a UK consumer or business has a dispute with a party in a state that is a member of the EU or is a party to the Lugano convention, there are clear rules to determine which court in which jurisdiction should hear the case. This prevents the risk of parallel proceedings, or more than one court hearing the case.

Secondly, there is almost automatic recognition and enforcement of the judgments of one participating state in another. If a business successfully sues another business in one state, it can ensure that it enforces the resulting judgment where it needs to without going through costly and time-consuming additional processes. That is possible because all participating states must apply uniform rules of jurisdiction and can trust that jurisdiction was assumed properly and appropriately.

The Brussels regime operates almost entirely on a reciprocal basis. Its effectiveness is founded on mutual co-operation between states: countries respect the jurisdiction of each other's courts and recognise and enforce each other's judgments. However, with some limited exceptions, including consumer and employment cases, the Brussels rules do not apply if the defendant in a dispute is domiciled outside the EU. In such cases, the EU member states and the Lugano parties—Norway, Switzerland and Iceland—apply their own national rules on cross-border matters.

What will change if we leave the EU without a deal? In those circumstances, the EU regime for determining these matters will simply cease to apply to us. The reciprocity in the EU regime that I have described can no longer apply to relations between EU member states and the UK after exit, nor will they apply between the Lugano parties and the UK. Furthermore, there are no unilateral actions that the UK can take to compel the EU as a whole to continue to apply the reciprocal jurisdictional rules or to enforce judgments. We therefore need to legislate now to provide clarity about how the UK will determine whether it has jurisdiction in a civil and commercial case and when UK courts will recognise and enforce judgments from EU countries. However, our legislation cannot determine what rules the EU will apply; that will be down to member states' own national laws.

The Government's response, which is set out in the draft regulations, is to revert—with some limited exceptions—to the rules on jurisdiction and the recognition and enforcement of judgments that currently apply to cross-border disputes to which the Brussels regime does not apply, namely disputes that involve parties from the UK on the one hand and parties from countries outside the EU and the Lugano convention on the other. The draft regulations are not creating new policy; they are transitioning us to a well-developed and understood set of rules that will provide an effective framework for UK courts to work with and will take into account the lack of reciprocity in the area.

There are a few exceptions to this general approach. Importantly, existing international agreements such as the rules of The Hague convention of 2005 on choice of court agreements would continue to apply, as the UK is acceding to this as a contracting state. This will be brought into UK law, post EU exit, by a separate SI that has been subject to the negative procedure, which means that UK courts would take jurisdiction whenever there is a valid choice of court agreement to which the convention applies. We would also readily recognise and enforce the judgment of a foreign court that is validly selected under an agreement. Courts of other contracting states to the convention would equally recognise and enforce the judgment of a UK court to which the convention applies.

We have sought, where we can, to maintain the jurisdictional protections for UK consumers and employees that are contained in the Brussels regime. These rules are not restricted to EU-domiciled defendants, so we can retain much of the consumer and employee-friendly approach of the Brussels regime while restating them for UK-based consumers and employees, which will largely take away their need to sue abroad in such cases and the expense and difficulty that it brings.

This instrument is necessary to fix the statute book in the event of a no-deal exit from the EU. We have assessed its impact and published a full impact assessment. Broadly, we have concluded that although in certain respects the common law might operate less efficiently

that the Brussels regime, to which the UK is a party as a result of EU membership, only negligible costs would arise from this SI, relative to the alternative of leaving legislation on the statute book that would cease to operate effectively in the absence of reciprocity after the UK has left the EU. The Government's view is that removing deficient retained EU law from domestic law would clarify the rules that apply to determining jurisdiction and post-EU exit recognition and enforcement of judgments. Our approach has been led by engagement with the sector, particularly the Law Society, the Bar Council, the Brexit Law Committee and others.

As I have set out, there would be deficiencies in retained EU law that implements the instruments of the Brussels regime because of a lack of reciprocity should we leave the EU without a deal. This SI fixes those deficiencies and establishes a practical set of rules for dealing with cross-border disputes in civil and commercial matters in such a scenario.

2.38 pm

Yasmin Qureshi (Bolton South East) (Lab): The Minister outlined legal issues dealt with by the recast Brussels regime, which has been in force since January 2015. One issue she did not mention is that when a person is one of a number of defendants, they can be joined to proceedings that are commenced in another member state where they are not domiciled if those proceedings are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments.

As the Minister said, the way the Brussels regime has been put into practice means that there is a seamless transfer of cases and judgments—a bit like the customs union, but for legal services. The Opposition recognise that this SI has to be tabled to ensure reciprocity, as the agreement between European Union member states and the UK on cross-border, civil and commercial disputes will no longer apply after exit day. The SI would also make provision for cases that start before exit day, but—as far as I know—the Ministry of Justice has not published an impact assessment of the draft regulations' effect on the current system and on cases that are currently before courts.

Although the Law Society and Bar Council have been consulted, a number of bodies have reservations about the impact of these draft regulations. They are concerned, and we are concerned, about the impact that a no-deal Brexit would have on cross-border co-operation on civil justice. Trade between the United Kingdom and the European Union's 27 countries has increased in the past 40 years, not least because of civil judicial co-operation.

One thing we are concerned about is the loss of the Brussels I framework for determining which national court has jurisdiction, and recognising where there is a choice of court clause or not between parties to the dispute. Following on from that, it provides for a near-automatic recognition allowing parties to enforce the judgment in all EU member states. It covers all judgments reached in civil and commercial matters, including contractual and non-contractual disputes, employment, insurance and consumer disputes.

Participation in Brussels I has been in four particular areas, and the impact is on four particular areas. First, it encourages cross-border trade. As it continues to grow, commercial parties will correspondingly need judgments to be enforced against counter-parties with assets in other countries. Brussels I allows them to do this easily and cheaply due to the near-automatic nature of the mechanisms. This can encourage—and has encouraged—investment in member states, and promotes the growth of UK businesses overseas. The ability to enforce judgments, or awards in the case of arbitration, in a country is often a threshold issue for businesses contemplating an investment in that country, so will be beneficial to UK businesses in the European Union, and for European Union businesses looking to continue to trade with the UK.

Secondly, Brussels I increased predictability and certainty, leading to reduced costs for businesses. Businesses have the certainty that they can enforce their rights, and that can easily recuperate assets in EU countries. This is particularly helpful for smaller businesses that do not have resources that are comparable to those of large companies.

Thirdly, Brussels I makes England and Wales attractive to litigants. Maintaining it would provide a continued incentive for parties to negotiate jurisdiction clauses in favour of the English courts. As mentioned in previous hearings, British legal services are worth about £24 billion, which will be massively impacted if we leave without a deal.

Finally, Brussels I provides an enormous amount of protection to consumers by allowing them to sue or defend themselves in the home court familiar to them without having to pay lawyers or high legal fees for that purpose.

Can I ask the Minister whether the Lugano convention has been considered? It deals with jurisdiction, recognition, and the enforcement of judgments in civil and commercial matters. It currently applies between European Union member states and Switzerland, Norway and Iceland—the European Free Trade Association area. Other non-European Union members can accede to the convention under certain conditions. We ask the United Kingdom Government to seek accession to the Lugano convention by applying to the Swiss Federal Council as soon as possible. The convention is not a European Union instrument although the European Union is party to it, so we ask the Government to make it a priority in their no-deal preparations. Will the Minister confirm if that has been considered or applied for? If not, why not?

Ms Ryan, I would like to indicate that the Opposition will be abstaining in the vote on this statutory instrument.

The Chair: Before I call the next speaker, I realise that not all Government Back-Bench members of the Committee are interested in this topic, but I would ask that they either work quietly or leave the room. It is not acceptable to be carrying on your own meeting from the beginning to this point in our sitting.

2.44 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): I thank the Minister for her statement. I want to make a couple of short comments. It is important that we do not underestimate the significance of these proceedings. We are, essentially, re-writing an important piece of primary legislation. Full treaties are basically being dis-applied from the United Kingdom through 84 pretty technical clauses. I just wonder at the outset whether there are ways that we can make this process work better from the point of view of scrutiny.

[Stuart C. McDonald]

Importantly, the explanatory memorandum to the draft regulations refers to there having been no formal consultation but some discussions with stakeholders; the Minister named one or two of the stakeholders. However, from what I can see, the explanatory memorandum was written several months ago. I wonder if it would have been possible during that time to ask for written submissions from some of these stakeholders, so that MPs trying to scrutinise such important bits of legislation could see for themselves the expert opinion of the likes of the Law Society or the Bar Council.

I managed to track down a briefing from the Law Society of Scotland. I am grateful to it for having prepared one at such short notice. The Minister will be pleased to hear that it gave the draft regulations a clean bill of health, so we ultimately accept their need and will support their implementation. However, given the significance of these issues, it would have been useful to have seen a little bit more detail than provided in the explanatory memorandum.

The explanatory memorandum makes reference to private international law being transferred to Northern Ireland, to be within the competence of the Northern Ireland authorities, but it is silent on devolution to Scotland. I have not been able to get a definitive view in the time available whether this matter should be devolved to the Scottish Parliament. Regardless of whether it is devolved or not, I would like some reassurance that there have been close discussions with the Scottish Government about what the draft regulations will mean for the Scottish courts. There usually are such discussions, but I do not see them mentioned in the explanatory memorandum. The White Paper on civil jurisdiction commits to close working with the devolved Administrations. It would be useful to have a flavour of what has been discussed in relation to this particular draft statutory instrument.

Finally, I have a question on an exception that the Minister pointed out, although it is probably for a future day, about our retaining the rules on the jurisdiction in employment cases. Reading through the explanatory memorandum, it seems to me that an employer must sue an employee where the employee is domiciled, which seems perfectly sensible. However, if it is the other way around, the employee has a choice of where to sue the employer, although strangely enough that choice does not include where the employee is domiciled. He could sue in the jurisdiction where he carries out work for his employer but not where he is domiciled.

I totally get that the Government are actually only implementing what the Brussels regulations do at the moment, but I think the situation is slightly strange. The Government have tweaked one or two other Brussels regulations in relation to corporations and associations, so I wonder if they gave any thought to tweaking that one. It seems strange that an employee could not sue where they are domiciled. I am guessing that that would affect someone who lives in, say, Newcastle, but works offshore, three weeks on, three weeks off, in Scottish waters. As I understand it, they would not be able to sue in England. That is probably too technical for today; it is something to think about for another occasion.

Notwithstanding our slight concerns about the degree of scrutiny of something as important as the draft regulations, I understand that they are necessary. We support them.

2.48 pm

Lucy Frazer: I thank the Front-Bench Members for their interesting and important submissions. I recognise what the hon. Member for Bolton South East said—that this draft instrument has to be introduced in the circumstances—and I underline the importance of the recognition of judgments across borders.

To answer a couple of the hon. Lady's points, we published the impact assessment last Monday. On her specific point about cases already before the court, there is a saving provision to ensure that the UK will deal with those cases under the Brussels regime, so far as that is possible. She also highlighted the Lugano convention. I assure her, as we have said at all stages of this process and in relation to the deal discussions, that the UK Government absolutely want to remain a signatory to the convention; it is one of our priorities. We have spoken to the other states party to that convention, whose agreement we will need. However, the EU also has to sign up to that, and we have raised the matter with the EU.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East raised several matters relating to Scotland, including whether there had been consultation on this aspect of Brexit. I highlight that our Brexit Law Committee comprises members of all the key stakeholders in this area—the Law Society, the Bar Council, TheCityUK and several specialists—who we have consulted for their advice and opinions. I have held roundtables with them throughout this process, as have my officials.

I assure the hon. Gentleman that we have regularly consulted the devolved Administrations throughout this process. I was at an interministerial meeting with all the devolved Administrations in Edinburgh on Thursday last week to discuss this very subject. I was pleased that the Scottish Minister for Parliamentary Business thanked my officials for their co-operative working with the Scottish Government on this matter, as well as on many others. The hon. Gentleman also mentioned the Law Society of Scotland, which I have spoken to several times to update it on what we are doing.

If the hon. Gentleman would like to raise any technical matters, I am very happy to discuss those with him. However, for those reasons, I commend the draft regulations to the Committee.

Question put and agreed to.

2.51 pm

Committee rose.