

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT EUROPEAN UNION (WITHDRAWAL)
ACT 2018 (REPEAL OF EU RESTRICTIONS IN
DEVOLUTION LEGISLATION, ETC.)
REGULATIONS 2022

Thursday 3 March 2022

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The Committee consisted of the following Members:

Chair: DR RUPA HUQ

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|---|---|
| † Anderson, Lee (<i>Ashfield</i>) (Con) | † Higginbotham, Antony (<i>Burnley</i>) (Con) |
| † Brock, Deidre (<i>Edinburgh North and Leith</i>) (SNP) | † McKinnell, Catherine (<i>Newcastle upon Tyne North</i>) (Lab) |
| Byrne, Ian (<i>Liverpool, West Derby</i>) (Lab) | † Mohindra, Mr Gagan (<i>South West Hertfordshire</i>) (Con) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Norris, Alex (<i>Nottingham North</i>) (Lab/Co-op) |
| Cooper, Rosie (<i>West Lancashire</i>) (Lab) | † O'Brien, Neil (<i>Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities</i>) |
| † Dines, Miss Sarah (<i>Derbyshire Dales</i>) (Con) | † Swayne, Sir Desmond (<i>New Forest West</i>) (Con) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | Kevin Maddison, Matt Case, <i>Committee Clerks</i> |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † attended the Committee |
| † Fuller, Richard (<i>North East Bedfordshire</i>) (Con) | |
| † Gibson, Peter (<i>Darlington</i>) (Con) | |
| Hardy, Emma (<i>Kingston upon Hull West and Hessle</i>) (Lab) | |

Sixth Delegated Legislation Committee

Thursday 3 March 2022

[DR RUPA HUQ *in the Chair*]

Draft European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022

11.30 am

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Neil O'Brien): I beg to move,

That the Committee has considered the draft European Union (Withdrawal) Act 2018 (Repeal of EU Restrictions in Devolution Legislation, etc.) Regulations 2022.

It is a pleasure to serve under your chairmanship, Dr Huq. As Members will be aware, the draft regulations that we are considering were made under the powers of the European Union (Withdrawal) Act 2018. The regulations were laid in draft before the House on 25 January 2022 and are subject to the affirmative procedure.

If approved and introduced, the draft regulations will repeal powers in section 12 of the EU (Withdrawal) Act, which gave a regulations-making power to temporarily freeze devolved legislative competence while UK common frameworks were finalised. The draft regulations will also make consequential provisions, including the removal of limits on devolved legislative and executive competence introduced into the devolution settlements, in addition to any cross-references to those powers.

The section 12 powers to freeze devolved competence, which the draft regulations will repeal, were always intended to be time-limited, and they expired on 31 January. The powers provided a useful contingency while common frameworks were being worked out by the Government and the devolved Governments, but they were never intended and never needed to be used.

The fact that the powers have not been used is credit to the collaborative spirit with which the Government and the devolved Governments have worked together successfully to develop common frameworks. Those frameworks now play an essential role in underpinning a common approach across the UK to policy areas that had previously been governed by EU law and that are within devolved competence. I am pleased to report that 30 out of the expected 32 common frameworks are in operation.

The EU (Withdrawal) Act contains an in-built duty on Ministers to consider the repeal of section 12 powers. As the powers were never used and can in fact no longer be used, there was almost no justification for retaining them. On top of removing those redundant powers, the draft regulations will remove the statutory obligation on the Government to report to Parliament on the use of the formal powers. As Members will be aware, the Government have produced 13 such reports and will shortly publish a 14th.

The draft regulations may appear to be little more than housekeeping, but I believe that they are also a reflection of the huge progress that the Government have made with the devolved Governments in developing new common frameworks. As we speak, those frameworks are fostering a consistent approach across the UK to a broad range of policy areas, from fishing to food labelling, and nutrition to hazardous substances planning. I commend the draft regulations to the Committee.

11.33 am

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve with you in the Chair, Dr Huq.

I am grateful for the Minister's explanation. I do not intend either to divide or to detain the Committee today—[*Interruption.*] Well, I can do a longer version if colleagues want. I could not tell whether that was agreement or murmurings of massive disappointment; I shall err on the side of caution, because I would wish never to displease colleagues.

We talk a lot about what ought to be on the statute book, but it is right that as custodians of it we should seek to remove redundant powers. Clearly, these were seen as valuable safeguards at the time to ensure orderly transition, but the moment for that has certainly passed. Although we are debating their removal, it is worth reflecting that it is significantly undesirable to put a freeze on the devolution settlement. That was done in pursuit of what was a significant goal at the time, but any such action weakens the settlement, and at a time when we need to build and strengthen our Union, that does not help. As the Minister said, the powers were never needed; instead, we have seen that the operation of the different Parliaments with good faith, good relationships and shared goals is a better way to do it than via regulation. I hope to hear from the Minister that there are no plans for similar powers in other legislation, whether related to transition issues or anything else.

I will stop there because I am not sure that I enjoyed the debates on this matter the first time. I look around the room and see many Members who were not here for those; I envy them greatly. I do not think rehashing those points would serve much of a purpose because, as the Minister and I have said, the provisions have not been used, they will not now be needed and, in any event, they have not been usable since the end of January. On that basis, the Labour party is happy to repeal them.

11.35 am

Deidre Brock (Edinburgh North and Leith) (SNP): It is a great pleasure to serve under your chairship, Dr Huq. The Committee will be pleased to hear that I will not speak for long either because the Scottish National party supports, and indeed welcomes, the UK Government's removal of the mechanism. We have always opposed section 12 and believe that it completely undermined the devolution settlement, under which consent must be sought and fully respected.

Our Cabinet Secretary for the Constitution, External Affairs and Culture said recently:

“One of the fundamental principles of the devolution settlement is that the powers and responsibilities of the Scottish Parliament”—and indeed the Welsh Senedd—

“and in turn, the Scottish Government, cannot be changed without its consent. This is embodied in the statutory procedures under the Scotland Act 1998 which require the agreement of the Scottish Parliament, as well the House of Commons and the House of Lords, before such changes can be made by secondary legislation...

While they have never been used, the powers in section 12 of the Act for UK Ministers to change that competence, unilaterally and without consent, overrides that fundamental constitutional principle of the devolution settlement, which is why it was rejected by both the Scottish Government and the Scottish Parliament.

Despite the refusal of legislative consent by the Scottish Parliament” to the European Union (Withdrawal) Bill in 2018,

“the UK Government proceeded with the legislation, consciously and deliberately overriding the Sewel Convention for the first time since devolution in 1999.”

That has caused irreparable damage. It suggests that this Government have an extremely worrying disregard for devolution and, frankly, it provides little cause for confidence in their future dealings with devolved Administrations.

In closing, I join the hon. Member for Nottingham North in asking the Minister to provide assurances that that sort of behaviour will not be repeated, and I will

ask one final, slightly cheeky question. The Minister mentioned the common frameworks. If 30 out of 32 common frameworks are currently agreed, why did the Government feel the need to pass the United Kingdom Internal Market Act 2020, which has caused a great deal of concern among the devolved Administrations?

11.37 am

Neil O’Brien: We are in broad agreement with the hon. Members for Nottingham North and for Edinburgh North and Leith. These were one-time-only measures and were not used. This is probably not the place to relitigate everything to do with UKIM, but I am happy to discuss that further later. For all the reasons that I have set out, I hope that the Committee will support the draft regulations.

Question put and agreed to.

11.38 am

Committee rose.

