PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT JURISDICTION, JUDGMENTS AND APPLICABLE LAW (AMENDMENT) (EU EXIT) REGULATIONS 2020

Monday 30 November 2020

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not later than

Friday 4 December 2020

The Committee consisted of the following Members:

Chair: Sir David Amess

† Ahmad Khan, Imran *(Wakefield)* (Con)
Begum, Apsana *(Poplar and Limehouse)* (Lab)
† Butler, Rob *(Aylesbury)* (Con)
Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Chalk, Alex *(Parliamentary Under-Secretary of State for Justice)*
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
Cummins, Judith *(Bradford South)* (Lab)
† Cunningham, Alex *(Stockton North)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Gullis, Jonathan *(Stoke-on-Trent North)* (Con)
Kawczynski, Daniel *(Shrewsbury and Atcham)* (Con)
† Pursglove, Tom *(Corby)* (Con)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)
† Spencer, Dr Ben *(Runnymede and Weybridge)* (Con)
Thompson, Owen *(Midlothian)* (SNP)
Twigg, Derek *(Halton)* (Lab)

Liam Laurence Smyth, *Committee Clerk*

† attended the Committee

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[Sir David Amess *in the Chair*]

Draft Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020

4.30 pm

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

That the Committee has considered the draft Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020.

May I begin by saying what a pleasure it is to serve under your chairmanship, Sir David? This statutory instrument forms part of the Government's ongoing work to ensure that there are functioning domestic laws that deal with cross-border civil and commercial and family law matters in place at the end of the transition period, and that they are consistent with the UK's obligations under the withdrawal agreement.

The instrument is made under sections 8 and 8B of the European Union (Withdrawal) Act 2018. It amends a number of statutory instruments made to remedy deficiencies in domestic legislation arising from the UK's withdrawal from the EU. The amendments address minor defects in those instruments, clarify the interaction of international conventions and domestic law after the end of the transition period, and ensure that two of those instruments are consistent with the provisions of the withdrawal agreement.

First, the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 revoke the Brussels Ia regulation—the key EU instrument dealing with jurisdiction and the recognition and enforcement of judgments in cross-border civil and commercial matters. The Government's exit policy intention is to replicate, as closely as possible, the Brussels Ia employment jurisdiction rules, modified only as necessary to make them work in the UK.

However, in relation to one ground of the special jurisdiction rules, the rule has been inadvertently broadened to cover employees without a habitual place of work in any one part of the UK, rather than employees without a habitual place of work in any one country, as is the case in Brussels Ia. The effect is that a larger group of employees would be able to sue employers in UK courts under this rule. That does not reflect the Government's policy intention, and neither is it a desirable public policy outcome. This instrument addresses that issue by amending the civil regulations to ensure that the Brussels Ia employment jurisdiction rules are correctly transposed into domestic law, modified only as necessary to make them work in the UK context. It does not represent any reduction in the protection available to employees; it merely properly replicates the existing EU rules.

Secondly, the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 revokes: the Brussels IIa regulation, which is the main EU regulation dealing with jurisdiction and the recognition and enforcement of judgments in parental responsibility cases; and the maintenance regulation, which is the main EU regulation dealing with jurisdiction and the recognition and enforcement of judgments in maintenance cases. In their place, the UK will move principally to the 1996 Hague convention, for cross-border parental responsibility matters involving parties from EU member states; and to the 2007 Hague convention, for the cross-border recognition and enforcement of maintenance involving parties from EU member states. Where there are no applicable Hague convention rules, the family regulations make provision for the rules that will apply. In the case of maintenance jurisdiction, these are largely the rules as they existed prior to the relevant EU rules taking effect.

Two minor errors have been identified in the amendments made to domestic legislation by the family regulations to reinstate the pre-EU jurisdiction rules for maintenance cases in Scotland. The first error is the carrying through of a reference to

"actions for adherence and aliment".

These concepts have been abolished in Scots law, making this reference obsolete. This instrument addresses that by simply deleting the reference.

The second error has the unintended effect that, from the end of the transition period, certain applicants seeking maintenance—referred to as "aliment" in Scotland—would be disadvantaged. This would be where that claim is not connected to divorce or other proceedings, and the applicant in such a case would be unable to bring the proceedings in Scotland and would have to pursue the paying party in the courts of the country where the paying party is domiciled.

That problem is addressed in this instrument through an amendment to the family regulations to restore the jurisdiction of the Scottish court to hear claims for aliment where the applicant is domiciled or habitually resident in Scotland. We have worked closely with the Scottish Government to identify these errors and agree suitable remedies via the instrument that we are debating today.

This instrument addresses these areas of uncertainty through amendments to the family regulations to make it clear, and put beyond doubt, that the saving and transitional provisions apply to intra-UK maintenance matters and that the relevant Hague convention rules take precedence over the domestic jurisdiction rules in cases that properly fall under the relevant Hague conventions.

Thirdly, the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 revoke or amend, as appropriate, domestic legislation that gave effect to the EU mediation directive—other than court rules and matters within the legislative competence of the Scottish Parliament. One of the domestic instruments amended by the mediation regulations—namely, the Fair Employment and Treatment (Northern Ireland) Order 1998—has, subsequent to the making of the mediation regulations, been amended further by the Employment Act (Northern Ireland) 2016. This amendment came into effect on 27 January 2020. As such, the mediation regulations do not take account of it. This instrument therefore amends the mediation regulations to take account of that later amendment, ensuring that the meaning of the relevant provision in the Northern Ireland order is clear once it is amended by the mediation regulations.

Fourthly, the Family Procedure Rules 2010 and the Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019 make amendments to the family procedure rules and the court of protection rules that are consequential upon the main civil judicial co-operation exit instruments. The instrument that we are debating today addresses some minor technical errors in the rules regulations, re-establishing a link between the family procedure rules and the transitional provisions in the civil regulations in respect of maintenance cases arising under the 2007 Lugano convention, and fixing a cross-referencing error in, and omitting an erroneous reference to "EU member state" from, the amendments to the court of protection rules.

Fifthly, in addition to these corrective and clarifying amendments, this instrument amends two of the civil judicial co-operation exit instruments to ensure that their provisions are consistent with the UK's obligations under the withdrawal agreement. The first of these instruments is the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, which amend the Rome I and Rome II regulations. The other instrument is the aforementioned family regulations, which I have already described. This instrument amends the Rome regulations and the family regulations to align these instruments with the UK's obligations under the relevant provision of the withdrawal agreement—article 66 in the case of the Rome regulations, and article 67 in the case of the family regulations.

I should add that this is the first of two instruments that will amend the CJC exit SIs to ensure that their provisions align with the requirements of the withdrawal agreement. The second of these instruments is still being finalised and will be laid before Parliament shortly.

Finally, I will turn briefly to the impacts. As I have indicated, the amendments in this instrument correct minor technical errors and clarify ambiguities in the civil, family, mediation, and family and court of protection rules regulations, and will ensure that the family regulations and Rome regulations are consistent with directly applicable provisions of the withdrawal agreement. As such, they are not expected to have any significant impact on business, charities or the voluntary or public sectors. Indeed, as a result of the errors and ambiguities being corrected, the amendments will ensure that the civil, family, mediation, and family and court of protection rules exit SIs have the impact intended by the Government when they were laid before Parliament, and as is reflected in the explanatory memoranda for those instruments and, in the case of the civil, family and mediation exit SIs, in the impact assessments published in respect of those instruments.

4.38 pm

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Sir David. I thank the Minister for outlining his proposed changes in considerable detail—I am pleased that he did not go through all 13 of the pages that he claims to have prepared for the occasion. This statutory instrument corrects technical defects in several SIs made in relation to the UK's withdrawal from the European Union. The amendments are extremely technical, as we have just heard, so I will not go into the detail again.

However, it is important to recognise that we would not be in this mess if the Government had anticipated these defects when the original instruments were drafted. We all understand and accept that the UK's withdrawal from the EU necessitates a large volume of legislation, some of which will of course be delegated, but just because the legislation is being dealt with in significant volumes and at pace does not mean that it should not be dealt with properly and diligently.

It is worrying that these defects slipped through the first time, but even more worrying is the fact that in at least once instance the defect had to be brought to the attention of the Ministry of Justice by an external legal expert. I am talking about the amendment to the civil regulations that corrects an error relating to the grounds on which an employer can be sued by an employee—a very important piece of legislation.

It is also pretty disgraceful that the Government have to rely on external experts to bring such defects to their attention. That should simply not be the case. Even one such defect would be cause for concern, but unfortunately Government incompetence goes further. In this SI alone we are fixing defects in the civil regulations, the family regulations, the mediation regulations, the Rome regulations, and even the rules regulations. Is the Minister satisfied that all the errors have now been ironed out, and that we will not find ourselves back here in a few weeks' time trying to correct further errors?

At least we on the Opposition Benches are keen to provide the public with as much stability and certainty as possible as the transition period comes to a close. I wish that the same could be said of the Government, as we are drawing ever closer to 31 December and still so much is up in the air—a far cry from the promised "oven-ready" exit deal.

Although it is regrettable that these defects were not picked up by the Government when the original instruments were being drafted, we accept that these changes must be made in order to provide legal certainty at the end of the transition period, and therefore we will not oppose them.

4.40 pm

Alex Chalk: I am grateful to the hon. Gentleman for supporting these regulations. They correct minor technical defects, and we are of course grateful to those who have pointed them out. I do not recall the Labour Opposition pointing out these defects with alacrity at the time, but we welcome the sinner that repenteth. I would like to express the Government's appreciation for the assistance that we have had from the family law stakeholders who raised the issues. We welcome their input and advice, as we also welcome the input and advice of our colleagues in the Scottish and Northern Ireland Governments. I commend this instrument to the Committee.

Question put and agreed to.

4.41 pm

Committee rose.