PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixteenth Delegated Legislation Committee

RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) (AMENDMENT) (EU EXIT) 2019

CIVIL PROCEDURE (AMENDMENT) (EU EXIT) RULES 2019

Monday 25 February 2019

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not later than

Friday 1 March 2019

The Committee consisted of the following Members:

Chair: Siobhain McDonagh

† Allan, Lucy *(Telford)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Duncan, Sir Alan *(Minister for Europe and the Americas)*
† Ford, Vicky *(Chelmsford)* (Con)
† Freer, Mike *(Lord Commissioner of Her Majesty's Treasury)*
† Goodman, Helen *(Bishop Auckland)* (Lab)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Johnson, Gareth *(Dartford)* (Con)
† Jones, Mr David *(Clwyd West)* (Con)
Jones, Mr Kevan *(North Durham)* (Lab)
† Kawczynski, Daniel *(Shrewsbury and Atcham)* (Con)
† Lammy, Mr David *(Tottenham)* (Lab)
† Lewer, Andrew *(Northampton South)* (Con)
† Perkins, Toby *(Chesterfield)* (Lab)
† Rowley, Danielle *(Midlothian)* (Lab)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Zeichner, Daniel *(Cambridge)* (Lab)

Yohanna Sallberg, *Committee Clerk*

† attended the Committee

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[Siobhain McDonagh *in the Chair*]

Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019

4.30 pm

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

That the Committee has considered the Rules of the Court of Judicature (Northern Ireland) (Amendment) (EU Exit) 2019 (S.R. (N.I.) 2019, No. 8).

The Chair: With this it will be convenient to consider the Civil Procedure (Amendment) (EU Exit) Rules 2019 (S.I. 2019, No. 147).

Sir Alan Duncan: It is a pleasure to serve under your chairmanship, Ms McDonagh.

Colleagues will recall that the Sanctions and Anti-Money Laundering Act 2018 provides the UK with the legal powers to impose, update and lift sanctions regulations, and to update our anti-money laundering framework after we leave the EU. An important feature of the sanctions Act, which was discussed in detail during its passage, is the right provided to designated persons to challenge their designation. Chapter 2 of the Act provides a route for the designated person to request that the Minister carry out an administrative review of their designation.

The Sanctions Review Procedure (EU Exit) Regulations 2018 came into force on 7 January and set out the process to be applied in relation to such reviews. A review could be requested for various reasons, including when a designated person believes that the reasons for their designation are incorrect or that particular information associated with the designation is not correct. If, following the review, the Minster's decision is to uphold the designation, the designated person has the right, under section 38 of the sanctions Act, to apply to the High Court in England and Wales and in Northern Ireland, and to the Court of Session in Scotland, to have the decision made against them set aside.

The statutory instruments set out the process that is applicable to such court challenges. They are a technical step in the establishment of the new autonomous UK sanctions regimes. They make technical amendments to the Civil Procedure Rules 1998 for England and Wales, and to the Rules of the Court of Judicature (Northern Ireland) 1980. They do not make any new substantive provisions. The instruments provide the procedure that will apply when challenges to sanctions decisions are brought before the courts of England and Wales and of Northern Ireland under the 2018 Act.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): Will the Minister give way?

Sir Alan Duncan: I would rather complete my remarks and answer questions later, if I may.

The instruments allow the Government to apply to the courts to use the closed material procedure where appropriate in relation to such challenges. That enables the Government to defend legal challenges against sanctions decisions that may be underpinned by sensitive information. I should make it clear that the UK will use public unclassified material wherever possible in maintaining and pursuing sanctions listings. In a minority of cases, classified material may be necessary to support or sustain certain listings. The rules of court therefore provide for closed sessions for those exceptional circumstances in which the Government have used classified information to support a listing that is then challenged in court.

As I alluded to earlier in my speech, the mechanism for considering such information is an extension of tried and tested procedure that allows us the full consideration of the facts and protects the rights of entities. Under section 40 of the sanctions Act, we would apply sections 66 to 68 of the Counter-Terrorism Act 2008 to any such challenges against sanctions decisions made under the sanctions Act. Rules of court made under the 2008 Act, and amended in a similar way to these instruments by the Terrorist Asset-Freezing etc. Act 2010, allow the Treasury to ask for closed material procedures to apply to proceedings involving challenges to financial restrictions directions made under that Act.

The statutory instruments make technical amendments to part 79 of the Civil Procedure Rules 1998 and to order 116B of the Rules of the Court of Judicature (Northern Ireland) 1980 to extend the existing procedures to challenges against decisions made under the sanctions Act. They will ensure that challenges against sanctions decisions under the sanctions Act are treated in the same way as challenges against financial restrictions decisions made under the Counter-Terrorism Act.

Any failure to have the instruments in place by the day we leave the EU would represent a significant risk. There would be no closed material procedure set out for court reviews against designation decisions under the sanctions Act, including the availability of the closed material procedure, so the Government would not defend legal challenges to sanctions where sensitive information underpins a sanctions designation. That could result in a designation being revoked, which could have a significant impact on our meeting key foreign policy objectives. It could reduce our ability to co-ordinate sanction actions with close allies and could allow individuals involved in dangerous activities to travel to or invest in the UK.

Before making the rules of court, the Lord Chancellor consulted the Lord Chief Justice of England and Wales and the Lord Chief Justice of Northern Ireland in January this year, and they raised no concerns. I welcome this opportunity to discuss the statutory instruments and to answer questions. I commend the rules to the Committee.

4.37 pm

Helen Goodman (Bishop Auckland) (Lab): It is a great pleasure to serve under your chairmanship, Ms McDonagh. I have a number of questions for the Minister, because the minute a Minister says, "This is only technical," everybody's alarm bells ring.

The Minister will recall that Her Majesty's Opposition supported the Government's stance on the right to challenge when we took the Sanctions and Anti-Money Laundering Act through the House. Quite a lot of questions were asked in the House of Lords, where it was felt that having an administrative process before we moved on to the involvement of the court was wrong. I accepted what the Minister said and agreed that some people who would wish to challenge sanctions have vast legal resources. If we were not to have an effective process, it could make it extremely difficult and expensive for any Government to run an effective sanctions policy.

None the less, I was a little surprised by the two statutory instruments and I have some questions because I am not convinced by them. My underlying question is, what sort of sanctions situation would warrant the use of this secret procedure? In what respect is it like a terrorism episode? It is rather a different sort of thing and I am not clear that the procedure is justified. Although the Minister set out in some detail how it would work, he did not go so far as to explain why it is necessary. I want to ask the Minister who a special advocate is, and what sensitive material comprises.

Do we have a process that includes the possibility of using closed courts under the existing sanctions regime, which is run from the European Union? The obvious question is, if we do not have that process at the moment, why is it necessary to tighten up after 29 March? The Minister has not explained how it works now, whether this is a change and, if so, why we need the change at this moment.

Will the Minister also remind the Committee of something, although people are probably aware of it? He said that the possibility of a closed courts process is allowed under the 2010 and 2008 legislation. Am I right in thinking that that is about financial sanctions, and that all he is doing in this legislation is requesting a closed court procedure for travel bans? Those are the questions on which we need reassurance before we agree with him; we have not had those reassurances so far.

4.41 pm

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Ms McDonagh.

I have a few questions for the Minister, the first of which is a technical one. There is no statutory instrument for Scotland, so I assume a similar process is being gone through in the Scottish Parliament or in a different statutory instrument Committee. Will he clarify that, so that we have coherence about the sanctions regime across the UK as a whole?

Secondly, I share the concerns of my hon. Friend the Member for Bishop Auckland on the Front Bench about the use of secret courts and closed sessions more generally. Having served alongside those working in government and with sensitive material, in particular in the international sphere, I understand the need for such courts in certain cases, but I believe fundamentally that those cases should be very restricted. We do not want to set any wider precedent for our courts or such services.

Helen Goodman: The other thing that the statutory instrument lacks is any process for review of how the process is working—not the individual sanctions, but the process and its secret aspect.

Stephen Doughty: Indeed. I was going to ask the Minister a similar question—who will act as an oversight body? Will it be the Lord Chancellor or the Ministry of Justice, or will an independent body review such materials? Will individuals who are security cleared to the appropriate level, for example, review how information is used and whether those secret sessions are operating appropriately? Personally, I am always happy to accept the independent assurances of those with the appropriate clearances who review such matters, but will the Minister reassure us at that level?

I ask that because I have concerns about how secrecy is used in other cases, such as under the arms export control legislation. For example, secret hearings were held about the arms sold to Saudi Arabia in relation to Yemen. Obviously, in most cases I want to be able to support the Government in their efforts to impose sanctions on those who have done wrong or put our national security or financial services under threat, but the danger is that by using such powers in this area, we might unnecessarily set a precedent in other areas, which could be used by the Government to go about business that I believe should be fully in the public domain, with the appropriate oversight.

Will the Minister tell us what additional steps are being taken to ensure that there are safeguards for those wrongly caught up in sanctions and anti-money laundering legislation? The statutory instruments are part of that, but many of us had the experience of being caught up in the new PEP—politically exposed person—regulations. Doing simple transactions as an MP or a person of public interest is often a lot more difficult these days because we are subject to those safeguards. I totally appreciate why they need to be in place, but in some cases individuals wrongly end up on sanction or travel ban lists just because of their name—a mis-spelling or a common name—with those of Islamic or middle eastern origin often being confused. Will the Minister provide some reassurances about how such people can receive redress?

Overall, in relation not only to the statutory instruments but to the more general Brexit legislation in this area, does the Minister believe that there will, regretfully, be a degradation in our ability to co-operate with others across Europe on such matters? One of the strengths of the European sanctions regime has been the co-ordinated effort by many countries that are interlinked financially and in other respects. Unfortunately, by setting up our own separate regime, however much we choose to ally ourselves with countries across Europe, we risk creating loopholes and gaps for individuals to exploit.

I appreciate that in some areas we could apply higher sanctions and tests, which others may not agree with, but can the Minister provide reassurance in that respect, not least given the involvement of Russia and other foreign states, and of individuals with money, in attempts to undermine our democratic processes—the very actions that these rules are concerned with? The public and those investigating these matters have many unanswered questions.

4.45 pm

Sir Alan Duncan: I am grateful to hon. Members for their pertinent questions. Let me first address the general point on the right to challenge that the hon. Member for Bishop Auckland made at the beginning of her comments.

[Sir Alan Duncan]

When we were preparing the 2018 Act, I sought ardently to ensure that there were initially easy ways of challenging a designation. If we get the wrong Igor or the wrong Ahmed, for instance, it is right that someone should be able to walk straight into the government system—I am exaggerating, but hon. Members know what I mean—and say, "Oi, you've got the wrong bloke here," without having to go to court. I thought it was very important for the 2018 Act to contain a process that allowed someone inexpensively, and simply by presenting the facts, to point out where a mistake might have been made, rather than having to spend a lot of money with lawyers. One of the reasons I felt so strongly about that is that 15 years ago, a company in my constituency was sanctioned because someone got the wrong company of the same name. I therefore thought it was very important to embody that early stage of redress in the process.

However, inevitably, in this world of sanctions, where we are dealing with people who may be very rich or corporately very clever and sneaky, we must also have a proper court process. *[Interruption.]* Excuse me—say something!

Stephen Doughty: The Minister is making an important point about redress. We share information about sanctions and those who are sanctioned with our Five Eyes partners and others. Perhaps he will confirm, after he has enjoyed a drink of water, the importance of having redress numbers and other identifiers so people are not caught up in the US electronic system for travel authorisation, for example.

Sir Alan Duncan: May I express my deep gratitude to the hon. Gentleman for his learned and well-timed intervention?

Helen Goodman: Does the Minister expect that the Government will make a habit of being bailed out by the Opposition?

Sir Alan Duncan: No, because at the last count there were not many of them left.

The statutory instruments lay down the procedure for sanctions designation appeals where cases go to court. The vast majority of those cases will be based on open source material, but, as with terrorism legislation, the statutory instruments provide for the closed process to be used where necessary. Most material will be open source, but, given that we are dealing with some pretty dodgy people, information from intelligence sources may have led to the decision to designate someone. Therefore, as with terrorism—the parallels may get quite close—the SIs provide for a closed process that allows that material to be discussed. I say to the hon. Lady and to all other hon. Members that there is nothing sinister about that. It replicates what happens elsewhere. It is tried and tested, and I would argue that it is very straightforward.

The hon. Member for Cardiff South and Penarth asked, "Why not Scotland?" The 2018 Act provides that Scotland will make its own rules of court. That follows the existing precedent in the Counter-Terrorism Act 2008 and the Terrorist Asset-Freezing etc. Act 2010. The Scottish Government have been consulted, and are aware of the need to do that.

The hon. Member for Bishop Auckland asked about special advocates. A special advocate is a specifically appointed lawyer, whose functions are set out under rule 79.19 of the Civil Procedure Rules. Their role is to consider sensitive material and to ensure that the proceedings are fair. They will represent the interests of the designated person.

I was asked whether there are closed proceedings in the EU. There are some similar, but not identical, processes in the EU. Owing to the need to safeguard sensitive member state evidence, those procedures have not been used regularly to date. The use of them for UK sanctions will appropriately safeguard our information.

I hope that I have answered the questions that were raised. The statutory instruments are straightforward. They broadly replicate what happens elsewhere in similar court proceedings, and I urge the Committee to accept them. I commend the rules to the Committee.

Question put and agreed to.

CIVIL PROCEDURE (AMENDMENT) (EU EXIT) RULES 2019

Resolved,

That the Committee has considered the Civil Procedure (Amendment) (EU Exit) Rules 2019 (S.I. 2019, No. 147).—*(Sir Alan Duncan.)*

4.52 pm

Committee rose.