PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) (AMENDMENT) (EU EXIT) REGULATIONS 2018

Monday 11 February 2019

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Friday 15 February 2019

The Committee consisted of the following Members:

Chair: Sir Edward Leigh

† Blackman, Bob *(Harrow East)* (Con)
† Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Goldsmith, Zac *(Richmond Park)* (Con)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Lammy, Mr David *(Tottenham)* (Lab)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† Lucas, Ian C. *(Wrexham)* (Lab)
† McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
† Monaghan, Carol *(Glasgow North West)* (SNP)
† O'Brien, Neil *(Harborough)* (Con)
† Paterson, Mr Owen *(North Shropshire)* (Con)
† Perkins, Toby *(Chesterfield)* (Lab)
† Sheerman, Mr Barry *(Huddersfield)* (Lab/Co-op)
† Smith, Henry *(Crawley)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)

Anwen Rees, *Committee Clerk*

† attended the Committee

Second Delegated Legislation Committee

Monday 11 February 2019

[Sir Edward Leigh *in the Chair*]

Draft Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018

4.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington): I beg to move,

That the Committee has considered the draft Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018.

It is normally said as a formality, but in this case, I reiterate what a pleasure it is to serve under your chairmanship, Sir Edward. Having served on Committees under your chairmanship before, I know that we can expect fairness and a sense of justice from you in the Chair. I am sure the shadow Minister agrees.

The draft regulations form an essential part of the Government's contingency planning to ensure that copyright legislation continues to function appropriately if there is no negotiated agreement on the terms of the UK's exit from the EU. Copyright law is largely harmonised internationally by a series of multilateral treaties to which the UK and most other countries are party. Those agreements ensure that music, books, art and other copyright works that originate in any treaty country are protected in all others. Fortunately, our membership of those treaties does not depend on our relationship with the EU. As such, regardless of whether a deal is agreed, UK copyright works will continue to receive protection around the world.

However, a body of EU law on copyright goes beyond the provisions of those international agreements. It has further harmonised copyright protection across the EU and has introduced EU-only rights and mechanisms for facilitating the use of copyright content in cross-border services, which includes the sui generis database—in my rather crude legal studies 40 years ago that meant "without categorisation"; I do not suppose the Latin has changed, but I am sure the shadow Minister will correct me if it has. That provides EU-wide protection for EU database creators and the copyright country of origin principle, under which satellite broadcasters that transmit films and other copyright-protected works across the EU need permission from the copyright owner only for the state in which a broadcast originates, rather than every state in which it is received.

A significant proportion of our copyright legislation derives from the EU copyright acquis and therefore includes reference to the EU, the European economic area and member states. Without amendment, many such references would become inappropriate in the event of a no deal, either because they presuppose the UK's membership of the EU, which will not make sense when we are no longer a member state, or because they implement EU cross-border copyright mechanisms that will become inoperable in a no-deal scenario.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): I apologise for being late; some of us were trapped in the Chamber for a statement. Was the point that the Minister is pursuing not at the heart of the controversy and fuss around this statutory instrument in the House of Lords? I wonder if he could let me know.

Richard Harrington: I cannot let the hon. Gentleman know, because I do not think that is the case, but I am sure I will be corrected if it is. Certainly, I have not been informed that the statutory instrument caused a problem in the House of Lords and I am sure that someone would have told me if it had. Their lordships, particularly certain friends of mine, such as Lord Adonis, do go into great detail on such statutory instruments, so it may well have been one of them. I am afraid I cannot answer the question now, but I will try to answer it by the end of the sitting.

Mr Sheerman: Because I am so popular with the Whips, they have been putting me on a lot of these Committees, so I am gaining some knowledge by experience. It seems that we pitch up to clear these instruments and say that we have given them the seal of parliamentary accountability, but so much of the information about these really complex areas is not here and, often, Ministers do not seem to know what the real impact of the measures will be. As far as I understand it, the implications for intellectual property of coming out of Europe are huge, but I am not getting that picture from the few words I have heard from the Minister.

Richard Harrington: I hope that the hon. Gentleman will hear me out, because I do not think it is as huge as he does. We sometimes disagree on things, but I think it is fair to say that his heart is in the same place as mine. However, if he will hear me out—

Ian C. Lucas (Wrexham) (Lab):Will the Minister give way?

Richard Harrington: I could correct that bit about the hon. Member for Huddersfield's heart if it would pre-empt the hon. Gentleman's question.

Ian C. Lucas: I would like some clarification about the country of origin principle. Is the Minister saying that if this instrument were to pass, the country of origin principle would apply to the UK as it does now?

Richard Harrington: If the hon. Gentleman will give me a few minutes, I will finish. If he is not satisfied with what I have to say, I will be happy to take his questions.

On the point made by the hon. Member for Huddersfield about this being a controversial SI in the House of Lords, as I thought, it is yet to be debated in the House of Lords. That does not, of course, mean that he will not be right in future, but it has certainly not been debated up until now, so I clarify that for the record.

The SI will preserve, where possible and appropriate, existing arrangements in UK copyright legislation by making minor correcting amendments. The only exception to the principle of continuity arises from our implementation of some of the EU cross-border copyright mechanisms. It is unavoidable that the reciprocal elements

of those mechanisms between the EU and the UK will become inoperable in a no-deal scenario, because they depend on reciprocal provisions that only apply between member states. We have therefore considered how best to address our implementation of those mechanisms.

In some cases, it is appropriate to continue to extend the cross-border provisions to the EU on a unilateral basis, because providing continuity in that way would be beneficial to UK consumers or businesses. That is the case for the copyright country of origin principle in satellite broadcasting. In that case, the regulations will support UK consumers and give them continued access to foreign television programmes by not introducing new barriers to broadcasts in the UK. For other mechanisms, doing so would be detrimental to those in the UK. For example, continuing to provide database rights for EU creators without reciprocal action by the EU would put UK businesses at a competitive disadvantage. This instrument restricts those mechanisms to operate on a purely domestic basis or brings them to an end, as appropriate.

Mr Sheerman: On a point of order, Sir Edward. I have been on several Delegated Legislation Committees, and this is the most complex SI I have dealt with. I did not have access to this material before I walked into this room. As a Member of Parliament, I find myself floundering, because it is so highly complex—I speak as someone who has a lot of sons-in-law, one of whom is an intellectual property lawyer, and as someone who has been given a little bit of information about how important this issue is to businesses. Could this meeting be deferred so that we can actually read this stuff? I feel that I am not doing my duty, and you, Sir Edward, are more punctilious than anyone else in the Palace in how you regard parliamentary accountability. I have walked in here on a busy day, after three statements, and I am faced with all this material that I have not had advance notice of and have not had a chance to read. How can I do my job as a Member of Parliament?

The Chair: Mr Sheerman, you are a very experienced Member of Parliament. You have, I think, been here since 1979. It is incumbent on Members of Parliament, if they really are interested—and I am sure that everybody here is interested—to read all the material beforehand. However, we are only halfway through the Minister's speech. He has several more pages of wonderful prose still to go, so we may be more enlightened if we are patient.

Mr Sheerman: Further to that point of order, Sir Edward. I am a pretty hard-working Member of Parliament, as are you, and I take my job very seriously. I only complain when I have cause to complain—when, for instance, I come into a meeting such as this in which I feel that I cannot do justice to the proceedings and I feel on the back foot. This is the tip of the iceberg. I have just come from the statement about Seaborne Freight and preparations at ports. We are well into the 21st century. I have not had the chance to talk to some of the leading people in the industry, as I would normally do, to say, "Guys, what do you think about this?".

I was on a Delegated Legislation Committee two or three weeks ago on the important issue of air safety, which I know a lot about because I chair the Parliamentary Advisory Council for Transport Safety. I found that the Minister did not know about it; he had not done his homework. He just gabbled his statement and left me alone.

The Chair: I think the hon. Gentleman has made his point. We have nearly an hour and a half to go. Let us listen to the Minister. If the hon. Gentleman and other Members want to speak later, we can stay here for a long time and really delve deeply into this. So far, we have heard from the Minister that this is minor amending legislation, but let us listen to him.

Catherine McKinnell (Newcastle upon Tyne North) (Lab): Further to that point of order, Sir Edward. I obviously do not have the experience of my hon. Friend the Member for Huddersfield, but I made an effort to read all the papers about these very important regulations that we are being asked to pass or oppose. One thing that alarmed me about them was that they referred to the regulations having an impact on UK businesses, but said that there will be no significant impact on charities, voluntary bodies or the public sector. Clearly, the regulations will have an impact, but I could find no evidence of an impact assessment. Is one available? If so, could it be provided to us during the debate so we can properly scrutinise this issue?

The Chair: That is an interesting point of order, but it is not actually a point of order to do with procedure. It is a point of information for the Minister, who can deal with it now if he wishes, because he has the knowledge.

Richard Harrington: I shall do my best. Impact assessments are worked out on what is called the de minimis threshold. That means that if the impact is expected to be less than, from memory, £5 million, there is no need to do an impact assessment. In the judgment of the people who work these things out, it is below that level. That is why there is no separate impact assessment.

Mr Sheerman: Five million?

Richard Harrington: Yes.

I will continue and then, if this is acceptable, Sir Edward, I can pick up other points after I have finished, if hon. Members feel that I have not covered them. The shadow Minister usually feels that I have not done so.

In support of the instrument, we have published three impact assessments, each of which has been green-rated by the independent Regulatory Policy Committee. They correspond to three of the most significant cross-border mechanisms: sui generis database rights, the copyright country of origin principle, and cross-border portability of online content services, which allow EU consumers to access their online streaming or rental services as if they were at home when they visit another member state.

The Secondary Legislation Scrutiny Committee and the European Statutory Instruments Committee commented that the assessments did not provide sufficient detail on the impact of no deal on UK stakeholders. The reasons for that are the same in each case: the impacts on UK consumers, broadcasters and other stakeholders will result from the UK's being treated as a

[Richard Harrington]

third country in a no-deal scenario, not from these regulations, which amend the UK's portion of the cross-border provisions and will primarily affect EU right holders, consumers and broadcasters.

In line with the "Better regulation framework", the impact assessments consider the effects of the instrument under consideration and not—this is significant—the impacts that arise from other countries' legislation, which we cannot avoid in a no-deal situation. However, we recognise that those impacts exist and that UK stakeholders will need to be aware of them. That is why in November 2018, the Government published a long-term economic analysis of the impacts of leaving the EU. We have also published technical notices and detailed guidance on what a no-deal Brexit would mean for copyright and related rights. This gives consumers, right holders, businesses and other organisations the information they need in plain English to make informed preparations for all outcomes.

Catherine McKinnell: Will the Minister give way on that point?

Richard Harrington: If the hon. Lady does not mind, I will not. I will be finished in literally two minutes.

These regulations will provide certainty, clarity and, as far as possible, continuity for UK businesses, right holders and consumers as we leave the EU. I commend the draft regulations to the House.

Catherine McKinnell: On that point, will the Minister give way before he finishes?

The Chair: Is the Minister giving way?

Richard Harrington: Yes.

Catherine McKinnell: The Minister rightly says that the information should be available to businesses so that they can prepare for Brexit, whatever the scenario might be. I did not get the exact wording that he used. Are the Government not concerned that, at this stage in proceedings, that luxury will not be available to businesses before the event? How many businesses have the Government consulted on a formal basis in order to arrive at their conclusions on the impact that these changes would have on those businesses?

Richard Harrington: I will do my best to answer those questions. I may have misled the hon. Lady on the impact assessment. I thought she was referring just to the charities. We published three full impact assessments in December 2018, but there was no significant impact on charities, which was the point I think she was making.

Catherine McKinnell: The point I was making is that the explanatory memorandum says that some changes could have an impact on UK businesses, but I went on to note that it says there will be

"no significant impact on charities".

I am concerned that it has been acknowledged that there will be an impact on businesses. My point relates to our ability to scrutinise that impact, the accessibility of information and the amount of consultation that has taken place in order to be able properly to assess and scrutinise what the impact will be.

Richard Harrington: I now fully understand what the hon. Lady was saying. The Government did not carry out a formal consultation. Given that it was during the negotiations with the European Union on the future trading relationship, it was felt at the time that making everything public would have impaired our ability to do that. However, I can confirm that the Department conducted industry roundtable discussions with individuals from a range of organisations across all sectors. In this sector, that included the Commercial Broadcasters Association, Directors UK, the PRS for Music—the performing rights society—techUK, which represents over 900 technology firms, the Libraries and Archives Copyright Alliance, the British Library, the Publishers Association, the Society of Authors, the Association of Photographers and the Authors Licensing and Collecting Society, among others. In roundtable discussions, the Department talked to and listened to the concerns of stakeholders from right across the affected industries.

Mr Sheerman *rose—*

The Chair: Has the Minister finished, or is he giving way?

Richard Harrington: I think that is the end of my giving way.

Mr Sheerman: Can I have a further intervention? Were any senior figures in the industry involved, such as Richard Branson or the heads of the big conglomerates? There are a number of key players in this area of intellectual property, and it is vital for the vibrancy of our film, television and creative sectors. The Minister and I get on very well and I like him—I do not like all Ministers, but I like this one.

Richard Harrington: That's my career finished.

Mr Sheerman: No. The fact of the matter is that I am learning the lessons, Sir Edward. It has been a heavy day and I have been trying to catch up on this as the Minister was speaking.

The Chair: You are starting to wander.

Mr Sheerman: No, I am not wandering. I have been in so many Delegated Legislation Committees in which I have asked the Minister, "What is the downside of this?" Ministers keep saying to me, "It's all going to be all right. These few regulations will make it all right," and then I go out and talk to the industry, which says, "It's not all right. There's going to be severe dislocation." Is the Minister suggesting that participants in those roundtable discussions said, "It's all right, Minister, wonderful; steady as you go," or did they have serious reservations about leaving the EU and about the impact on their sector?

Richard Harrington: I can answer that question in the following way. The hon. Gentleman knows that I have a lot of respect for him and that we share many views. I do not know what the views of the stakeholders on leaving the EU were—I imagine they would have thought it detrimental to their businesses, but I was not party to

that. Today, we are talking about a specific piece of secondary legislation for the event of crashing out of the EU—a hard Brexit.

I do not know the rank of the people involved, and I cannot say whether Richard Branson was involved. He is offshore and is allowed only 90 days here, so perhaps he was not allowed to come. I cannot comment on that. However, I assure the hon. Gentleman that there were proper senior people representing proper companies and proper entities. I do not think that the Department had a plan for only low-level people to attend. I cannot say who was there. I am not withholding information; I am afraid I do not know. Having had more than two years' experience of the Department, I can say it is fairly thorough in its consultations with stakeholders.

Nick Smith (Blaenau Gwent) (Lab): The Minister said that there were no formal consultations as part of the exercise, but there were roundtables with key people from the relevant sectors and businesses. Where is the feedback from the roundtable discussions that took place? I am quickly flicking through the information on the analysis and evidence, and I cannot find it. Will the Minister tell us more about what businesses said during the roundtables so that we can understand what occurred?

Richard Harrington: I must apologise for not sitting down, Sir Edward. I have never had so many interventions in an SI.

Mr Sheerman: It is good exercise.

Richard Harrington: Yes, it is. The hon. Member for Huddersfield has been to far more than I have.

I hope the shadow Whip will accept that I am not generally one for waffle on this kind of thing. I do not know the answer to his question, but I know that formal minutes were not published because there was a discussion rather than a formal consultation. He does not have a copy of the minutes in his pack because there are not any.

Henry Smith (Crawley) (Con): How were the companies invited to the roundtables? How were they selected?

Richard Harrington: They were selected because the officials concerned understood them to be the main stakeholders in the field. They are experienced at their jobs. As I have said before, I have found the Department for Business, Energy and Industrial Strategy to have a very good system of consultation.

Catherine McKinnell: I thank the Minister for giving way. He is being very generous. I am here to scrutinise the legislation. Members of the public, businesses and consumers who will be affected will take a great interest in this process, and they will be concerned that the Government are comfortable to proceed with these legislative changes without any formal consultation. It creates the impression that there is an avoidance of democratic scrutiny, which is typical of much of the Brexit legislation passing through Parliament at the moment and is causing concern.

Richard Harrington: I thank the hon. Lady for that contribution. I disagree with her because there has been a fairly thorough informal consultation, although I fully accept that is not the same as a formal consultation. I noticed a look of disdain on the shadow Minister's face, which his face does not normally give away, but it did in this particular case.

Mr Sheerman: This is a nice intervention in the sense that we are here to learn. That is our job. Sir Edward is the expert on this and people respect his experience. We are trying to do a thorough job. I apologise for pushing the Minister on this, but what he has just described is almost a secret meeting that took no minutes. There was a meeting. We do not know who was there. There is no record of who was there and no record of what was discussed and whether people said, "Steady as you go, mate. Get on with it," or whether they had severe reservations. The consultation seems a bit strange.

Richard Harrington: There were roundtable discussions, not a formal consultation that was put online. It was a group of stakeholders that the Department thought were the relevant ones. The Department wanted to hear their views and listen to what they had to say, and that is reflected in this no-deal statutory instrument. The point that the hon. Gentleman makes—he usually makes it—is about the view of industry and business on leaving the European Union. In this case, we are talking about a limited amount of what we might call crash-out, emergency, hard-Brexit statutory instruments. No minute was kept because it was not a formal consultation, but roundtables are like that—people raise their views and officials take note of them.

Henry Smith: I am grateful for the Minister's generosity in giving way. He has used the term "crashing out" twice now. I appreciate that there are a range of opinions across the Committee about the merits or otherwise of Brexit—I see some well-known suspects in the Committee Room, and I think I know the Minister's view, too. When industry stakeholders were brought in, was their selection conducted with a bias towards "remain" opinions, or was it more random?

Richard Harrington: I do not want to mislead my hon. Friend. I do not know about this specific case, but I could give him other examples in which the Department has consulted with stakeholders. I assure him categorically that their views on Brexit would be the last consideration. The Department is a professional organisation run by very professional civil servants. From a ministerial point of view, I have come across no case in which any Minister would say, "We are having that company in, but not that one." That would be very improper. I reassure him categorically on that point.

Mr Sheerman: The Minister was the first person to start using extravagant language about crashing out of Europe. Most of us still want to see a harmonious process with a smooth transition out of Europe. His term "crash-out" is extremely worrying for people in the creative industries in this country, many of whom would be deeply disadvantaged by our crashing out of Europe with no protection for their intellectual property or their many years of creative work. The Minister used the words "crash-out". Were there any people at the roundtable like Sir Bob Geldof, who is a leader in the industry and runs a large number of companies? He

[Mr Sheerman]

would have known what to say. Let's get him in—let's talk to Sir Bob! *[Interruption.]* The Minister thinks I am star-struck because I have mentioned two well known figures, but they are well known figures in the industry. Why were they not consulted?

The Chair: Order. I think we are in danger of getting overexcited about terms such as "crashing out". We need to tone down the whole debate and use very careful words. The scope of the debate covers the amendments that the draft regulations will make to UK copyright legislation; it is quite a technical and detailed debate. Let us avoid getting overexcited about crashes, shall we?

Mr Sheerman: On a point of order, Sir Edward. I pointed out that we were having a very civilised conversation, using all these technical terms, until the Minister started talking about "crashing out". I am an expert on road and transport safety, so I am worried about crashing out of anything.

The Chair: We are going to calm down now. The Minister will bring his remarks to a conclusion, and then we will hear from the Opposition.

Richard Harrington: May I clarify that I should probably not have used that expression? I really meant a hard Brexit or leaving without a deal, but I used a euphemism. I find that Opposition Members—and indeed Government Members—need a little raciness and excitement when debating statutory instruments, so I felt that the expression might have been appropriate. However, it clearly was not, so I apologise to the Chair and the Committee. It was like saying "a rollercoaster" or something like that. Now that I think I have clarified that point, may I finish the point about consultation?

Toby Perkins (Chesterfield) (Lab): I am not so interested in the Minister's terminology, but I am very interested in the consultation. In asking us to support the draft regulations, he is asking us to take quite a lot on faith. We all remember being told that the Government's documentation was excruciatingly detailed, but it was subsequently exposed that there was very little detail at all. Opposition Members therefore want a little reassurance about the consultation with the industry, which we recognise is a very important one. On reflection, does the Minister think it would be useful to give us a bit more information about the feedback from the Government's roundtable discussions, given the huge upheavals in their EU negotiations?

Richard Harrington: I think we have covered the consultation. The hon. Gentleman's point is that we should have published the response as if it were a formal consultation, but I have accepted that it was not.

I reiterate that the Department hosted a whole series of industry roundtables to discuss no-deal planning generally with publishers, collection management organisations, broadcasters, technology firms, museum archives and educational institutions. During the drafting of the regulations, we listened to the concerns of stakeholders that published their views on the issues and opportunities for IP arising from Brexit, such as the Alliance for Intellectual Property and the British Copyright Council, which are representative bodies that cover a broad range of copyright interests. We also published the technical notices with detailed guidance on what no deal might mean for copyright and regulated rights.

Mr Sheerman: Can I be helpful, as someone who was a Select Committee Chair for 10 years? When we did an inquiry, we put out a call for evidence, which was printed in the papers and shared on social media and so on, so anyone who wanted to give evidence to the Public Accounts Committee or the Education Committee could write in. Was this wider consultation publicised and broadly known about? Were people told about it and could they submit their evidence or signify their interest in the topic? Did the Minister get many responses?

Richard Harrington: I can clarify that it was not like a Select Committee inquiry, which is online and public. This was a series of meetings of stakeholders to talk about the issues, so it is not a fair comparison. I fully accept, however, that in the hon. Gentleman's opinion, the Department should have held a full public consultation, but for the reasons that I explained before, it did not. We are satisfied with the results, however, and we are happy to stand by the draft regulations.

5.2 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. This is already close to being the longest statutory instrument Committee that I have served on in my nine years in this place and I have only just stood up to respond as Opposition spokesman.

Mr Sheerman: You haven't had us behind you before.

Bill Esterson: I find the answers we have had to the numerous interventions absolutely remarkable—and not in a good way. The Minister's inability to answer some pretty simple questions from my hon. Friends the Members for Huddersfield, for Chesterfield and for Newcastle upon Tyne North is staggering. I do not blame him in particular, because it is not his brief, but the fact that the answers are not available for him to give is baffling.

If the Minister cannot tell us what was said in the consultation, what was the point of it? What concerns were raised? He cannot tell us that either. How do we know whether the consultees at those roundtables truly reflected the breadth of views in the sector? If we cannot answer those questions, how on earth can the Committee judge the responses—he cannot tell us what they are anyway—and whether they justify us supporting the regulations? I am afraid that we are in a bit of a pickle.

The regulations are about whether holidaymakers can watch Netflix, Sky, Amazon Prime or any other content provider on the continent or in the Irish Republic; uncertainty about satellite TV broadcasts between countries staying in the EEA and our own; and businesses not knowing whether they can share databases. There is also an element in the regulations about the Marrakesh treaty and disabled people who copy material so they

can use it in a different country to their country of origin, which I do not remember the Minister mentioning in his opening remarks.

We have yet another statutory instrument, which describes detailed changes to regulations relating to the UK's exit from the EU, including in the event of, as the Minister puts, crashing out—on the Opposition Benches we are happy with that term, but others might call it no deal. Yet again, the analysis leaves significant gaps in the ability of hon. Members to scrutinise and adequately decide whether the regulations do what they are supposed to, or whether what they propose addresses the objective of preparing for life after Brexit, including in the event of no deal.

On numerous previous occasions, my Labour Front Bench colleagues and I have spelled out our objections to this Government's approach to secondary legislation. The volume and flow of EU exit secondary legislation is deeply concerning for accountability and proper scrutiny, especially when the evidence does not back it up, because the evidence is not able to be provided to us, as we have just heard. The Government have assured the Opposition that no policy decisions are being taken. However, establishing a regulatory framework, for example, inevitably involves matters of judgment and raises questions about resourcing and capacity. Secondary legislation ought to be used for technical, non-partisan, non-controversial changes, because of the limited accountability that it allows. Instead, this Government continue to push through contentious legislation with high policy content via this vehicle.

As legislators we have to get it right. These regulations could represent real and substantive changes to the statute book and, as such, they need proper and in-depth scrutiny. In this light, we in the Opposition would like to put on record our deepest concerns that the process regarding these regulations is not as accessible and transparent as it should be.

Let us look at the explanatory memorandum, to see in a bit more detail what is being addressed. Paragraph 7.2 refers to the EU satellite and cable directive, which allows broadcasters to gain copyright clearance for broadcasts across the EEA, while only having to obtain permission in the country of broadcast. The explanatory memorandum says that the regulation will apply only within the UK, with consequences unresolved as to the impact for broadcasting across the EEA. This appears to have significant consequences for broadcasters, the impact of which is not addressed by the impact assessment.

Speaking of the impact assessments, when I walked into the room, I did not see copies of the three impact assessments that the Minister referred to available for hon. Members to scrutinise. On previous occasions, when the Government have bothered to publish impact assessments, they have been available to members of Delegated Legislation Committees. I do not understand why that is not the case on this occasion. My hon. Friends, who have raised their concerns about their ability to do their job this afternoon, are absolutely right to make that point, because how can they possibly comment without that information, when they are not given such detail? I have a copy of it, because I got a copy before the meeting. However, unless those copies are available here, hon. Members will not be aware of everything that might be available to them.

The Chair: Order. On that point, is the Government ensuring that this information is available now to all Members?

Richard Harrington: My understanding is that it was published in December and therefore available on the website and through every other form of public means. I do accept that they were not in this room and if they should be, I will ensure in future that they are.

The Chair: I think it is quite important that the Government should ensure that these are available in the room on all occasions. I think it is a fair point.

Richard Harrington: I will clarify the position. I agree with your position, Sir Edward, and I will ensure that in future, if I am involved in statutory instruments, and if the documents are available—as they would be, if they were published in December—they will be available here. I think that is a valid point and I would like to apologise for that.

The Chair: The Government must take this seriously, because in the past, the Opposition have moved dilatory motions on this sort of issue. Therefore, the Government must take this sort of thing very seriously indeed.

Richard Harrington: I agree.

Bill Esterson *rose—*

Catherine McKinnell: Will my hon. Friend give way?

Bill Esterson: I will.

Catherine McKinnell: I am grateful to the Chair for raising that point. Does my hon. Friend share my concern, and the concern of those businesses and consumers potentially affected by these changes, that in not providing the impact assessments for hon. Members to scrutinise as part of this process, the Government are giving the impression that they have something to hide, thereby increasing the level of anxiety about the potential impact of these changes?

Bill Esterson: I think my hon. Friend has made an extremely good point, and the Minister and his colleagues have heard what she has said. And I thank you, Sir Edward, for your intervention there as well.

This situation simply is not good enough. I came to this Committee today expecting that all Members would have the information that I have, or that it would be available to them in the room, but it is not here. Of the papers that are emailed around when the Committee of Selection selects the Members for a Committee, the impact assessment is not one of the documents that is usually sent; it is usually waiting here in the room for us. It would usually only be the Front-Bench spokespersons who would get a copy in advance.

Catherine McKinnell: As I said directly to the Minister before, I noted the comments about the impact assessments and actually looked for the impact assessments that are relevant to this legislation, but I could not find sufficient impact assessments to clarify for me what the impact of the legislation would be. So it is not even a failure of the Government to make them available today; actually,

[Catherine McKinnell]

this process is all very unclear, in terms of what the impact is and how it has been assessed. So, even if the information that is available was provided, I do not think that it would be clear enough.

Bill Esterson: I completely agree with that, and there are a number of points here, Sir Edward. In previous Committees, we have had a discussion about the fact that impact assessments have not been produced at all on numerous occasions when significant changes have been made, and there has been an issue with the nature of the impact assessments that the Government have chosen to produce.

I will discuss a little later the content of the three impact assessments that have been produced. My hon. Friend the Member for Newcastle upon Tyne North is quite right that they do not actually give Members the ability to scrutinise thoroughly what we are being asked to scrutinise.

Mr Sheerman: My hon. Friend knows, as I do, that if someone had not asked an urgent question last Thursday on roaming charges after Britain comes out of the European Union, that very complex issue would have been dealt with in one of these Committees up here, with as little information as we have now. As it was, the Minister had to come to the Dispatch Box and there was a thorough airing of a very important piece of delegated legislation. Many of us, Sir Edward, will be coming up to Committees time and again—there are hundreds of these pieces of delegated legislation. So, early on, and it is quite early on, we have to get this process right, so that we have the information that we need to do our job.

So I want the Minister to reflect on what happened last Thursday. The Opposition had to call for an urgent question to find out what was going on in an important area of policy regarding roaming charges after we leave the European Union, which is not dissimilar to the policy area that we are considering now.

Bill Esterson: My hon. Friend is absolutely right. There is a similarity with the portability of content and the ability for consumers to watch Netflix or Amazon Prime, on the one hand, or for satellite broadcasters to reach their customers in a country different to the one where their broadcast comes from. It is very similar to the point about mobile phone roaming charges. Who knows? Maybe somebody will table an urgent question on those points in the days ahead. So I completely agree with my hon. Friend's point; it had occurred to me, as well.

I mentioned the apparently very significant consequences for broadcasters, which have not been addressed by the impact assessment. Just to emphasise the consequences of these regulations, a European Commission notice to stakeholders states that in the absence of an agreement between the UK and the EU, broadcasters in the UK will no longer benefit from this mechanism when providing cross-border broadcasting services to EU customers, and they will have to clear rights in all the member states that their signal reaches. I do not think we are talking about a situation where it is just one side of the Irish border or the other, although there are some interesting questions there about where someone lives and which signal they receive. I do not see how the regulations address the Commission's point. That must be of major concern to UK broadcasters. I wonder whether that was one of the technical points raised in the roundtable to which the Minister referred—he was not able to tell us before, but perhaps he will be when he responds.

Paragraph 7.4 of the explanatory memorandum refers to the implementation of the EU term directive and to copyright duration for copyright works originating from EEA states. It also says that copyright works originating in the UK will be treated with consistency in the EEA. I can see how we could guarantee consistency of treatment of works originating in the EEA, but how can the regulations guarantee the same in return? Has a mutual recognition agreement been finalised in that respect?

In paragraphs 7.5, 7.8 and 7.15 of the explanatory memorandum, it is claimed that there will be consistency of treatment for EEA citizens in the UK and for UK citizens in the EEA. Again, when was a mutual recognition agreement signed? Or, in the event that it was not, why is that claim being made? As far as I can see from what has been published, we have no way of verifying whether the regulations will hold up in court. That lack of published consultation—or informal roundtable consultation, or however the Minister wishes to describe it—would suggest that I am right to have such concerns.

In contrast to the paragraphs that indicate a continuation of mutual recognition or an establishment of new agreements on mutual recognition in some areas, paragraph 7.10 of the explanatory memorandum refers to the ending of mutual recognition and to the end of information sharing with respect to UK cultural heritage institutions. It is impossible to predict the consequences of the end of those arrangements for the arts and for heritage objects.

Paragraphs 7.12 and 7.21 refer to the Marrakesh treaty and rights for disabled people to copy copyrighted materials and to exchange such copies. Paragraph 7.12 refers to the loss of rights for disabled people to have copies of copyrighted works without infringing copyright. I do not pretend to understand the consequences of the EU's membership of the Marrakesh treaty—unlike some of the lawyers sat behind me, I do not have the training or qualification for that—but can the Minister tell us when we will ratify the Marrakesh treaty in our own right as the UK, as indicated in paragraph 7.21?

According to the Government's September guidance on no-deal planning, the answer is "after we have left the EU." Can the Minister confirm whether we will be able to do what is suggested in the explanatory memorandum between exit day and ratification of the treaty? Can he confirm when we will become signatories to the treaty in our own right, or whether something already happened in that respect that is not mentioned in this paperwork?

Paragraph 7.20 concerns the portability regulation—this affects Netflix and Amazon Prime—which allows us to watch content when we visit the EEA by moving rights and permissions with the consumer. The draft regulations appear to end that arrangement. That change will have a significant impact on consumers and on the providers of content. Who will pay for holidaymakers to watch Netflix or Amazon Prime when in the EU after 29 March?

I wonder whether we will be able to watch the "House of Cards" series—it springs to mind in this place—using a UK subscription, or if we will need to buy a new EU subscription to do so. Can the Minister clarify that?

The sifting Committees of both Houses of Parliament recommended that the statutory instrument should be upgraded from the negative to the affirmative procedure. The House of Commons sifting Committee gave the following reasons:

"The amendments to primary legislation are considerable, and the combined number of changes to other legislation is significant, all relating to intellectual property, a cornerstone of the internal market in services."

The Committee set out its concerns about the country of origin principle for satellite broadcasting and the portability or otherwise of online content. It stated its reservations about the inadequacy of the impact assessments, just as my hon. Friends have this afternoon:

"The Committee is concerned about the impact on business and the loss of consumer rights and is disappointed that the Government has chosen not to provide further information on these issues to assist the Committee in its decision making."

That is sounding very familiar. The House of Lords reached a similar conclusion. The sifting Committee conclusion is confirmed in paragraph 3.2 of the explanatory memorandum to the regulations.

Without more detailed impact assessments, how is it possible for the Government to claim that the statutory instrument does what is needed to protect businesses, workers and consumers? The EU approach to impact assessments for regulatory changes is so much stronger than the narrow version chosen by the Government. It addresses the wider economic and societal impact. It is absurd that the Government refuse to use such an analysis for complex far-reaching changes. The lack of full analysis and consultation leaves open the question of whether regulations such as these are fit for purpose and whether they might be open to challenge in the courts. This side of the House has made that point repeatedly in Delegated Legislation Committees that have considered multiple and complex regulations related to exit from the European Union.

The Government guidance published on 24 September 2018 sets out the consequences of a no-deal scenario in this area. It raises concerns about universal database rights, portability of online content services, country of origin for copyright clearance of satellite broadcasting, the potential for UK heritage institutions to infringe copyright, the non-ratification of the Marrakesh treaty before exit day, and the potential implications. All those concerns are apparent from a detailed analysis of the regulations and the explanatory memorandum, yet the information before us does not explain how or why they should be, and have been, addressed. It does not address the concerns raised by the Government's own guidance.

According to the impact assessments—I return to the intervention by my hon. Friend the Member for Newcastle upon Tyne North—inadequate as they are, the Government's aim is to maintain the status quo for UK database creators and to avoid any costs to rights holders. The logic of what is proposed is that there will be a cost to EEA creators of databases that will likely be passed on to UK consumers. It is hard to believe that consumers will not have significant concerns about the idea of having to pay more for their services. The consumer affairs experts we spoke to in preparing for this Committee had not been consulted about that. I wonder what was said at those roundtables by consumer representatives about those concerns. So much for the championing of the cause of the consumer, which we often hear from members of the Government, in particular the Secretary of State for International Trade.

Meanwhile, again in the impact assessments, we see that EEA broadcasters will not need separate rights clearance in the UK. But without a reciprocal agreement post Brexit, EEA nations could choose to suspend country of origin broadcast rules between member states. While the statutory instrument preserves the status quo, EEA broadcasters into the UK may be affected by familiarisation costs. Some 33,000 UK businesses would be affected—that is a Government estimate—as their work is broadcast by EEA rights holders into the UK. Again, there is potential for costs to be passed on to the consumers. Was that point raised in the roundtable, and what was said? We do not know.

UK online content services with EU equivalents will not be able to give customers access to their material when present in the UK unless access is reciprocated—that is in the impact assessment. That will not be in place from day one after Brexit, and there is no indication of how long such arrangements might take to put in place. What was the basis for the statement in the impact assessment that tourism in the UK would not be affected? Were broadcasters consulted? What was their view? What was the view of the UK hospitality industry of the impact on tourism in this country? Were they at those roundtables?

The explanatory memorandum states that the regulations achieve certain objectives. I wondered how it was possible for someone who is not an expert in the relevant law to confirm those claims, so I sought advice from a number of legal experts, since the Government did not publish any analysis from lawyers. One lawyer told me,

"I don't have the bandwidth to think the implications through".

That goes to the first intervention by my hon. Friend the Member for Huddersfield. Another lawyer told me:

"The draft regulations simply need as much Parliamentary scrutiny as time permits, and the goal is more technical than policy driven - to make the regulations as good as they can be under the circumstances, so that the courts don't have to spend the next decade unpicking them. It would be a very considerable undertaking to quality assure these very complex amendments to existing UK law."

That came from a lawyer with 40 years' experience of UK intellectual property law. The specialist IP lawyers who looked at this do not have the bandwidth to consider these matters. They tell us that making good regulations matters, so the courts do not have to spend the next decade unpicking them, but lawyers are unable to say whether the Government guidance on no-deal consequences have been addressed. If the lawyers cannot say whether the regulations can be relied on, what chance do we have, as Members of the House of Commons with limited access to information?

The Minister confirmed there was no formal consultation. Had there been, perhaps the lawyers could have advised the Government and avoided any potential that the regulations would be inadequate. Perhaps the lawyers would have had time to tell us whether the Government's proposed regulations were fit for purpose. We have not even had that from the people at the roundtable.

[Bill Esterson]

I return to the expert advice. That lawyer with 40 years' experience in IP told me,

"The one thing that can be said with certainty is that it is a shocking departure from minimum standards of Parliamentary scrutiny to allow such wholesale changes to our existing intellectual property laws to be made without proper stakeholder or expert scrutiny."

That lawyer confirms what we have been saying about a number of the SIs we have been asked to consider. The Minister's response will need to be remarkable to address the yawning gap in his analysis.

5.29 pm

Ian C. Lucas: It is a pleasure to be here, Sir Edward. I want to make a couple of brief points to add my concern about the general tenor of these proceedings.

First, the only reason we are discussing the statutory instrument is that the European Statutory Instruments Committee, on which I sit, recommended that it should go through the affirmative resolution procedure rather than the negative. The Government's original intention was that we would not even discuss this very important piece of secondary legislation, which is indicative of their understanding—or lack of understanding—of a proposal that clearly has substantial impacts and effects.

My second point is about the impact of the statutory instrument. Paragraph 2.5 of the explanatory memorandum says:

"This instrument will ensure retained EU law contains appropriate references to the 'European Union', 'Member State'… Additionally, the instrument aims to give continued effect to cross-border mechanisms and their underlying policies wherever possible."

Therefore, the intention of the statutory instrument is to continue with arrangements that are agreed by the EU, or by the EU states, after we leave the EU.

The explanatory memorandum goes on to say:

"Where this is not possible…the mechanism is given unilateral effect within the United Kingdom."

The statutory instrument therefore gives EU member states the power to determine the arrangements that are going to apply within the UK. Government Members who think that the process of taking back control means giving other nations control over the legislation and laws that apply to this country, without us having an input, have the ideal statutory instrument to support. We are, it seems, passing to other countries authority over not only past legislation, but future legislation. On the basis of this statutory instrument, we seem to be binding ourselves to having our laws set by other jurisdictions and members of the EU after we have left. That seems quite an extraordinary proposition, which goes way beyond the ambit of a Delegated Legislation Committee such as this one.

In summary, what we have here is a catastrophic mess. I have great respect and affection for the Minister, but frankly, this whole thing is a massive embarrassment. There has not been proper consultation. We have a piece of secondary legislation that appears to give other countries the authority to legislate within the UK without us having an input. The Government need to go away, rethink, have a proper consultation, and come back with an appropriate statutory instrument for this Committee to consider.

5.33 pm

Richard Harrington: I shall do my best to go through the many points that have been raised. I hope that I can persuade Opposition Members to rethink their objection to the statutory instrument—I very much doubt I can, Sir Edward, but if you will be patient with me, I will do my best. I nearly said "if the court will be patient", because this is like a courtroom drama, but I know that you are a patient man, Sir Edward. If the Committee will bear with me, I shall do my best.

The shadow Minister raised many points. There was a general one about his concerns. *[Interruption.]* Perhaps he could listen to what I have to say.

Bill Esterson: Sorry.

Richard Harrington: It is perfectly okay, but I would like the hon. Gentleman to concentrate on my points, as I did my best to concentrate on his. I hope he will feel that I have answered them properly.

To deal first with the hon. Gentleman's fundamental concern about the process as a whole, I reiterate our view that the regulations are not intended to make significant changes to existing policy. In line with the powers of the European Union (Withdrawal) Act 2018, they aim for continuity as far as possible, and so provide the minimum necessary changes to ensure that our internationally renowned UK copyright legislation continues to function in a no-deal scenario. We have really tried to provide continuity and certainty.

Bill Esterson: Will the Minister give way on that point?

Richard Harrington: Would the hon. Gentleman wait? I listened to him.

Bill Esterson: I think I might be able to help the Minister.

Richard Harrington: This is a new policy. I shall sit down.

Bill Esterson: I am grateful to the Minister for giving way. I have a great deal of respect for him, and I do listen to him. The Opposition understand that this series of statutory instruments is about preparing for no deal and trying to avoid disruption. The problem is that the information available to us and the answers we have had from the Minister raise serious questions about whether that is exactly what is happening. That is the heart of the matter.

Richard Harrington: I accept fully that that is the Opposition's intention, but I felt that I should make it as clear as I can that the regulations are not intended to make any significant change to our existing policy.

The hon. Member for Sefton Central asked whether any rights will be lost in the event of no deal. I can categorically say that they will not. As I said previously, certain reciprocal arrangements that facilitate cross-border use of copyrighted material will end, but that is distinct from the underlying intellectual property rights. I hope that his lawyer of 40 years' experience will confirm that. Our continued membership of the international treaties on copyright will ensure that UK works will continue to receive protection abroad, while foreign works will continue to be protected in the UK. These changes also ensure that copyright duration will not change for UK rights holders on exit.

The hon. Gentleman also asked what we are doing to support UK broadcasters who are facing the loss of the copyright country of origin principle. It is still our intention to secure an agreement with the EU on our future relationship—I think that is very well known—and as we set out in our White Paper last July, we want any deal to involve the best possible arrangements for the broadcasting sector. If we leave without a deal, broadcasters may face disruption due to the fact that the EU copyright country of origin principle would cease to apply to the UK. We have tried to give broadcasters and other businesses as much information as possible about the implications of no deal by putting this in the technical notices and detailed guidance about what it means for copyright. The UK cannot address that issue unilaterally in a no-deal scenario.

The shadow Minister mentioned the Marrakesh treaty. The UK has implemented the provisions of the treaty in UK law, and they will be retained after exit. Currently, the treaty has effect in the UK due to the EU's ratification of it in October 2018, and we are on track to ratify it in our own right, but that cannot happen until we leave the EU, because it is an EU competence at the moment. Until we ratify the law, other treaty countries could prevent the cross-border exchange of copies of works in accessible formats in the UK. Our domestic copyright exceptions stemming from the treaty, which provide disabled persons with improved access to copyright-protected works, will not be affected by our departure from the EU.

The shadow Minister asked when we will ratify the Marrakesh treaty. We are on track to do that. It will be literally as soon as possible after exit. Our ratification must then be accepted by the World Intellectual Property Organisation, before we are once again individually treated as a member of the treaty. There will be a delay between exit and the acceptance of our ratification in a no-deal scenario. We are doing our absolute best to ensure that it will be as short as possible.

On the impact assessments, the hon. Member for Sefton Central asked why we did not consider wider impacts. The impact assessments that accompany the instrument describe in detail the effect of introducing the regulations relative to the pre-exit status quo. That is in line with the "Better regulation framework" and HM Treasury's Green Book guidance. They are not intended to analyse the impact of no deal more broadly, such as the effect of the EU cross-border copyright mechanism ceasing to apply to the UK. Those impacts arise from the fact that the EU will treat the UK as a third country in a no-deal scenario and will happen regardless of whether this instrument is made. We considered the wider impacts of our exit from the EU in a long-term economic analysis published last November.

The shadow Minister asked why the Government are using secondary legislation for EU exit. This matter has been discussed widely in relation to many statutory instruments, but fundamentally, using primary legislation is inappropriate for the large number of mechanistic changes that are needed. It is normal to use secondary legislation in these circumstances. Furthermore, the changes are dependent on the outcome of the negotiations. This method was heavily debated and agreed to by both Houses during the passage of the European Union (Withdrawal) Act last year. It would not be practical to make all the required legislative changes through primary legislation. However, I reiterate that these changes do not include major policy changes or decisions on policy.

We are very pleased to have—and we do accept—recommendations from the sifting Committee, on which the hon. Member for Wrexham serves, to ensure that sufficient scrutiny is in place for the secondary legislation made under the principal powers in the Act. I accept what the shadow Minister said about not regarding this as enough scrutiny, but we did accept straightaway the recommendations of that Committee.

The shadow Minister asked what the effect will be on UK consumers. The EU portability regulation works by reciprocal application of cross-border rules. It will not cover UK-EU travel in the event of no deal, and we cannot replicate the effects of existing arrangements on a unilateral basis. It is true that UK consumers may see changes to their content services when they visit the EU, but the law will merely revert to its pre-April 2018 status quo.

The shadow Minister asked why the UK is unilaterally applying the country of origin principle for EU satellite broadcasters. The proposed plan is consistent with how UK legislation already treats satellite broadcasters from outside the EU. Continuing to apply the country of origin principle in this way will support UK consumers' continued access to foreign television programming, because it is not introducing new and unnecessary burdens on broadcasts to the UK. I am sure that the businesses to which the shadow Minister refers will be very pleased about that.

The hon. Member for Wrexham continued that theme and asked why we give unilateral effect to certain mechanisms. It is unavoidable that some cross-border arrangements will apply. In some cases, we will apply these arrangements to the EU on a unilateral basis. That does not mean that we will unilaterally implement EU law; we will just provide continuity where we feel that it is appropriate.

I have done my absolute best to answer the questions raised. As I said in my opening speech, this statutory instrument is essential in preparing our copyright legislation for a no-deal scenario. I therefore commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 8.

Division No. 1]

AYES

Blackman, Bob	Lopez, Julia
Clarke, Mr Simon	O'Brien, Neil
Goldsmith, Zac	Paterson, rh Mr Owen
Harrington, Richard	Smith, Henry
Harris, Rebecca	

NOES

Esterson, Bill	Monaghan, Carol
Lammy, rh Mr David	Perkins, Toby
Lucas, Ian C.	Sheerman, Mr Barry
McKinnell, Catherine	Smith, Nick

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018.

5.44 pm

Committee rose.