

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT EUROPEAN UNION (WITHDRAWAL) ACT  
2018 (CONSEQUENTIAL MODIFICATIONS AND  
REPEALS AND REVOCATIONS) (EU EXIT)  
REGULATIONS 2019

*Thursday 21 February 2019*

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

*Chair:* MR ADRIAN BAILEY

- |   |  |
|---|--|
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)   | † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)             |
| † Hall, Luke ( <i>Thornbury and Yate</i> ) (Con)  | † Pearce, Teresa ( <i>Erith and Thamesmead</i> ) (Lab)           |
| † Harper, Mr Mark ( <i>Forest of Dean</i> ) (Con)   | † Pennycook, Matthew ( <i>Greenwich and Woolwich</i> ) (Lab)     |
| † Heaton-Harris, Chris ( <i>Parliamentary Under-Secretary of State for Exiting the European Union</i> ) | Powell, Lucy ( <i>Manchester Central</i> ) (Lab/Co-op)           |
| † Jones, Susan Elan ( <i>Clwyd South</i> ) (Lab)  | † Slaughter, Andy ( <i>Hammersmith</i> ) (Lab)                   |
| † Keegan, Gillian ( <i>Chichester</i> ) (Con)   | † Swayne, Sir Desmond ( <i>New Forest West</i> ) (Con)           |
| McDonald, Stuart C. ( <i>Cumbernauld, Kilsyth and Kirkintilloch East</i> ) (SNP)                        | † Tomlinson, Michael ( <i>Mid Dorset and North Poole</i> ) (Con) |
| Malhotra, Seema ( <i>Feltham and Heston</i> ) (Lab/Co-op)   | Mike Winter, <i>Committee Clerk</i>                              |
| † Mann, Scott ( <i>North Cornwall</i> ) (Con)   |  |
| † Morden, Jessica ( <i>Newport East</i> ) (Lab)   | † <b>attended the Committee</b>                                  |

## Second Delegated Legislation Committee

Thursday 21 February 2019

[MR ADRIAN BAILEY *in the Chair*]

### Draft European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019

11.30 am

**The Parliamentary Under-Secretary of State for Exiting the European Union (Chris Heaton-Harris):** I beg to move,

That the Committee has considered the draft European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Bailey, and to discuss the draft regulations in Committee.

This is the second statutory instrument that I have had the pleasure of debating under the affirmative procedure. I considered the negative procedure to be appropriate for the draft regulations, given that they cover subject matter of a technical nature and do not make substantive policy changes. The Secondary Legislation Scrutiny Committee of the House of Lords agreed, but the European Statutory Instruments Committee considered that they should be debated under the affirmative procedure. The Committee concluded:

“Despite being technical in nature we consider the cumulative impact of the amendments is such that the additional safeguard of affirmative resolution is appropriate.”

I accepted that recommendation, and that is why we are in Committee today.

The draft regulations continue the Department’s work of laying the groundwork for our exit from the European Union, to ensure that the UK’s legal system continues to function effectively on and after exit day. This statutory instrument is being made using the consequential and correcting powers in the European Union (Withdrawal) Act 2018. The draft regulations are technical, and they are designed to prepare the country’s statute book for departure from the European Union.

In summary, the draft regulations do three key things. First, they make it clear how certain cross-references in UK law to EU instruments are to be read after exit day; secondly, they make consequential amendments to domestic interpretation of legislation in the light of the introduction of retained EU law, which is the new category of law that will be created on exit; and, thirdly, they repeal and revoke various pieces of EU-derived domestic primary and secondary legislation that will become redundant as a result of the UK’s withdrawal from the European Union and the repeal of the European Communities Act 1972. Those pieces of EU-derived domestic legislation were made in domestic law to enable the UK to fulfil its EU obligations.

The sifting Committee did not single out any part of the draft regulations for discussion, so I had two choices: to go into great depth on each part; or—I think the

Committee will be pleased to hear this—not to go into too much detail, but to talk about them broadly. I will, of course, be delighted to expand on any aspect that is of interest to members of the Committee.

Let me briefly explain the three key aspects, starting with the cross-references to EU legislation. UK legislation that implements EU law and EU instruments that will become part of retained EU law contain many cross-references to European Union instruments. Cross-references can be ambulatory or non-ambulatory. Ambulatory references are those that automatically update when the instrument referred to is updated. Provision is made for ambulatory references in the European Union (Withdrawal) Act. Non-ambulatory references are those that do not update automatically when the legislation that is referred to is updated. The Act does not make provision for non-ambulatory references, and that is being done through parts 2, 3 and 4 of the draft regulations. The draft regulations provide rules for how non-ambulatory references to EU law should be read, depending on whether they are up to date on exit or form part of retained EU law. The draft regulations also provide that cross-references to EU legislation created on or after exit day are to be read as being to the retained EU law version of that legislation—in other words, to the version domesticated under the Act.

The second key feature of the draft regulations is that they make consequential amendments to the interpretation legislation for Scotland and Northern Ireland in line with the European Union (Withdrawal) Act and the changes made to the Interpretation Act 1978 for England and Wales. That is to reflect the new context post exit, and the relationship between domestic and retained EU law. For example, the draft regulations update the definition of enactment in the Interpretation and Legislative Reform (Scotland) Act 2010 to include retained direct EU legislation and insert the definitions relating to EU exit created by the European Union (Withdrawal) Act. Similar provisions have been made for Northern Ireland. The draft regulations also ensure that the normal rules on laying documents before the Northern Ireland Assembly apply to retained direct EU legislation.

The final aspect of the draft regulations is the repeal and revocation of several pieces of, or provisions within, primary and secondary legislation that will become redundant as a result of the repeal of the European Communities Act 1972 or the UK’s withdrawal from the European Union. The reasons for the repeals and revocations of EU-derived domestic legislation are explained in detail on pages 6, 7 and 8 of the explanatory memorandum. For example, several Acts that gave effect in UK law to the accession treaties for various EU member states are being repealed, and that legislation will become redundant when the UK withdraws from the European Union. Without the draft regulations, the legislation would continue to sit meaninglessly on our statute book. By repealing it, we will ensure that our statute book remains clear and therefore more effective.

I want to draw Members’ attention to the repeal of the European Communities (Amendment) Act 1993, because the repeal of section 6 of that Act requires consequential amendments to be made to other pieces of legislation. Section 6 determines who is eligible to be sent to participate on the UK’s behalf in the European Committee of the Regions. On exit day, the UK will no

longer be a member state, so it will no longer be entitled to send a delegation to the Committee of the Regions and that section will become redundant.

Section 6 of the 1993 Act has been amended numerous times to reflect changes to devolution and local government arrangements. Therefore, several other pieces of legislation that amend section 6 of the 1993 Act are also being repealed or revoked, because they will become redundant. That includes provisions in the Government of Wales Act 1998 and the Scotland Act 1998. Again, those are technical and consequential amendments, not substantive policy issues, and they have been accepted as such by the devolved Administrations.

The draft regulations also make transitional and savings provisions to ensure that repeals of approvals made under the European Parliamentary Elections Acts of 1978 and 2002 have no effect on the validity of the treaties or anything that is done in relation to those treaties. The Government have consulted the Scottish Government, the Welsh Government, and the Northern Irish civil service in the absence of a Northern Irish Executive, and no concerns were raised about our proposed amendments.

I am happy to expand on anything that Members might find helpful. I hope that all members of the Committee agree that the draft regulations offer sensible amendments to the UK statute book to prepare the UK for departure from the EU by providing certainty and continuity for the operation of the UK legal system after exit day.

11.38 am

**Matthew Pennycook** (Greenwich and Woolwich) (Lab): It is a real pleasure to serve under your chairmanship, Mr Bailey. The Minister has already made clear the reasons why the European Statutory Instruments Committee recommended that the draft regulations be upgraded, and why he accepted that recommendation. I agree that the draft regulations are largely technical in nature and uncontroversial. For that reason, we do not intend to divide the Committee today, and my remarks will be brief.

I want, however, to probe the Minister on two specific points about the draft regulations. The first relates to part 5, which gives effect to the schedule. As he made clear, part 5 makes consequential repeals to EU-related domestic legislation in relation to parliamentary approval for accession treaties for other member states to the EU; the Single European Act and other treaties; and devolved representation in EU institutions for certain regional purposes. As he said, the repeals appear to be similar in intent to those that we considered late last year in the draft European Union (Withdrawal) Act 2018 (Consequential Amendments) Regulations 2018, in the sense that they appear to be cosmetic and are required only to tidy up redundant references that will be of no continuing legal or practical consequence following the repeal of the European Communities Act. Given the complexity of the draft regulations that we are considering, will the Minister confirm for the record that the relevant repeals concern matters of genuine post-exit redundancy and have no effect on anything that is done prior to exit day under them or in connection with them?

My second point about the draft regulations relates to parts 2, 3 and 4, all of which, as the Minister said, concern how cross-references in domestic legislation to EU law will be understood after exit day. As the Minister has set out, schedule 8 of the European Union (Withdrawal) Act makes it clear that the current ambulatory relationship between certain UK legislative instruments and EU law will cease after exit day, to be replaced by an ambulatory reference to the new body of EU retained law. The provisions in part 2 of the draft regulations, and similarly for devolved legislation in parts 3 and 4, clarify how non-ambulatory references—references that do not currently allow for automatic updating subject to developments at an EU level—should be understood.

The fact that the draft regulations require this clarification suggests that the Government believe that the European Union (Withdrawal) Act does not provide for the correction to non-ambulatory references in the same way as it does for ambulatory references. I find it somewhat difficult to understand why that Act did not make provision for how non-ambulatory cross-references to EU legislation up to the point immediately before exit should be read and, consequently, why the draft regulations are required to correct that omission.

Why did the European Union (Withdrawal) Act not address non-ambulatory references? Was it an oversight—an understandable one, perhaps—or did the Department intend to identify all the non-ambulatory references to EU law one by one and use the correcting power in section 8 of the Act on them, only to realise subsequently that compiling an exhaustive list would be more difficult than creating a general rule? Whatever the reason, I think that the Committee, and anyone following our proceedings, would benefit from an explanation from the Minister.

11.41 am

**Chris Heaton-Harris:** I thank the hon. Gentleman for his comments, and I can confirm that the answer to his first question is yes. His second question was about why we have introduced the draft regulations. I went through the European Union (Withdrawal) Act debate to see whether there were any references to non-ambulatory references, and I found that a section of the debate went into quite some detail on ambulatory references but no reference was made to non-ambulatory references.

I honestly do not know what my Department might have been thinking at that time. However, I believe that we have tried to go through this process in the best possible way, so I guess we are heading towards the second of the hon. Gentleman's suggested answers to his own question, rather than the first. We have gone through a quite legitimate tidying-up exercise.

The draft regulations are an important part of the Government's preparations for the UK's withdrawal from the European Union to ensure that our legal system continues to function effectively after exit day, and I commend them to the Committee.

*Question put and agreed to.*

11.43 am

*Committee rose.*





