

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Tenth Delegated Legislation Committee

RUSSIA (SANCTIONS) (EU-EXIT)
REGULATIONS 2019

Tuesday 14 May 2019

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

† Brine, Steve (*Winchester*) (Con)
 † Bryant, Chris (*Rhondda*) (Lab)
 † Burghart, Alex (*Brentwood and Ongar*) (Con)
 † Cartlidge, James (*South Suffolk*) (Con)
 † Duncan, Sir Alan (*Minister for Europe and the Americas*)
 † Fabricant, Michael (*Lichfield*) (Con)
 † Goodman, Helen (*Bishop Auckland*) (Lab)
 † Jones, Darren (*Bristol North West*) (Lab)
 † Lopez, Julia (*Hornchurch and Upminster*) (Con)
 McDonald, Stewart Malcolm (*Glasgow South*) (SNP)

† Pawsey, Mark (*Rugby*) (Con)
 † Rowley, Danielle (*Midlothian*) (Lab)
 † Slaughter, Andy (*Hammersmith*) (Lab)
 † Smith, Nick (*Blaenau Gwent*) (Lab)
 † Stewart, Iain (*Milton Keynes South*) (Con)
 † Thomas, Gareth (*Harrow West*) (Lab/Co-op)
 † Tomlinson, Michael (*Mid Dorset and North Poole*) (Con)

Yohanna Sallbert, *Committee Clerk*

† **attended the Committee**

Tenth Delegated Legislation Committee

Tuesday 14 May 2019

[STEWART HOSIE *in the Chair*]

Russia (Sanctions) (EU Exit) Regulations 2019

5 pm

The Minister for Europe and the Americas (Sir Alan Duncan): I beg to move,

That the Committee has considered the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I., 2019, No. 855).

Hon. Members will be aware—not least following our recent discussions about other sanctions regulations—of the importance of sanctions to our foreign policy and national security, and of the Government's commitment to maintaining our sanctions capabilities and leadership role after we leave the EU. I therefore do not intend to rehearse the same arguments today, although I am happy to do so if hon. Members wish.

Colleagues will also be aware that statutory instruments such as the Russia (Sanctions) (EU Exit) Regulations are necessary to set out the detail of each sanctions regime within the framework of the Sanctions and Anti-Money Laundering Act 2018. As required under the Act, a report on the purposes of the regulations and the penalties in them is available in the Vote Office in case hon. Members have an interest.

Under regulation 1(3), the provisions to allow designation decisions to be taken commenced on 11 April, the day after the regulations were made. The regulations were laid before Parliament at midday on 11 April; since the time at which they would come into force was not specified, there was a period on that day when the regulations were in force but had not been laid. Regrettably, owing to an administrative oversight compounded by the Easter break, we did not meet the procedural and legal requirement to notify the Speaker and the Lord Speaker of that pre-laying commencement until eight working days after the regulations were laid.

I have written to Mr Speaker, the Lord Speaker, the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee. A copy of my letter has been placed in the Library. We have reviewed our processes and taken steps to ensure that this will not happen again.

Chris Bryant (Rhondda) (Lab): I recall that barely an hour ago, when the Select Committee on Foreign Affairs asked the Minister why the regulations had been laid before Parliament so late, he chose not to mention any of this. Why not?

Sir Alan Duncan: I thought that it would be much more appropriate to mention it to this Committee, out of respect for the House more widely—something that the hon. Gentleman and I always take pains to display. Once again, I thank the JCSI for its close and helpful scrutiny over recent months of so many statutory instruments relating to sanctions.

The regulations provide for the transfer into UK law of the three existing EU sanctions regimes against Russia in respect of Russian actions in Ukraine. They seek to deliver substantially the same policy effect as the measures in the corresponding EU regimes—to deliver a cost to Russia for its actions, to press it to change its Ukraine policy and to end its illegal annexation of Crimea and Sevastopol. The measures include asset freezes and travel bans on individuals and entities; sectoral measures to restrict parts of Russia's finance, energy and defence industry; and restrictions on trade and investment relating to Crimea.

The continuation of sanctions since 2014 sends a strong, unified international message that Russia's actions in Ukraine will not be tolerated. Approving the regulations will ensure that we have the necessary powers to impose sanctions in respect of Russia from the date of EU exit. During the period of our membership of the EU, or the implementation period in the event of a deal, EU sanctions would continue to apply and the regulations would not immediately be needed. In those circumstances, we would seek to use powers in the 2018 Act to the fullest possible extent, but there would be some limitations on the measures that we could impose autonomously during that period.

I know that in the light of the Russian Magnitsky case, many hon. Members are keen for the UK to develop our own independent human rights sanctions regime, so they may query why we are simply transferring existing EU sanctions regimes into UK law. That is because this statutory instrument has been laid on a contingent basis to provide for the continuation of sanctions should we leave the EU without a deal. As such, our priority has necessarily been to ensure the transfer of existing EU measures. I assure everyone that the 2018 Act does indeed give the necessary powers in UK law to allow us to develop our own regime. However, it is important to recognise that that cannot be done immediately. It would be the first UK national sanctions regime, so the legal and policy risks must be carefully scrutinised, and the correct processes must be put in place to ensure that it delivers the desired effect, while avoiding any unintended consequences.

This statutory instrument provides for the transfer into UK law of well-established EU sanctions regimes that are in line with the UK's foreign policy priorities. It encourages respect for the rule of law, for the rules-based international order and for security and stability. Approving this statutory instrument will allow the UK to continue to implement sanctions against Russia from the moment we leave the EU. It will send a strong signal of our intention to continue to play a leading role in the development of sanctions in the future. I welcome the opportunity to discuss it further. I commend the regulations to the Committee.

5.6 pm

Helen Goodman (Bishop Auckland) (Lab): It is a pleasure to serve under your chairmanship, Mr Hosie. The Minister and some members of this Committee cantered over the Russian sanctions grounds earlier this afternoon, and I suspect that we will discuss some of the same issues that were discussed in the Foreign Affairs Committee. The Minister's explanation about pre-laying commencement came as rather a surprise to me because, although he wrote to the Chair of the Joint Committee

on Statutory Instruments, Mr Speaker and the Lord Speaker, he did not include in his letter Her Majesty's loyal Opposition. I am slightly puzzled by what is going on here and what he means by "pre-laying commencement". Was that just done in the case of the Russian sanctions, and did he do it for all the others? Why was there such an emergency on 11 April? Was it because of the run-up to the Brexit votes that we had on the 12th?

I seek your guidance, Mr Hosie. If we were to oppose this statutory instrument, and if the House were to vote against it, how does that interrelate when there is a pre-laid commencement? I simply do not understand the process, and I would like an explanation, in particular because, rather unusually, we are having consideration upstairs now at 5 o'clock, and there is a vote in the main Chamber at 7 o'clock. This is all being rushed along in rather a strange way. I literally do not understand what is going on.

I understand that the Minister is seeking to translate into our own free-standing legislation the powers that were used by the European Union in response to Russia's actions in the illegal annexation of Crimea and the destabilisation of Ukraine. The explanatory memorandum, which has also been laid before the Committee, sets out what is being done and why. Basically, the reason for implementing these sanctions was that there were numerous breaches by the Russians of international law, treaties and agreements. We have two reports from the Minister—one on the reasonableness of the offences attached to them, the second on why he believes that sanctions were the right policy in this case.

This obviously raises the fundamental question whether this set of sanctions is effective. Are they in practice influencing the behaviour of the Russians? It is my contention that the answer is "not much". Since these sanctions were imposed in 2014, we have had the Salisbury Novichok attack on our soil; we have seen no change in Russia's stance in Ukraine or Crimea; and more recently, the Russians seized three Ukrainian vessels in the Straits of Kerch. It is difficult to argue that the sanctions are effective.

Michael Fabricant (Lichfield) (Con): The hon. Lady makes a fair point about the events since the introduction of sanctions, but will she not accept that it has reduced the gross domestic product of the Russian Federation, which is now almost less than half that of the United Kingdom? If these sanctions had not been put in place, the Russian economy would be far stronger and far more able to produce equipment, weapons and manpower and would maybe involve themselves in even more events overseas in the form of invasion.

Helen Goodman: The purpose of the sanctions is not to damage the Russian economy. It is to get the Russians to change their foreign policy and their stance in Ukraine, and they have not done that. The hon. Gentleman's remarks are hypothetical and cannot be proved either way. At the same time, we also know that at any moment when we have sanctions, there is also a cost to the British economy.

I wonder whether the Government might have done better had they implemented the Magnitsky sanctions, which they have failed to do. We agreed on a cross-party basis to put these into law this time last year. We gave the Government the power to introduce sanctions, including travel bans, on individuals who had committed gross and serious human rights abuses. This raises a couple

of issues. First, the Government claim that they cannot implement the Magnitsky powers unless and until Brexit happens. However, there is a big question mark over whether this is true. I am sure that the Minister has seen the opinion from two barristers, Tim Otty and Maya Lester, which argues that this is not the case and that section 64 of the Sanctions and Anti-Money Laundering Act makes no reference in the commencement provisions to Brexit day. It appears that the reason Ministers have given in the Chamber for the last several months is simply not accurate.

It is also the case that the use of Magnitsky sanctions would not conflict with European law. We know that because the Baltic states, which are also members of the European Union, have been implementing Magnitsky sanctions. Were the Minister to do this, it might give us a targeted and therefore more effective approach than what is in place at the moment. Despite the fact that we know that there are human rights abuses occurring in Crimea at the moment that would fall under the Magnitsky aegis, the Minister makes no reference to them in his reports to Parliament. Until I hear some more from the Minister, and unless he is able to give some reassurance on this point, I am afraid that we will not be nodding through this statutory instrument this afternoon.

5.14 pm

Chris Bryant: It is a delight to sit under your chairmanship, Mr Hosie, even though we are in the gloomiest of Committee Rooms in the building. Just a minor point: one of the problems for disabled access in this building is that many people who are partially sighted find it very difficult to read papers in such a room. I hope one day we will be able to sort that out.

I wholly support the sanctions, as the Minister suggested. Indeed, I want to praise the Government of the right hon. Member for Maidenhead (Mrs May) for having been such an ardent advocate of sanctions on Russia. Several people from other countries who have been to Foreign Affairs Councils during her time have told me that had it not been for her strong argument at those meetings in favour of maintaining sanctions, they would have been dropped by now. I am not sure whether it is because of her experience as a former Home Secretary that she is particularly conscious of the pernicious influence that sometimes Russian foreign policy can have elsewhere in the world, and in particular in the UK, or whether it is for some other reason, but I do want to laud the role that the Government have played in that.

I have an anxiety for the future, that if Brexit does ever happen, when we are no longer sitting at the table it will be more difficult for the UK Government to secure the kind of sanctions regime for France, Germany and other members of the European Union that we would want them to advocate, and we may find ourselves standing rather alone. That may well be a worrying situation for us in the future.

It is undoubtedly true that the Russian state's deliberate annexation of Crimea and Sevastopol from Ukraine—I do not think there is any doubt that that was done deliberately by the Russian state; although they pretended to be independent forces of some kind, they were to all intents and purposes operating under Russian military command—was an illegal annexation and would not have happened had it not been for Ukraine's surrendering

[Chris Bryant]

its nuclear weapons as a result of the Budapest accord, of which the UK was a signatory, and of which Putin himself was a signatory, which guaranteed the territorial integrity of Ukraine.

However, I have some anxieties about the way that this statutory instrument has come forward. First, it was laid on 11 April. This SI was meant to meet the problem, had we fallen out of the EU on 29 March without having a new sanctions regime in place because there was no deal. It seems odd that it should not have been laid until 11 April, even though it was meant to meet a need for 29 March. I know there was a second deadline, which was 12 April, and I presume that is what led to the rather strange rush at the final moment. Now we are having another rush, because presumably the Government expect that at any moment something will transpire in the Brexit negotiations that will lead to some change in the situation governing our being kept permanently in aspic or in suspended animation in the House.

It feels as though these mistakes in timing are a result of a lack of capacity in the sanctions section of the Foreign Office. As I understand it, the sanctions team consists of 40 people at the Foreign Office. Reading between the lines from the note that has been sent to the Foreign Affairs Committee, I suspect that that is insufficient to be able to do the job properly. Ministers have said several times—I do not doubt the sincerity of the Minister with us today—that it is a bit difficult to get a new sanctions regime all lined up and put together, because there is so much other business to be got through. I see sanctions policy as an absolutely vital part of our foreign policy. It is one of the key parts of our toolbox—alongside diplomacy, defence and other soft power measures—in trying to secure our foreign policy aims. I hope the Minister can respond on whether there is sufficient capacity and whether that led to the hiccup.

As my hon. Friend the Member for Bishop Auckland said, the key question is whether we can have an independent, autonomous sanctions regime while we are a member of the European Union or during a transition period—if the withdrawal agreement is ever agreed. My hon. Friend referred to the advice by two QCs that makes it very clear that, in their opinion, it is perfectly possible for us to have an independent sanctions regime; if we wanted to, we could draw up anything we wanted while we are still a member, or during a transition period.

As I understand it, the Government's policy is that that is not the case. The Minister said that an autonomous and independent sanctions regime cannot be introduced immediately and can only happen once we have left the European Union. I presume that is the meaning of paragraph 6.1 of the explanatory memorandum, which says:

“The UK's implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972.”

The Government's argument seems to be that we cannot implement any form of sanctions policy.

I believe the Government are wrong, but it seems that they are in doubt as to whether that is the case. If I am right and the Government are wrong, I do not understand why the sanctions measures before us today do not include the Magnitsky measures to enforce sanctions against human rights abusers in other countries in the world.

As my hon. Friend the Member for Bishop Auckland rightly states, the Sanctions and Anti-Money Laundering Act 2018 does not refer to an implementation date of Brexit day, and the Government have to report by the end of this month on the Magnitsky provisions in that Act. Since they have to report to Parliament, that means they have to do so before we rise next Thursday, 23 May. At the moment they have not done anything about those provisions, so I presume that the Government will present a sort of nil return. Will the Minister confirm what he said previously in the Foreign Affairs Committee on that?

I would prefer us to be implementing far more substantial measures. Estonia, Lithuania and Latvia have a list of 49 people who have sanctions against them under the Magnitsky provisions in their nation states. I do not understand why we cannot simply do the same.

Finally, the Government will be reporting annually on each of the sanctions regimes such as this one that they are starting. What form will those reports take? Will there be an opportunity for debate when they are tabled?

I very much hope that the Government will make it as clear as possible that, while they may feel legally constrained, they would none the less like to implement further sanctions regimes as soon as possible.

The Chair: Before I call the Minister to sum up, I would tell the Committee, in response to the question from the hon. Member for Bishop Auckland earlier, that should this question be called to a Division, and should the noes have it, that would simply confirm that the Committee has not considered that which we are now considering, but it would not stop the ability of this matter to be put as a question on the Floor of the House later this evening.

Sir Alan Duncan: Thank you, Mr Hosie. You have rather stolen my first paragraph. It might not prevent the hon. Member for Bishop Auckland from deciding that she has not considered something that she has just considered, but we shall see whether she chooses to call a slightly fatuous Division. However, I apologise at the outset; she should have been written to and was not. I will investigate why that was not the case and will send her a subsequent letter, fully explaining the procedural hiccup.

If it is indeed her intention to try to vote down this statutory instrument, the consequences could be dire. We could end up with no Russian sanctions, which would be a very grave mistake.

Helen Goodman: The right hon. Gentleman knows that that is not the case. He knows perfectly well that, at the moment, the sanctions regime is covered by European law. He is not doing the Magnitsky part that we think he ought to be doing. He is making provision for a legal base for sanctions once the European Communities Act 1972 is no longer in force.

Because we debated it at length in the Bill Committee, he also knows that one of the problems with the Government doing so much through delegated legislation is that Her Majesty's Opposition have no choice. We cannot amend this. All we can do is vote against it. If we win a vote, the Government can come back with a revised statutory instrument. But it is not in our gift to amend it, which obviously would be our preferred option; that is simply not open to us.

Sir Alan Duncan: Procedurally, the hon. Lady is right. If it were to be voted down there would remain a danger that there could be a lacuna or a hiatus in which there were no extant Russian sanctions. She mentioned Magnitsky: Lithuania, Latvia and Estonia have Magnitsky-lite, as it were. Their regimes only include travel bans, whereas the provisions in the primary legislation passed by us—with great cross-party approval—would allow for much more, once the Magnitsky provisions are put in place. We intend to do that. The hon. Member for Rhondda has pointed out—fairly—that our sanctions team are working very hard. Indeed they are. They are an excellent team and I am glad to take this opportunity to say so and put it on the record. But they have a massive rush of SIs. It is not just the number of them going through this House; it is the enormous body of work that goes on beneath the bits of paper we then end up with here. It totally absorbs the 40 people in the team who work so hard. When they do it, we will bring forward a Magnitsky SI.

Chris Bryant: I am glad to hear that. On the travel ban issue, I do not understand why, in the UK, we cannot simply state that anybody involved in the murder of Sergei Magnitsky or the corruption unveiled by him is not welcome in this country and will be banned from entry. That is what the three Baltic countries have done. Why can we not do that?

Sir Alan Duncan: It is not for me to speak on behalf of the Home Office. There may well be provisions in law for them to be able to do that, should they so wish. Again, that is a broader Home Office issue rather than a Foreign Office matter for this Committee.

Gareth Thomas (Harrow West) (Lab/Co-op): On the question of the pressures on the 40 civil servants, surely the threat posed by the Russians is a matter of national security. If there are not enough staff in the Department to implement these sanctions, why has the Foreign Secretary not deployed more staff to enable us to crack on with this?

Sir Alan Duncan: We are cracking on. We are doing everything on time. We will put in place the provision for a continuation of the 30 EU sanctions regimes, should we leave with no deal. Obviously, there will be an implementation period if we leave with a deal.

Gareth Thomas *indicated dissent.*

Sir Alan Duncan: I do not know why the hon. Gentleman shakes his head when this is a straightforward matter of fact. The team have done a good job in making sure that the sanctions regimes will continue in all circumstances. Here we go again.

Chris Bryant: The Minister says that the immigration and travel ban situation is not a matter for him. In his own sanctions, it states in section 20 of part 4, “Immigration”, that a person

“who is designated under regulation 5 for the purposes of this regulation is an excluded person for the purposes of section 8B of the Immigration Act 1971”.

His own sanctions regime includes provisions around travel bans, but not in relation to Magnitsky.

Sir Alan Duncan: Yes, but the instrument transposes existing EU sanctions regimes; it does not add to or amend them. The process has been to transpose as identically as possible the EU regimes into what will be our law when we leave.

It is clear that the sanctions have been working in broad ways. There are massive economic pressures on Russia, and we should not think that they are not causing concern among those who govern that country. Sanctions are an integral part of our response to some of the most important foreign policy challenges that we face.

We must be ready to deliver sanctions independently as soon as we leave the EU. That is why the SI is so important. Transposing EU sanctions regimes in this way puts the UK on a solid footing to continue to protect our interests, defend our values and maintain the position of leadership that we have built on sanctions since 2014. Once again, I commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Brine, Steve	Lopez, Julia
Burghart, Alex	Pawsey, Mark
Cartlidge, James	Stewart, Iain
Duncan, rh Sir Alan	Tomlinson, Michael
Fabricant, Michael	

NOES

Bryant, Chris	Slaughter, Andy
Goodman, Helen	Smith, Nick
Jones, Darren	Thomas, Gareth
Rowley, Danielle	

Question accordingly agreed to.

Resolved,

That the Committee has considered the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I., 2019, No. 855).

5.32 pm

Committee rose.

