

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT LAW ENFORCEMENT AND SECURITY
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Wednesday 27 February 2019

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The Committee consisted of the following Members:

Chair: SIR DAVID AMESS

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| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † McDonald, Stuart C. (<i>Cumbernauld, Kilsyth and Kirkintilloch East</i>) (SNP) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Maynard, Paul (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Mills, Nigel (<i>Amber Valley</i>) (Con) |
| † Dakin, Nic (<i>Scunthorpe</i>) (Lab) | † Ross, Douglas (<i>Moray</i>) (Con) |
| † Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP) | † Smith, Eleanor (<i>Wolverhampton South West</i>) (Lab) |
| † Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Thomas-Symonds, Nick (<i>Torfaen</i>) (Lab) |
| † Hoare, Simon (<i>North Dorset</i>) (Con) | † Warburton, David (<i>Somerton and Frome</i>) (Con) |
| † Huq, Dr Rupa (<i>Ealing Central and Acton</i>) (Lab) | |
| † Hurd, Mr Nick (<i>Minister for Policing and the Fire Service</i>) | Jack Dent, <i>Committee Clerk</i> |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | † attended the Committee |

Eleventh Delegated Legislation Committee

Wednesday 27 February 2019

[SIR DAVID AMESS *in the Chair*]

Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

2.30 pm

The Minister for Policing and the Fire Service (Mr Nick Hurd): I beg to move,

That the Committee has considered the draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.

Sir David, it is an enormous pleasure to serve under your chairmanship, and to propose the regulations to the Committee. The Committee will be aware that the Government are preparing for all scenarios relating to the UK's withdrawal from the EU, including the scenario in which the UK leaves the EU without a deal in March 2019. As part of those preparations, the Government are bringing forward a programme of secondary legislation that is intended to ensure that there is an effectively functioning statute book on exit day.

This afternoon's statutory instrument forms part of that programme of secondary legislation. It addresses deficiencies in our domestic statute book that would arise if we leave the EU without a deal and focuses in particular on deficiencies in the area of security, law enforcement, criminal justice and some security-related regulatory systems.

By way of context, the Committee will, I am sure, be aware that the UK currently participates in a number of EU tools and measures that support security, law enforcement and judicial co-operation in criminal matters, some of which, such as the European arrest warrant or Europol, will be very familiar. We also participate in a number of security-related EU regulatory regimes related to firearms, drug precursors and explosive precursors.

Should the UK leave the EU without an agreement next month—the no-deal scenario—the UK's access to those tools and measures would cease. At the same time, the UK would cease to be bound by those security-related EU regulatory systems. That decoupling would occur as a result of the UK having withdrawn from the European Union—that is, as a result of the article 50 notification, not as a result of the provisions found in this instrument.

The regulations clearly play no part in bringing about the UK's withdrawal from the EU; rather, their purpose is to make amendments to the UK's domestic statute book, including retained EU legislation, to reflect that new situation. The changes they make are those that we cannot or should not avoid, in the event of a no-deal exit. The regulations do not contain significant policy choices.

Against that backdrop, let me be clear that the regulations will do three main things. First, they will revoke or amend retained, directly applicable EU legislation and domestic legislation in the area of security, law enforcement,

criminal justice and some security-related regulatory systems. That will ensure that the statute book continues to function effectively in a no-deal scenario.

Secondly, where necessary the instrument includes transitional or saving provisions to address live or “in flight” cases—that is, provisions confirming how cases that are live on exit day should be dealt with, or how data received before exit should be treated. That will provide certainty for operational partners such as the police and prosecutors who currently operate the EU tools and measures, and who need to be clear on what activity can continue and on what terms, at the point of exit.

Thirdly, in the case of extradition, the instrument will ensure that the UK has the correct legal underpinning to operate the no-deal contingency arrangement for extradition, which is the 1957 Council of Europe convention on extradition with EU member states.

Overall, the making of the instrument will provide legal and operational certainty to the public sector, including our law enforcement and criminal justice partners across the UK, such as the National Crime Agency and our police and prosecution services. Although it remains the Government's position that exiting with a deal is in the UK's best interests, the instrument makes important changes to ensure readiness on exit day in a no-deal scenario.

I should make clear, however, that for the most part the instrument is not a vehicle for implementing the Government's policy response to a no-deal exit. Our contingency arrangements for co-operation with EU partners on security, law enforcement and criminal justice involve making more use of Interpol, Council of Europe conventions and bilateral channels. Those are alternative channels that are already in use and therefore do not require domestic legislation to set up. That is why these contingency arrangements are largely outside the scope of what the regulations set out to do. Even the Council of Europe convention on extradition, in respect of which this instrument links into our contingency arrangements, is already in place and in day-to-day use by the UK with non-EU countries. For the purposes of our domestic law under the Extradition Act 2003, the instrument re-categorises EU member states so that we can administer requests from EU member states under part 2 of the Act rather than under part 1, as at present.

I should make it clear to the Committee that the instrument would come into force on exit day, as defined in the European Union (Withdrawal) Act 2018. Should we enter an implementation period, the entry into force of these regulations, along with most other EU exit instruments, will be deferred until the end of that period. This would be achieved via the withdrawal agreement Bill. I commend the regulations to the Committee.

2.36 pm

Nick Thomas-Symonds (Torfaen) (Lab): As always, it is a pleasure to serve under your chairmanship, Sir David. I want to make it clear that the Opposition do not oppose these regulations or the aim of having a functioning statute book without prejudicing the outcome of the negotiations. I will, however, make a number of observations on the regulations and on the wider security position with regard to our exit from the European Union. I hope that the Minister will be able to comment on them.

The UK participates in about 40 European Union measures that are meant to enhance security, law enforcement and judicial co-operation in criminal matters. They are very important tools, as is our participation in security-related EU regulatory systems. As the Minister has set out, the regulations essentially do three things. First, they seek to revoke or amend retained EU law that is directly applicable to our current domestic legislation. Secondly, they try to deal with a situation in which we would have a live case that has not been completed at the point of exit. That is a particular concern with regard to data: what would be the status of data that we held without a legal means to continue to hold it?

Thirdly, there is the issue of extradition. The Minister has referred to the 1957 Council of Europe convention on extradition, which, according to the explanatory memorandum accompanying the regulations, would be used

“in lieu of the European Arrest Warrant”,

but this is undoubtedly a far more limited measure than the European arrest warrant. It is clear from part 14 of the instrument that the UK and the EU would allow EU extradition requests from other member states in lieu of the European arrest warrant.

Paragraph 3 of article 2 of the convention itself states:

“Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as it is concerned, exclude such offences from the application of this Convention.”

In other words, an EU member state is required to surrender a wanted individual only if there is dual criminality across the two jurisdictions. That would be an important restriction on the regulations, and I would like confirmation that the Home Office is seized of it and an explanation of what it would do to plug that gap.

The Government’s own advice, as set out in the explanatory memorandum, states:

“In 2017/18, the UK arrested over 1,400 individuals on the basis of European Arrest Warrants...issued by the other 27 EU Member States. In the same period, EU Member States arrested 183 individuals on the basis of EAWs issued by the UK.”

It is a very important tool, and there will be practical consequences if the necessary measures are not in place.

Martin Docherty-Hughes (West Dunbartonshire) (SNP): We will not vote against these regulations, but does the hon. Gentleman agree that they do not replace the fundamentally important European arrest warrant? The warrant has assisted constituents of mine, including the family of Lisa Brown in the Vale of Leven. Her mother was buried only last week, and Lisa is missing and presumed to have been murdered by a UK national. We used a European arrest warrant to get him from Denmark to Spain.

Nick Thomas-Symonds: I entirely agree with the hon. Gentleman, who is absolutely right. Although the Opposition do not oppose the narrowness of the regulations, there is a whole host of wider issues relating to security capacity. The hon. Gentleman is right to highlight the importance of the European arrest warrant mechanism, which has clearly been very important in the situation to which he referred. There is real concern about the potential state of uncertainty, and we need clarity about the impact of different outcomes on our security.

On “The Andrew Marr Show” on 3 February, the Home Secretary refused to dispute claims made by Sir John Sawers, the former head of MI6, that

“the harder the Brexit, the greater the damage,”

and by Neil Basu, the head of counter-terrorism policing at the Metropolitan police, that a no-deal Brexit would be

“a very serious flaw in our security arrangements.”

When pressed, the Home Secretary conceded only that there would be “a change in capability” and that

“most of these capabilities were only relevant for us from 2015 onwards.”

Yet it is clear, even from these regulations, that there is a loss of access to databases. I will come back to that issue.

There is lack of clarity in both the regulations and the explanatory memorandum, which states:

“The practical impact of a ‘no-deal’ exit on security, law enforcement and criminal justice cooperation with EU Member States is outside the scope of the provisions found in this instrument.”

That may be technically correct, but the Government need to set out what they plan to do to at least maintain our security capacity through co-operation with the EU27, and how they propose to build on it. I have read the Government’s assessment of the security partnership. It is a list of ambitions, but there is very little in the way of practical proposals to achieve them.

Quick access to information and co-ordinated work across borders is vital to our security, and there is a Europe-wide interest in working together to keep all our peoples safe. In their negotiations thus far, the Government have failed to get the Schengen information system—SIS II—and the European criminal record information system included in the political declaration. As I have indicated, this instrument would actually revoke access to databases such as Prüm and SIS II.

Similarly, the Government’s current promise to

“establish effective arrangements based on streamlined procedures and time limits”

is insufficient for the UK to maintain the benefits of the European arrest warrant. As I have said, reliance on the 1957 Council of Europe convention on extradition will not have the same effect, because it does not have the same capacity as the European arrest warrant.

Similarly, the Government have not identified exactly what our crucial relationship with Europol and Eurojust will be. To say that they are still working on the terms of co-operation is not good enough—it is nearly three years since the 2016 referendum.

Although the Opposition do not oppose the narrow measures in these regulations to have a functioning statute book on exit day, the Government have to focus on the vital issue of security co-operation and come up with workable solutions to maintain that level of co-operation, rather than allow that capability to be diminished.

2.43 pm

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Sir David. I will be very brief, because the shadow Minister has said pretty much everything that I would have said. I simply echo his concerns that any sort of Brexit will be a challenge and

[Stuart C. McDonald]

risks harming security co-operation. In the meantime, we must make the statute book as robust and complete as possible, which is what this delegated legislation is about.

Each week, parliamentarians are asked to look through a host of very detailed and complicated statutory instruments. We get helpful explanatory memorandums alongside them, and Ministers' introductory statements are also helpful. There is an assurance that stakeholders will be consulted, including devolved Administrations, which is important from my point of view. It would also be useful if we could see a summary of the consultation responses, because all I know is that consultations took place. I have tried to contact various stakeholders to see what they think, but it would be preferable if the Government could provide that, rather than our constantly having to do that homework week after week. Other than that, we fully support what the Government are trying to do with these regulations, which we certainly do not oppose.

2.44 pm

Mr Hurd: I thank both main Opposition spokesmen for their constructive and thoughtful approach to the regulations. They understand them for what they are, which is narrow in scope and design in order to ensure that we have a fully functioning, effective and relevant statute book in a scenario in which we do not expect or want to be.

The main thrust of the argument from the hon. Member for Torfaen takes me away from the narrow scope of the regulations, but I am happy to follow him because the context of this Committee is one of debate and discussion about the way through on Brexit. On no deal, I have been clear to the Select Committee on Home Affairs and others, as has the Home Secretary, that in a no-deal scenario, which we want to avoid, we will fall back on contingency arrangements. They are relatively low-risk, in that they exist and have been tested, but they are not as good as what we have at the moment. That is just fact.

On the European arrest warrant in particular, we will be forced to fall back on slower and clunkier processes, which are therefore sub-optimal. There is no sugar coating that, which is why we want to avoid that scenario. For context, the point that the Home Secretary made—I have said the same myself—is that although we may lose some capability on day one, we can rebuild that over time through bilateral relationships. On day one, however, there is no doubt at all that we will lose some capability.

It is important to note, however, that some of the most significant capabilities have come on-stream relatively quickly. SIS II went live in 2015 and the

passenger name record directive went live in 2016, and I do not remember Ministers of previous Governments claiming that the country was unsafe before they came into force. They are good instruments; they work and are embedded into our systems, and with our European partners we have spent years developing such platforms and tools together. We do not want to fall back on the contingency arrangements, but we have to plan for a no-deal scenario.

On the ongoing security partnership, my reading of the political declaration is that nothing is taken off the table. I understand and believe strongly that for any Government the security of the public is the No. 1 priority. The underlying data of all those instruments—the European arrest warrant, Europol, SIS II—shows that the UK's contribution to their success is fundamental. We are the second biggest contributor of data to Europe. When the Home Secretary and I meet Interior Ministers and counterparts in Europe, as we have done regularly over the past few months, I am very clear and they are extremely clear about the mutual interest in not losing the exchange of data.

Nick Thomas-Symonds: I have met Rob Wainwright, who was the director of Europol, and heard about its excellent work. I do not think there is any doubt about the UK's contribution to that agency and other areas. The issues regarding Europol, however, relate to third-country status and the level of access and quick access. There should be a focus on finding a practical solution to prevent our capability from being diminished.

Mr Hurd: I could not agree more. That is not nailed down; it is still open to negotiation. The point I am labelling is that when seeking a deal, one looks for the levels of mutual interest in securing that deal. Security co-operation is arguably the area where the mutual interest is clearest, because we have constructed those tools and platforms and they work in large part because of the UK contribution.

I am as clear as I can be that our European partners, at the Interior Minister level at least, are very keen to maintain the status quo as far as possible. The related political reality is that our status will change once we leave the European Union, but I am clear that as far as possible, the intention, both from our end of the pipe and that of our colleagues in Interior Ministries across Europe, is to end up in a place where we have very similar capabilities to those we have at the moment. That is the underlying objective for the security partnership.

Question put and agreed to.

2.50 pm

Committee rose.