19 April 2018

Dear Sharon,

During the debate on the EU (Withdrawal) Bill on Wednesday 28 March, you and other noble Lords made useful and detailed contributions on Schedule 5: Publication and rules of evidence (the Queen’s Printer). I am sorry that I was unable to respond to all of the points raised at the time and I promised to write.

As I said during the debate, we need to separate how retained EU law is incorporated from the duty of publication that schedule 5 would confer on the Queen’s Printer. I do appreciate how the two are connected in practice and also how they can be conflated. It is here, I think, we come to the heart of the issue.

Our main point of concern in the debate was the provision of a power for Ministers to exempt the Queen’s Printer, by direction, from the publication duty in paragraph 1, where the Minister is satisfied that one or more relevant instruments are not (or will not become) retained direct EU legislation. The debate frequently touched on the importance of proper scrutiny on both the granting of powers to Ministers and the use of those powers, and on the practicalities involved in this particular case. I want to make absolutely clear that the power does not enable a Minister to determine what is or is not retained EU law and it is not designed to prevent aspects of retained direct EU legislation being published. If there is any doubt regarding whether a particular provision of pre-exit EU legislation forms part of retained EU law, this will be determined by the courts as necessary, not by Ministers.

The power only allows Ministers to give a direction exempting the Queen’s Printer from the duty to publish a relevant instrument, where they are satisfied that it is not (or will not become) retained direct EU legislation. A direction simply removes the obligation (the duty) on the Queen’s Printer to publish a particular instrument, it does not determine whether or not the instrument forms part of retained EU law. It is therefore a clearly limited power, with a specific purpose in mind - i.e. reducing the publication of instruments that clearly do not form part of retained EU law. All that said, I do recognise your concerns and we are considering further the points made during the debate.

Anne.
Returning to the wider issue of publication, I want to set out our approach in the context of the size of the practical task the Queen’s Printer or, more directly, The National Archives, has taken on.

Our starting point is how people access EU law today. EU legislation, along with other documents, are published on an official website of the EU Publications Office, EUR-lex. Individuals and businesses then consider what aspects of EU law produce legal effects that are relevant to them. EUR-lex, to answer Baroness McIntosh’s question, is the central repository of EU law.

The Government, like the Lords Constitution Committee and other colleagues in the House, wants to ensure full transparency and not limit access to necessary information. We have started from the principle of openness and transparency so there will be ready access to all documents of potential relevance. The National Archives has a comprehensive plan to meet these needs.

The National Archives is providing two services. Firstly, there will be a new online collection of texts and documents, delivered as part of the government’s official Web Archive, that captures the full body of EU law, as published on EUR-Lex (the official source of EU law) as it stands on exit day. This archive copy of the EUR-Lex website on exit will include the electronic version of the Official Journal of the European Union, as well as supporting materials, and judgments of the European Court of Justice. This will ensure that the public have access to the complete body of EU law from EUR-Lex as it stood on exit day, but this archive will not update with changes made at an EU level post-exit. It will also provide a clear audit trail for the material that goes on to be published by the Queen’s Printer on legislation.gov.uk.

This work is of little use if the public cannot locate the law as it applies to them post-exit, and I understand the concerns of Baroness Ludford about how people are to find this information. The second part of The National Archives’ service will therefore see the gradual incorporation of retained direct EU legislation into government’s official legislation website, legislation.gov.uk, to move towards a single source of all official UK legislation post-exit. It will be the expected first point of access to retained direct EU legislation post-exit for most UK citizens. This will mean the published instruments will benefit from several features available on that website including advanced search and browse functions.

The National Archives will also enhance the legislation.gov.uk website in response to users’ needs. User research has clearly shown that users expect the legislation they find on legislation.gov.uk to be up to date. To help users better understand the status of the instruments they are viewing, The National Archives aim to produce “as amended” versions of retained direct EU legislation. This will include a full timeline of changes both pre-exit and incorporating amendments made by UK legislation post-exit, with annotations so users can verify the text. There will also be clear messaging and signposting on the site to assist users in identifying relevant legislation. To support this messaging, any Ministerial Directions will also be published on legislation.gov.uk, creating a clear link to legislation which is not required for publication.

Preparatory work to deliver these services is already underway. Given your interest, I would like to offer you a demonstration of the services by The National Archives and DExEU. Your input would be welcomed. Please contact my office if you would like to arrange this.
I hope you find this letter helpful. I will also send a copy to all those Peers who spoke to the amendment as well as Lord Ashton, PUSS, DCMS, Lord Callanan, PUSS, DExEU and Jeff James, the Queen’s Printer and CEO of the National Archives. I will place a copy in the House library.

With kind regards,
Yours sincerely,
Annabel
BARONESS GOLDIE

Baroness Bowles of Berkhamsted
House of Lords