

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

RAILWAYS (SAFETY, ACCESS, MANAGEMENT
AND INTEROPERABILITY) (MISCELLANEOUS
AMENDMENTS AND TRANSITIONAL PROVISION)
(EU EXIT) REGULATIONS 2019

Monday 21 October 2019

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The Committee consisted of the following Members:

Chair: MIKE GAPES

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| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Hughes, Eddie (<i>Walsall North</i>) (Con) |
| † Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP) | † Jarvis, Dan (<i>Barnsley Central</i>) (Lab) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Lamont, John (<i>Berwickshire, Roxburgh and Selkirk</i>) (Con) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | McMorrin, Anna (<i>Cardiff North</i>) (Lab) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | † Maskell, Rachael (<i>York Central</i>) (Lab/Co-op) |
| Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| † Duncan, Sir Alan (<i>Rutland and Melton</i>) (Con) | |
| † Efford, Clive (<i>Eltham</i>) (Lab) | |
| Girvan, Paul (<i>South Antrim</i>) (DUP) | Dominic Stockbridge, <i>Committee Clerk</i> |
| † Green, Chris (<i>Bolton West</i>) (Con) | |
| † Heaton-Harris, Chris (<i>Minister of State, Department for Transport</i>) | † attended the Committee |

Fifth Delegated Legislation Committee

Monday 21 October 2019

[MIKE GAPES *in the Chair*]

Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019

6 pm

The Minister of State, Department for Transport (Chris Heaton-Harris): I beg to move,

That the Committee has considered the Railways (Safety, Access, Management and Interoperability) (Miscellaneous Amendments and Transitional Provision) (EU Exit) Regulations 2019 (S.I., 2019, No. 1310).

That is a mouthful that I will refer to as “this statutory instrument” from now on. It is a pleasure to serve under your chairmanship, Mr Gapes. I will start by explaining to the Committee why we used the affirmative procedure provided for in the European Union (Withdrawal) Act 2018.

This statutory instrument will be needed if the UK leaves the European Union without a deal, as it is important to ensure clarity and certainty for the rail industry and passengers. The statutory instrument fixes deficiencies in a number of pieces of rail-related legislation, including important changes to the rail safety legislative framework and corrections to minor issues in previous Brexit-related instruments that were raised by the Joint Committee on Statutory Instruments. In previous debates on rail Brexit legislation in the House of Lords, the Government made the commitment that the rail safety amendments and issues identified by the JCSI would be fixed in time for Brexit.

The Government have given very careful consideration to the appropriate procedure for this statutory instrument. Providing certainty and clarity to industry and passengers is our absolute priority, and we concluded that to provide the right level of certainty and to fulfil commitments made in Parliament and to industry, the statutory instrument needed to be in place for Brexit day. The use of the affirmative procedure was thus appropriate to provide such certainty and clarity.

This statutory instrument’s most significant provision is to introduce in Great Britain a two-year recognition period for part A safety certificates issued in the European Union before exit day, by amending the Rail Safety (Amendment etc.) (EU Exit) Regulations 2019. The statutory instrument also makes corrections to EU implementing legislation that came into effect on 12 April 2019, as well as some minor corrections to earlier implementing legislation.

The part A safety certificates are valid for up to five years and are essential pieces of documentation that are issued in the UK by the Office of Rail and Road. They confirm that train operators have the necessary safety procedures in place and are competent to run a railway. The statutory instrument will introduce a two-year

recognition period for the existing part A safety certificates issued in the European Union. That gives certainty that an EU-issued part A safety certificate will continue to be recognised for the purpose of operating trains on the mainline railway in Great Britain for two years after Brexit or until it expires, whichever is sooner. A train operator will then need to apply to the ORR for a new part A safety certificate and the accompanying part B safety certificate.

A two-year period provides an appropriate amount of time for the industry to prepare and align itself with the Great British domestic certification regime, and it is consistent with recognition periods introduced in other rail-related Brexit legislation. It also gives Great Britain appropriate control, which we will use to maintain our excellent safety record. Safety is always the No. 1 priority on the railway.

Only one operator has been identified as providing services in Great Britain using a part A certificate issued in another EU member state. Officials, both from my Department and from the Office of Rail and Road, have actively engaged with the operator concerned to ensure that it is prepared for Brexit.

Alan Brown (Kilmarnock and Loudoun) (SNP): What was that operator’s view on the fact that if there is a no-deal crash-out, its certificate would expire after two years rather than the time it has now, which could be longer?

Chris Heaton-Harris: I do not think that the operator has a view about the two-year period, because it hopes, by working with my officials and others, to fix that problem before Brexit day.

Alan Brown: Does that mean that that operator will apply to the ORR for an updated certificate?

Chris Heaton-Harris: Yes, that is what it is working towards.

On the amendments correcting issues in previous Brexit-related instruments, the JCSI identified minor drafting issues in two rail Brexit instruments. The Government thank the JCSI for identifying those minor drafting points. My Department has also identified minor drafting errors in two other Brexit instruments, which the instrument that we are discussing will also correct. I reassure colleagues that those drafting issues are all extremely minor and did not affect the viability of any of the Brexit instruments. However, it is important, in the interest of certainty, to ensure that we resolve those problems as soon as possible.

The instrument will also make fixes to EU implementing regulations. It makes fixes to Commission implementing regulations to maintain the ORR’s ability to charge a fee to establish the impact of an open access application. It will also make the usual technical Brexit-related fixes to various implementing regulations, including regulations on the new rail passenger services, on access to service facilities, and on establishing common safety methods for supervision by national safety authorities. I hope that everybody has enjoyed reading these papers, and I commend this statutory instrument to the Committee.

6.6 pm

Rachael Maskell (York Central) (Lab/Co-op): It is always a pleasure to serve under your chairmanship, Mr Gapes. I will not repeat the title of the legislation, which has been well documented. With just 10 days to go until the Government intend to leave the European Union, and in the light of the Minister's admission that there have been drafting issues with legislation, it is clear that rushing through legislation at the eleventh hour is not the best way of conducting business. Are we expecting any further draft regulations? I believe that at least one piece of legislation is still outstanding. When does the Minister expect it to be introduced? We are getting close to the wire.

Ensuring the safe running of our rail system is vital for passengers, staff and the economy. The UK boasts the safest railway network in the world, despite the tragic loss of life that we have witnessed in the last year. It is vital that we continue to scrutinise all legislation to ensure that standards are raised and the public are kept safe. Moving the function of oversight and the issuing of part A safety certification should the UK leave the EU is non-contentious in itself. We need, however, to ensure that the Office of Rail and Road is properly resourced to carry out its extended functions.

I have noted a succession of secondary legislation arguing for increased roles for UK agencies; however, I am concerned that increasing the pressures on those agencies without sufficient additional resourcing will place additional pressure on what are already overstretched bodies. My first ask is that the UK Government commit to keeping parity with EU standards—non-regression—in advancing safety. Had I been able to amend the draft regulations, I would have inserted such a measure. It is essential that whichever jurisdiction—the EU or the UK—has the most advanced approach to safety, the regulation of standards and the oversight of those who are to abide by such standards, the highest application is adhered to.

I note that the rail safety directive is yet to be transposed into UK law. With time short before June 2020, when does the Minister expect that work to be done? I ask that it be expedited, so that proper scrutiny can take place and we can ensure that all safety standards are upheld. Perhaps the Minister could also set out how the regulations will apply to the cross-border service across the channel over the next two years. Will he also confirm where the information that is currently shared with the European Union Agency for Railways and the European Commission will be reported to, and where supervision by national safety authorities—currently within the EU—will come from? Clearly, the role of the Office of Rail and Road will be extended. How will that be accommodated, how much will it cost, and what level of additional staffing is anticipated? The Minister must have those figures, as the regulations will come into force within the next 10 days.

Labour is not in favour of opening up the market for operations or infrastructure, and we will bring rail back into public ownership when we are in office. Can the Minister say whether there will be any changes to the market on the introduction of the regulations when it comes to the economic equilibrium test, including the impact on open access? The legislation enables the Office of Rail and Road to charge a fee for its services. Can the Minister set out the fee schedule today? Such a

schedule was absent from the legislation and could be applied within a matter of 10 days. Would an operator that currently holds a certificate that does not run out for a further five years be expected to pay for further certification from the Office of Rail and Road, or would there be continuity so that no more payment would be expected for this first wave of certification? Paragraph 2.11 of the explanatory note states that the UK will diverge “where it is clearly in the UK's interests.”

Will the Minister set out where he believes divergence will occur?

I also note the two-year grace period before the ORR alone will issue certification. If certification is not concluded within the two-year period, or if there is a failure to issue the right certification, it could lead to a serious fine or imprisonment. How will the Minister ensure that the current part A certification will be issued in time? I look forward to his response.

6.11 pm

Alan Brown: It is a pleasure to serve under your chairmanship, Mr Gapes. I will be brief. Given that these are technical regulations that relate to safety, I will certainly not be opposing them. I note that there were only eight responses from the 300 industry bodies that the Government consulted, so I take it that the industry is generally happy with the proposals.

It seems interesting that the Government believe that, in principle, they need a two-year transition period for these technical regulations; but we are supposed to believe that if the Government get the EU withdrawal Bill through, they will magically sort Brexit and all the other stuff in a year's time. These technical regulations need two years to bed in, so there seems to be a complete contrast in how things are going to go forward.

On Saturday, a Labour Back Bencher claimed that Labour had secured concessions on continuing the protection of workers' rights if there is an EU withdrawal agreement. Can the Minister confirm how workers' rights and protections will be guaranteed? Will he also confirm, as the hon. Member for York Central asked him to, how safety regulations will be maintained in order to achieve parity with the EU? Those things represent the direct opposite of a Government who want to cut red tape and are adamant that they can do things differently following Brexit. The two things are polar opposites, so can the Minister explain how those guarantees will be put in place?

Finally, I note that the papers confirm that this is a transferred matter in Northern Ireland. The Scottish National party has called for a long time for Network Rail in Scotland to be devolved to the Scottish Government. While this stuff is going on, the Williams rail review is happening. Can the Minister confirm that Brexit will not get in the way of the Williams rail review and any recommendations that come from it? Can he also confirm whether the devolution of Network Rail will be followed through, as the Scottish Government have recommended?

6.13 pm

Chris Heaton-Harris: I will answer as many of the points as I can, although some of them were political. I will steer clear of being political, because it is very easy

[Chris Heaton-Harris]

to spark a debate on Brexit, which could last the full 90 minutes. Although I am up for doing that, I am not convinced that other Members of the Committee would be too pleased—

The Chair: Or whether it is order.

Chris Heaton-Harris: Most definitely, Mr Gapes, but that is your call, not mine.

A number of points have been raised. Let me start by saying that businesses welcomed the two-year recognition period for certificates. Such certificates would expire after two years. This statutory instrument gives continuity: only one business is affected by that regulation, and it is trying to sort out its certification way before that period ends. I think we are in a good place on that.

Is there any more secondary legislation required in this area for leaving the European Union? We prioritise; we have spent ages prioritising our legislation so that we have the right package of legislation ready for 31 October. This SI has gone through the JCSI and been thoroughly checked, so I am convinced that it is absolutely spot on. I thank the Committee for its work in finding the issues that we had with previous SIs. That proves that it is working on this all the time, not just when we consult it. I also thank my Department for spotting the couple of errors that existed in previously passed SIs that we needed to correct, and that were not spotted by others.

Will these regulations lead to any loss of access to EU information? No; information related to railway safety is stored publicly online on the European Union Agency for Railways database of interoperability and safety. That will be accessible in the event that the UK leaves the European Union with or without a deal, so there are no concerns there.

The hon. Member for York Central quite rightly says that we make, and she makes, safety on our railways—for workers and passengers alike—a priority. We want the highest application of safety standards, and I give her the commitment that she asked for in that area. She also mentioned where we might possibly want to diverge in the future; as she outlined in her comments, if we wanted to go further in the realm of safety, we absolutely would. I think there would be agreement on both sides of the House on that.

Rachael Maskell: Can the Minister therefore confirm that should the European Union advance its safety standards, the UK would at least keep parity with those standards—or, as he has just related, go beyond those standards?

Chris Heaton-Harris: Yes, I think I can; in fact, we will not be diverging to reduce safety standards from where they are now. We might choose to diverge to increase our safety standards, but I give the hon. Lady the commitment that she asks for about not reducing safety standards through diverging—absolutely, 100%.

Rachael Maskell: May I split hairs with the Minister on this issue? He has clearly stated that we will not regress from where we are now, but if the European Union were to advance its safety standards, would we keep parity with it at that juncture?

Chris Heaton-Harris: I would like to think so, but I honestly cannot answer, because I have no idea what the European Union might do in the future. I would like to think that we would be in advance of European Union standards. Certainly, there is no rush to diverge in any way from current European Union safety standards, and the only push that I can see from this Parliament and domestically is for better standards. I would assume, therefore, that if the European Union tried to improve its safety regulations and regime, we would be ahead of that curve already and the EU would be following us.

There were a number of questions relating to the Williams review of the Office of Rail and Road, its resources and whether it needs additional resources. There will be no additional cost to the ORR or train operators from Great Britain's safety regime after Brexit, so, realistically, the ORR should have sufficient resources already. The Williams review opens up opportunities for how these things could be both resourced and policed in the future. We will doubtless have quite some debate across the Floor of the House on that, but that is for another time.

On devolution, I am as ambitious as the hon. Member for Kilmarnock and Loudoun is to have devolution writ thick through the Williams review. That, again, is not a debate for these particular regulations, but it is one that I look forward to having with him in the future.

Question put and agreed to.

6.20 pm

Committee rose.

