

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT LAW ENFORCEMENT AND SECURITY
(SEPARATION ISSUES ETC.) (EU EXIT)
REGULATIONS 2020

Wednesday 18 November 2020

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The Committee consisted of the following Members:

Chair: DEREK TWIGG

† Afriyie, Adam (*Windsor*) (Con)
 † Allan, Lucy (*Telford*) (Con)
 † Anderson, Stuart (*Wolverhampton South West*)
 (Con)
 Blake, Olivia (*Sheffield, Hallam*) (Lab)
 † Bradley, Ben (*Mansfield*) (Con)
 † Brokenshire, James (*Minister for Security*)
 † Elmore, Chris (*Ogmore*) (Lab)
 † Jenkinson, Mark (*Workington*) (Con)
 † Johnston, David (*Wantage*) (Con)
 † Jones, Andrew (*Harrogate and Knaresborough*)
 (Con)

Jones, Mr Kevan (*North Durham*) (Lab)
 † McGinn, Conor (*St Helens North*) (Lab)
 Mak, Alan (*Havant*) (Con)
 Owatemi, Taiwo (*Coventry North West*) (Lab)
 † Pursglove, Tom (*Corby*) (Con)
 Russell-Moyle, Lloyd (*Brighton, Kemptown*) (Lab/Co-
 op)
 Thompson, Owen (*Midlothian*) (SNP)
 Seb Newman, *Committee Clerk*
 † **attended the Committee**

Fifth Delegated Legislation Committee

Wednesday 18 November 2020

[DEREK TWIGG *in the Chair*]

Draft Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020

9.25 am

The Minister for Security (James Brokenshire): I beg to move,

That the Committee has considered the draft Law Enforcement and Security (Separation Issues etc.) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Twigg, and good morning to other members of the Committee.

The Committee will be aware that the Government have been preparing for the end of the transition period on 31 December. This statutory instrument forms one of the legislative changes we are making as part of those preparations to ensure that the law is clear and accessible on cross-border law enforcement and criminal justice matters. I have no doubt members of the Committee will have studied the statutory instrument carefully and read the accompanying impact assessment and explanatory memorandum. I hope it is clear from those not just what the regulations do, but what they do not do.

The regulations we are debating today are required under any European Union exit scenario. They will not enact an outcome of any negotiations. To that end, they are scenario agnostic. Instead, they will provide legal and operational clarity regarding the handling of live law enforcement and criminal justice related cases and procedures at the end of the transition period, and will ensure that the United Kingdom has a fully functioning statute book.

The regulations will do that by performing three main functions. First, they will make the changes needed in UK law to give full effect to the separation provisions contained in the withdrawal and separation agreements. These provisions concern ongoing cases and procedures at the end of the transition period, and place reciprocal obligations on the UK and European economic area-European Free Trade Association states regarding their handling.

Secondly, and in a similar vein, they will make the necessary amendments in UK law to give full effect to the related data provisions contained within those agreements. These provisions concern data accrued before the end of the transition period or under the separation provisions, and will provide clarity for operational partners regarding the handling of such data.

Thirdly, the regulations will address a number of deficiencies that would otherwise arise at the end of the transition period, for example where new EU law has come into force during the period since the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 were passed. Addressing those remaining deficiencies will ensure that the UK has a fully functioning and relevant domestic statute book at the end of the transition period.

Overall, the scope of this statutory instrument is narrow. It will give full effect to the separation provisions in the withdrawal and separation agreements by making the necessary technical changes in UK law. Making these changes will provide legal and operational clarity on the handling of live law enforcement and criminal justice cases at the end of the transition period, and will therefore enable the UK to meet its obligations under these agreements.

The regulations are required regardless of the outcome of any negotiations, and form part of a package of legislative changes we are making to ensure that the UK is ready for the end of the transition period. The safety and security of our citizens is the Government's top priority and this statutory instrument helps to support that.

I commend the regulations to the Committee.

9.29 am

Conor McGinn (St Helens North) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg, although as your constituency neighbour and very much the junior partner in that relationship, it feels like I am getting my homework marked by the Chair—but it is genuinely a pleasure to see you in the Chair.

As has been said, this statutory instrument makes the necessary amendments to UK law to give effect to the separation provisions concerning law enforcement and criminal justice co-operation contained within the withdrawal and separation agreements. It facilitates legal and operational clarity on the winding-down of ongoing operations at the end of the transition period. The regulations also address several deficiencies in retained EU law that would otherwise arise following the transition period.

I make it clear that we will not oppose today's regulations—they are necessary to ensure the ongoing integrity of continuing operations—but I want to raise some important concerns. I hope the Minister will take the opportunity to address them. While acknowledging that the instrument contains technical amendments, we also understand that they are necessary to meet our legal international obligations. It is good to see the Government agree on the importance of that point.

We are a responsible Opposition and want to ensure a functioning statute book after the transition period ends, and to make domestic law as clear as possible. We also recognise that UK law enforcement and its partners, which keep us safe, must have confidence that outstanding cases do not grind to a halt, which would compromise our ability to resolve serious cases, tackle criminality, prevent terrorism and protect our borders. Will the Minister take the opportunity to update us on what discussions he has had with UK agencies and with his European counterparts to allay such immediate and imminent fears and communicate that robust joint mechanisms will be in place to ensure relevant cases can be actioned with confidence, and not delayed or stopped?

The crux of the Government's argument today rests on providing certainty—that is the claim at least—both operationally and legally to UK law enforcement and the public. I listened carefully to the Minister's insistence that the regulations are a technical necessity to ensure the smooth transition to alternative arrangements. He also acknowledged that any clarity or certainty provided here is extremely narrow and limited.

We are hardly delivering certainty and confidence when now, just days away from the negotiation deadline and weeks away from the end of the transition period, UK law enforcement and security services still do not know what legal and regulatory framework they will be winding down to, nor what the practical, day-to-day impact of any security and criminal justice deal, or indeed no deal at all, will be on their ability to keep the public safe.

The Government need to be clear with law enforcement and the intelligence and security services, but most importantly, with the British people about what alternative—prospectively weaker—capabilities will mean for the UK’s security apparatus and our ability to protect the public.

On 5 November, the Minister told the House that if “negotiations...do not conclude successfully, we will move back to pre-existing tools and powers.”—[*Official Report*, 5 November 2020; Vol. 683, c. 528.]

Two weeks earlier, on 19 October, the Minister for the Cabinet Office implied, in response to a question from the former Prime Minister, the right hon. Member for Maidenhead (Mrs May), that under such a scenario, we could

“intensify the security that we give to British people”.—[*Official Report*, 19 October 2020; Vol. 682, c. 761.]

Can the Minister tell us what that means? From a senior member of the Government, not least one charged with securing a Brexit outcome, it seems rather vague and complacent.

In his letter to the Select Committee on Home Affairs, published only yesterday, Martin Hewitt, chair of the National Police Chiefs’ Council laid bare the stark operational impact these measures will have. He said that “the loss of some or all of the tools will mean that, even with contingencies in place, the fallback systems will be slower, provide less visibility of information/intelligence and make joined up working with European partners more cumbersome.”

I have some questions to the Minister on this point. How does he assess the likelihood of the situation that the chair of the NPCC has outlined arising? Given that, as I think he would agree, we need to take the warning very seriously, will he outline the details of any contingency plans that are in place for the loss of these vital tools? On data and information sharing, which is key and which, in terms of prospective ongoing cases, forms a large part of the regulations, lowering current capabilities would be seriously damaging and adversely affect the UK.

Lord Anderson, the former independent reviewer of terrorism legislation, said that UK police would be “increasingly unable to cope” without adequate cross-border data-sharing abilities. That would hinder our ability to receive alerts, search for criminal records, and extradite criminals.

UK law enforcement agencies are concerned. They still do not know what capabilities they will have, for example, in relation to the Schengen information system, SIS II, which the UK uses prolifically and we are set to lose. The alternative, as it stands, is to fall back on the Interpol apparatus. Steve Rodhouse, the National Crime Agency’s director general for operations, made clear the impact of that loss. He said that there are

“capability gaps affecting both sides which will reduce our ability to... exchange real time alerts and data on persons and objects of interest.”

On fast-track extradition arrangements to replace capabilities enjoyed under the European arrest warrant, we are none the wiser. That applies also to the loss of

the European criminal records information system—ECRIS—which, as the statutory instrument’s impact assessment highlights, affects around 4,000 requests every month.

The list continues. There is no certainty on Europol, and we have seen the success of European co-operation through Operation Venetic, the biggest and most significant law enforcement operation in the UK. I pay tribute to the NCA for its incredible work on that, but it was done in partnership with law enforcement across Europe. It was instigated by the French and Dutch police and it led to 756 arrests and the seizure of 2 tonnes of drugs, £54 million in illicit cash and 77 firearms in the UK alone. It saved countless lives and took criminals off the streets. It is a tangible product of European co-operation between law enforcement agencies. We will also potentially lose future access to passenger name records data and the Prüm database. I do not need to outline the potential effect of that to the Minister.

I do not want to be uncharitable, but this is something of a mess. To have law enforcement, counter-terrorism and security services winding down operations, some of which we know will not be wound up again, and some of which, if a deal is forthcoming, may or may not be wound up again to effective levels in the new year, is not a responsible or sustainable way to proceed. It is clear that the approach to the negotiations has been dither, delay and complacency. I acknowledge that that has not all been one way. This instrument might be a practical stopgap for now, but I am afraid it represents yet more kicking of the can down the road—which increasingly looks like a cul-de-sac rather than a motorway—with more uncertainty about the impact on ongoing investigations and resources.

It is hard to countenance how an almost blasé, all-right-on-the-night approach has been taken to the vital issue of the security and safety of British citizens, with the result that police efforts and resources are wasted in communicating changes, and their focus is forced to move away from day-to-day priorities to this. We wish that the future had more certainty and clarity for UK law enforcement—and they do, too. With time running out, that is in the Government’s hands and it is their responsibility to deliver.

We appreciate that today’s regulations are necessary for us to fulfil our legal commitments on law enforcement and criminal justice separation provisions, and provide UK law enforcement with some clarity. We will not oppose the regulations because it would be irresponsible and put ongoing operations at risk and people in danger.

However, placed in the wider context, the Minister must realise that any certainty here is limited. Our law enforcement, security services, their operational partners and indeed the wider public, need clarity on where the UK is headed. Importantly, they need to know the practical reality that outcomes of the negotiations—or, worse, a no-deal scenario—will have on the ability to fight crime and terrorism and keep them and our country safe.

9.38 am

James Brokenshire: Although I appreciate the Opposition’s support for the statutory instrument, unsurprisingly, I do not accept the shadow Minister’s contentions about the Government’s approach and posture. I say to him that the UK is, and will continue to be, a global leader on security and one of the safest countries in the world.

[James Brokenshire]

The Government take their responsibilities for the safety and security of the people of this country incredibly seriously.

As I have highlighted, the regulations will provide legal and operational clarity regarding the handling of live cases and procedures at the end of the transition period, and they will ensure the UK has a fully functioning statute book. As I have explained, they are required under any scenario, regardless of the outcome of the negotiations. Talks obviously continue in Brussels. There has been a constructive atmosphere, and progress has been made on putting legal texts together, but there are still significant differences on the familiar difficult issues—the so-called level playing field, and obviously in relation to fishing. Time is short, and we are focused on reaching an agreement with the EU. In the space of criminal justice, there is a good degree of convergence in what the UK and EU are seeking to negotiate on operational capabilities. In any negotiation, however, nothing is agreed until everything is agreed. We obviously look to continue those negotiations and to find a solution that fully respects the UK's sovereignty.

I shall respond to some of the points made by the shadow Minister in relation to a non-negotiated outcome, which I think was the main thrust of his remarks. In the event that it is not possible to reach an agreement, the UK has well-developed and well-rehearsed plans in place. He speaks about the incredibly important role of the National Police Chiefs' Council as well as the National Crime Agency, and I pay tribute to them for all their efforts and their work in seeking to ensure that we are well prepared under any scenario. If the shadow Minister looks at those letters, he will see that they underline those organisations' preparedness. I pay tribute again to them for the work that they have put in.

Conor McGinn: Does the Minister agree with Martin Hewitt that the loss of tools will mean that, even with the contingencies in place, systems will be slower, provide less visibility and make joined-up working more cumbersome? That is not my contention; that is what the chair of the National Police Chiefs' Council said.

James Brokenshire: I will come to the hon. Member's broader point. We can obviously discuss the specific issue of the second-generation Schengen information system, SIS II, and what that does and does not do. Notably, it was introduced in this country only in 2015. We had been reliant on various other measures, such as Interpol, to be able to facilitate exchanges.

This country will remain a safe place, and I reject any contention that there is any lack of emphasis on national security or on ensuring that we do not continue to be a global leader in the way that this country has been.

Conor McGinn: Will the Minister give way?

James Brokenshire: Perhaps I can help the hon. Member by saying that the plans for transitioning will clearly involve co-operation with EU member states in order to reach alternative non-EU arrangements by the end of the transition period where available. Broadly speaking, that would mean making more use of Interpol, Council of Europe conventions and bilateral channels, which are tried and tested mechanisms that the UK already uses for co-operation with many non-EU countries.

Conor McGinn: I have asked the Minister a very specific question: does he agree with the assessment of Martin Hewitt, the chair of the National Police Chiefs' Council? In a letter to the Home Affairs Committee, he expressed in stark terms his concerns about these specific matters. Does the Minister agree with him or not?

James Brokenshire: I think the shadow Minister's points are specifically about the second-generation Schengen information system. We have always said—I have said it myself before—that there will be some mutual loss of capability in the event that the UK no longer has access to SIS II. That is why we offered to reach an agreement with the EU that delivers a similar capability. The Commission maintains that it is not possible legally for the UK to continue to co-operate through SIS II after the transition period, but we have maintained our offer. Obviously, we know that there is clear benefit on all sides to working together, which is why we are positive about a continuing relationship with our European partners. That allows us to benefit through our collective and shared security. In the absence of SIS II, we will use Interpol channels, which predate our SIS II access and provide the capability to exchange data and communicate with all our international partners quickly and securely. I underline that the UK has an excellent relationship with Interpol in that regard.

Work continues on the issues and on preparations for all outcomes. The hon. Member for St Helens North highlights national security and counter-terrorism. National security has always been the responsibility of member states. Co-operation with European partners on national security largely takes place outside EU structures and so is not dependent on our membership of the EU. Our bilateral and multilateral co-operation will continue regardless of the outcome of any negotiations. It is important to highlight the work of organisations such as the Counter Terrorism Group, which facilitates counter-terrorism co-operation across 30 European intelligence and security services.

It is important to stress the steps that have been taken, such as the establishment and funding of the International Crime Coordination Centre to help police forces adapt to new processes after transition. Alongside extensive domestic preparations, we are also engaging with member states who have expressed their willingness to continue to share critical law enforcement data with the UK using Interpol channels. Although I recognise that today's statutory instrument is narrow, dealing with the effective continuation of various operational data sharing post transition that may have commenced before the end of the transition period, no one in this Committee should take anything I say today, as the shadow Minister has tried to play it, as anything other than an indication of our determination to ensure that the UK remains a leader in security. Steps have been taken by police, the NCA and other partners to see that we are ready and we have given them support. Clearly, we would like an agreement with our European partners. That is where the Government's emphasis continues to be, and we remain positive that even though gaps remain and even though time is short, that can still be achieved in the time available. That is where the Government's focus remains.

Question put and agreed to.

9.48 am

Committee rose.