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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ELECTRONIC COMMUNICATIONS
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2019

Tuesday 30 April 2019

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The Committee consisted of the following Members:

Chair: MR VIRENDRA SHARMA

Bardell, Hannah (<i>Livingston</i>) (SNP)	† James, Margot (<i>Minister for Digital and the Creative Industries</i>)
Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab)	Johnson, Diana (<i>Kingston upon Hull North</i>) (Lab)
† Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab)	Kyle, Peter (<i>Hove</i>) (Lab)
† Churchill, Jo (<i>Bury St Edmunds</i>) (Con)	† Maclean, Rachel (<i>Redditch</i>) (Con)
† Coaker, Vernon (<i>Gedling</i>) (Lab)	† Powell, Lucy (<i>Manchester Central</i>) (Lab/Co-op)
† Costa, Alberto (<i>South Leicestershire</i>) (Con)	† Stewart, Bob (<i>Beckenham</i>) (Con)
† Docherty, Leo (<i>Aldershot</i>) (Con)	† Swire, Sir Hugo (<i>East Devon</i>) (Con)
† Elmore, Chris (<i>Ogmore</i>) (Lab)	Medha Bhasin, <i>Committee Clerk</i>
† Freeman, George (<i>Mid Norfolk</i>) (Con)	† attended the Committee
† Hughes, Eddie (<i>Walsall North</i>) (Con)	

Second Delegated Legislation Committee

Tuesday 30 April 2019

[MR VIRENDRA SHARMA *in the Chair*]

Draft Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019

2.30 pm

The Minister for Digital and the Creative Industries (Margot James): I beg to move,

That the Committee has considered the draft Electronic Communications (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Sharma. The regulations correct deficiencies in the law that would arise from the UK's withdrawal from the EU, and they do so under powers conferred by section 8 of the European Union (Withdrawal) Act 2018. Both the Government and Parliament have expressed opposition to the UK's leaving the EU without a deal. However, my right hon. Friend the Prime Minister has been clear that it is appropriate to prepare for a no-deal scenario, and that remains priority work for the Government.

The regulations before us address deficiencies, arising from EU exit, in legislation relating to electronic communications. Deficiencies in domestic law have been addressed in other instruments that have already been considered by the House. Many of the provisions in this instrument simply revoke EU legislation that would be redundant after EU exit if it were converted into UK law. The regulations also make technical amendments to EU legislation relating to the notification of personal data breaches by providers of electronic communication services. These amendments include matters such as replacing references to the "competent national authority" with references to the Information Commissioner. The amendments are designed to ensure that the legislation continues to work effectively and in substantively the same way as before exit, taking into account that the UK will have left the EU.

I will now turn to the provisions concerning regulation of prices for certain intra-EU communications known as intra-EU calls, although they also apply to text messages. The European Statutory Instruments Committee recommended that these regulations be subject to the affirmative procedure, on the basis that these matters relate to consumer protection and are therefore of particular importance. New European rules regulating the price of intra-EU calls were legislated for in December 2018.

Vernon Coaker (Gedling) (Lab): Will the Minister explain why, in the first place, the Government did not think that it was worth using the affirmative resolution procedure and went for the negative one?

Margot James: The rest of my speech will probably make clear why the Government did not think that it was worth using the affirmative procedure. That said, the Government did agree with the proposition from the ESIC. The Government felt that this particular SI was not contentious and therefore the affirmative procedure

was not really necessary, but on balance, with the advice that we were given, we readily accepted the argument that it should be used, and therefore it is being used.

The rules regulate the maximum cost of mobile and landline calls and texts made from one EU member state to another. For example, a French consumer calling from their home in France to a consumer in Finland would be making an intra-EU call. These rules are different from the rules on mobile roaming, which apply when people travelling in the EU outside their home country use their mobile phones to make calls, send texts and so on. The EU exit SI relating to mobile roaming was approved by both Houses and made on 14 March.

To return to the intra-EU calls that this SI addresses, the new rules will require communications providers in the EU to charge their customers no more than 19 euro cents per minute for calls and six euro cents for texts. These rules come into force in the EU from 15 May this year.

I appreciate that the intra-EU calls rules are seen as a benefit to consumers. The rules have been introduced as a single market measure. They establish a reciprocal framework that has the purpose of strengthening the EU single market. The potential detriment to consumers as a result of this instrument can be mitigated through a range of alternatives to intra-EU calls and texts. Those include free internet-based services, and consumers can also buy calling cards and bolt-on deals. These options provide cheap calls and texts to the EU, on top of an existing phone package. Removing the provisions regulating intra-EU calls from the statute book is therefore the appropriate thing to do as we prepare to leave the EU. By so doing, it is highly likely that we will also leave the single market.

In conclusion, we are committed to ensuring that the law relating to electronic communications continues to function appropriately after exit, providing clarity and certainty to consumers and businesses. That is what these regulations will do, and I commend them to the House.

The Chair: I welcome Chris Elmore and congratulate him on his new role.

2.35 pm

Chris Elmore (Ogmore) (Lab): I think it is fair to say that this is a surprise outing for the whole Committee—especially me.

I have a series of questions for the Minister, and I would be very grateful if she answered them as fully as she can. The SI removes reciprocal arrangements for competent national authorities to notify each other where a breach affects subscribers or individuals in other member states. The explanatory memorandum says:

"it is anticipated that the Information Commissioner will cooperate with EEA authorities".

Can the Minister confirm that?

The SI removes some powers that the European Commission has at the moment, rather than transferring them to the Information Commissioner's Office. Why have the Government considered it unnecessary to recreate those powers in domestic law? For example, this SI does not recreate the Commission's power to publish an indicative list of appropriate technical measures to

demonstrate any personal data. That personal data would not have been intelligible to a person accessing it without authorisation in the case of a breach. Given that just last month, Facebook was found to have been storing 600 million users' passwords in plain text format for years, do the Government not think the public have a right to a greater reassurance that their personal data is safe? What steps have they taken?

On that subject, the Government have avoided answering written parliamentary questions asking when they were notified about the breach, how many UK users were affected and whether the Secretary of State was told about the breach when he met Mark Zuckerberg in February. We have submitted freedom of information requests to the Department. Mark Zuckerberg seems to be ignoring Parliament by refusing to come to the Digital, Culture, Media and Sport Committee, and it seems that he may have failed to mention the huge data breach when he sat opposite the Secretary of State.

The SI takes us out of the European regulators group for audiovisual media services. Of course, if the UK leaves without a deal, we cannot stay in EU groups. What plans have the Government got in place for the desired future relationship between the UK and European audiovisual sectors? For example, if the UK ceases to be party to the AVMS directive, it could become significantly less attractive as a broadcasting hub. Given the importance of the sector to the UK's economy and cultural reach, will the Minister provide reassurances about the future regulatory relationship between the UK and the European audiovisual sector? What consideration are the Government giving to that?

What plans are the Government putting in place to ensure UK consumers are duly informed about potential increases in the cost of using their mobile devices abroad, so British users do not get stuck with unanticipated fees? Finally, what measures do the Government plan to take to protect the consumer interest and guarantee that charges for calling or texting EU countries from within the UK do not increase?

2.38 pm

Vernon Coaker: It is a pleasure to serve under your chairmanship, Mr Sharma. I want to make a few remarks in support of my hon. Friend the Member for Ogmore (Chris Elmore). It is interesting that while we are in here, most Members are referring to their phones. We are discussing the relationship between the information we receive on our phones, how we receive it and the regulatory framework within which that operates.

I want to ask the Minister a couple of questions. As I say in every one of these Committees, delegated legislation is sometimes difficult because we cannot amend anything. We will all have been asked questions at surgeries by individuals or businesses who have been affected by some change in legislation that we have never heard of, but that turns out to have been debated in an SI Committee on a Tuesday afternoon, and we have to delve into the parliamentary records to see what happened. This is one of those SIs.

Most of the SI is impenetrable—I do not understand which regulations refer to which other regulations—but I know it must be important. My hon. Friend the Member for Ogmore, in his very good speech, tried to get the Minister to provide clarification. My first question for her is this: will there be any change to the way the

regulatory framework works, the availability of data, the protection of our constituents' data or the cost to them of their phone calls? Will there be any change at all to their existing contracts as a result of this SI? The Minister needs to answer that clearly.

I ask that because the Government initially said that things would remain exactly the same and the SI was of no consequence, so it should just sail through Parliament. The European Statutory Instruments Committee, which is made up of Members from all parties, including senior Members from different parties, pointed out that not everything would be the same, so it was important that the SI was subject to the affirmative procedure. To give the Government credit, they rethought their position and recognised that there was a need for the affirmative procedure.

When we pass this SI, as no doubt we will, and voters ask us at our surgeries, "How is it that my mobile phone charges have gone up?" the answer may be, "Because of this SI." As the European Statutory Instruments Committee pointed out, in the event of a no-deal scenario, the instrument

"revokes rules regulating the prices charged to consumers for certain intra-EU communications".

In other words, those prices will not be limited. Will the Minister say what that will mean in practice for our constituents in the event of a no-deal scenario?

Obviously, none of us wants no deal, but what will that mean for our constituents? Will prices be completely beyond our control? Have we no regulation we can use against the phone companies? Can Europe do what it wants and we just have to accept it? How will the pricing framework work for UK consumers—all of us—when we are outside the EU regulatory framework, given that one of the impacts is that prices will not be limited? Presumably, everyone could be charged a higher price than they are charged at the moment, and when constituents ask us, "When did that happen?" we will have to tell them that it happened here. That is my first question: what do I say to my constituents when they ask that?

My other question—I cannot find the answer to this anywhere; the Minister just needs to confirm whether I am right or wrong—is about arrangements with respect to data sharing and mobile phone communications with countries across the world. Some of those arrangements are negotiated through the EU. If we withdraw from the EU, what will happen to all the regulatory frameworks that the EU has negotiated with other countries, such as America, China and Australia? Are those irrelevant to the SI? Are they dealt with by another SI? It would be helpful if the Minister clarified that point for the Committee and the people who read *Hansard*.

As I said, the most important question is this: can the Minister confirm that when I receive my bill in a year's time, if we have left with no deal, there will be no surprises on that bill as a result of this SI? In other words, will she confirm that my bill will not increase, that I will still have every data protection I currently have, and that no other aspect of my contracts will change?

2.45 pm

Margot James: The hon. Members for Ogmore and for Gedling raised many interesting and challenging issues, most of which are beyond the scope of the SI.

[Margot James]

None the less, I will respond to those questions. I can give the hon. Member for Gedling good reassurance on much of what he asked for. However, I will start with the issue on which I cannot: data protection if we leave the EU with no deal. That is way beyond the scope of this SI, which is about intra-EU calls and has little to do with data protection. That is guaranteed under the Data Protection Act 2018, which is what protects our public.

The hon. Gentleman asked about the EU's arrangements with other European countries that have received a decision from the EU that their data protection regime is adequate to receive data from the EU. That is another question, and we as a country will have to undergo a process that the EU will apply to us when we leave to assure it that our data protection systems are adequate. We will have our hands full with that, whether we leave with a deal or without one.

That will be much easier if we leave with a deal, and I will briefly explain why. Under the deal, we will have an implementation period, and the European Commission has given us every reason to suppose that it will commence adequacy discussions with us as soon as we sign a withdrawal agreement. During the implementation period we will remain under EU law, so there will be no disruption to our data flows. It is to be hoped that the EU will conclude adequacy discussions by the time we reach the end of that implementation period. In such a scenario, we would be able to sail forth with an adequacy decision and no disruption. There is a small risk that there might be a bit of a time delay, but we feel we can manage that. If we leave with no deal, all bets are off in that respect, and we would need another debate on that point.

I turn to the issue that is more germane to the SI: whether the hon. Gentleman's constituents will come to him with increased phone bills. Technically speaking, some people could experience an increase in the price of their intra-EU calls. However, there are many other very cheap alternatives. If people are online, they can use Skype and WhatsApp, which are free services. Of course, I am mindful of people who are not online, and people in that scenario can use calling cards.

Vernon Coaker: Will the Minister put a figure on how many people in the UK might face an increase in their bills as a result of what she has just said?

Margot James: I could not possibly put a figure on it, but I assure the hon. Gentleman that I am talking about small numbers and very small variances in price. Ofcom has a duty to keep the market under review; at present, it is satisfied that the market for international calls is highly competitive and fair to consumers, and it does not expect any significant changes. In fact, one reason why I cannot give him any figures—nor will anyone else be able to—is that Ofcom does not differentiate between intra-EU calls and calls made outside the European Union to the rest of the world; it just evaluates prices across the board. There is no database from which we could give—

Vernon Coaker: How are people charged, then?

Margot James: The phone companies will make charges. Ofcom's duty is to make sure that those charges are reasonable and fair, and that the overall market for international calls is working, whether said calls are to a member state or a third country. That is how Ofcom evaluates it. I am sure the hon. Gentleman could consult Ofcom if he was interested in going further with this line of inquiry. Its website has a lot of material. If he does, I am sure he will be satisfied that his consumers are well protected by the arrangements that are in place.

The hon. Gentleman and the hon. Member for Ogmores also asked about mobile phone charges. They are not the issue under discussion—we are talking about roaming charges—but they were set out in the SI that we took through on 14 March. However, to answer the questions posed by the hon. Member for Ogmores, I can say that the Government have negotiated with mobile operators that there will be at least a flat amount of money—around £40 per month—for people who are travelling across Europe. If consumers exceed that charge, mobile companies will be obliged to inform them that they have hit that amount of money, so that at least consumers will be informed.

The Government can do nothing further, because the regulations go beyond the UK and around the rest of the European Union, and it will be up to operators what they charge. The single market offers consumers the benefit of a cap on roaming charges. We will leave that behind, and it will be for operators in those EU countries to determine what they will charge operating companies in the UK. That is the position. We do not expect to see significant increases, but determining that will not be within the UK Government's gift once we have left the European Union.

Vernon Coaker: Can the Minister confirm whether the £40 is a voluntary cap that the Government have negotiated? At the moment, if I go to France, I get a text that tells me that anything I use will come out of my normal allowance. If there is no deal, will I get a text that says, "You can spend roaming charges up to £40"? How is that going to work?

Margot James: If that comes to pass—there are a lot of ifs, buts and maybes in this—it will not be a cap on what can be charged; it will be a threshold. Once it is reached, the operating company will have to notify the consumer by text: "You are in France, and you have just incurred £40 of roaming charges." It is a threshold, not a cap. Does that answer the hon. Gentleman's question?

Vernon Coaker *indicated assent.*

Margot James: I hope so, because that is outside the remit of this SI.

Returning to this SI, I want to answer the questions the hon. Member for Ogmores asked about the ICO and the notification of authorities around the Union. This statutory instrument omits the permissive power conferred on the EU Commission in relation to the publication of a list of measures, such as encryption, that make data unintelligible. We have omitted the part that requires co-operation between competent national authorities where there are cross-border issues, because in a UK-only context—in other words, after we have left the European Union—the provision is obsolete.

There is no change to the safety and protection of consumer data. That is guaranteed under the general data protection regulation, which we implemented in UK law last year. The hon. Gentleman asked me various questions about the inquiries into Facebook led by the Information Commissioner, and whether they came up in the half-hour discussion between Facebook and the Secretary of State. To my recollection, they did not, but the issue is certainly relevant to data protection legislation and the work of the ICO. I am not privy to that work at the moment, because the inquiry is still live.

The hon. Gentleman also asked about arrangements for our audiovisual media services industry when we leave. Again, that is well beyond the scope of this SI. If he wishes to ask questions about that or ask his colleagues to instigate a debate on that point on the Floor of the House, I will be willing and happy to respond.

Question put and agreed to.

2.55 pm

Committee rose.

