

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT CONSTRUCTION PRODUCTS
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2019

Monday 4 February 2019

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

† Aldous, Peter (*Waveney*) (Con)
 † Antoniazzi, Tonia (*Gower*) (Lab)
 † Blackman-Woods, Dr Roberta (*City of Durham*) (Lab)
 † Bruce, Fiona (*Congleton*) (Con)
 † Cameron, Dr Lisa (*East Kilbride, Strathaven and Lesmahagow*) (SNP)
 † Donelan, Michelle (*Chippenham*) (Con)
 † Eagle, Maria (*Garston and Halewood*) (Lab)
 † Elmore, Chris (*Ogmore*) (Lab)
 † Green, Chris (*Bolton West*) (Con)
 † Howell, John (*Henley*) (Con)

Huq, Dr Rupa (*Ealing Central and Acton*) (Lab)
 † Lamont, John (*Berwickshire, Roxburgh and Selkirk*) (Con)
 † Leslie, Mr Chris (*Nottingham East*) (Lab/Co-op)
 † Malthouse, Kit (*Minister for Housing*)
 † Powell, Lucy (*Manchester Central*) (Lab/Co-op)
 † Prisk, Mr Mark (*Hertford and Stortford*) (Con)
 † Quince, Will (*Colchester*) (Con)

Dominic Stockbridge, *Committee Clerk*

† **attended the Committee**

Fifth Delegated Legislation Committee

Monday 4 February 2019

[MR ADRIAN BAILEY *in the Chair*]

Draft Construction Products (Amendment etc.) (EU Exit) Regulations 2019

6 pm

Maria Eagle (Garston and Halewood) (Lab): On a point of order, Mr Bailey. Could I have your guidance on whether it is in order for the documentation to which the regulations before the Committee refer not to be present in the room for Members to consult?

The Chair: What is being considered is the documentation that you have in front of you. The Government could have provided other documentation, but it is in order to go ahead with the documentation that we have at this moment.

6.1 pm

The Minister for Housing (Kit Malthouse): I beg to move,

That the Committee has considered the draft Construction Products (Amendment etc.) (EU Exit) Regulations 2019.

These regulations were laid before both Houses on 18 December 2018. They are part of the Government's programme of legislation to ensure that, if the UK leaves the EU without a deal or an implementation period, there continues to be a functioning legislative and regulatory regime. Leaving the EU with a deal remains the Government's top priority—that has not changed—but the responsible thing to do is to accelerate no-deal preparations to ensure that the country is prepared for every eventuality. The regulations are being made using powers in the European Union (Withdrawal) Act 2018 to fix legal deficiencies in retained EU law, in order to reflect the fact that the UK will no longer be an EU member state after exit day.

Maria Eagle: Will the Minister give way?

Kit Malthouse: Let me make a bit of progress.

I will start by providing some context, or background, to the regulations. The construction products regulation, or CPR, is an EU regulation that is directly applicable in all EU member states. It seeks to remove technical barriers to the trade of construction products, and applies UK-wide.

Maria Eagle: Will the Minister give way?

Kit Malthouse: I will not, sorry.

The CPR harmonises the methods of assessment and testing, the means of declaration of product performance, and the system of conformity assessment of construction

products. It does not harmonise national building regulations, and individual member states remain responsible for safety, environmental, energy and other requirements applicable to construction works. When a harmonised standard exists for a product, the CPR places obligations on manufacturers, distributors and importers of that product when it is placed on the market, including that the product must be accompanied by a declaration of performance and affixed with the CE mark. At the point at which the UK leaves the EU, the CPR will become retained EU law and will therefore form part of our legal system.

Maria Eagle: Will the Minister give way?

Kit Malthouse: In a moment, please.

Without the amendments made by this instrument, the CPR's provisions would not have practical application in the UK, because the UK will not be an EU member state. The CPR also confers several functions on the European Commission that will no longer have effect in relation to the UK.

Maria Eagle: I am grateful to the Minister for finally giving way, and it is good to hear his explanation of the regulation that this instrument amends. Can he tell the Committee why there are no copies of that regulation in the room for Members who are meant to be scrutinising the instrument to consult?

Kit Malthouse: As I said in my opening remarks, the instrument has been before the House since 18 December. It has been perfectly possible for Members to investigate it and to seek those documents for the past month and a half. If the hon. Lady has failed to do so, that is not our lookout.

Mr Mark Prisk (Hertford and Stortford) (Con): The Minister may not recall, but during the long period of the Labour Government, when I was in opposition, there were numerous occasions on which not only amendments or documents were not present—

Maria Eagle: When?

Mr Prisk: Numerous occasions.

Mr Chris Leslie (Nottingham East) (Lab/Co-op): When? Name them.

Mr Prisk: The entire time when the hon. Gentleman was in government and I was in opposition.

Mr Leslie: Name us an example.

Mr Prisk: I am very happy to name them—

The Chair: Order. Will Members not chunter from a sedentary position?

Mr Prisk: My question—which I am trying to ask without interruption from the Opposition—is this. Does the Minister agree that the fact that this instrument has

been tabled since before Christmas, and that Opposition Members have not taken the opportunity to do anything about it, suggests that their anger today is somewhat synthetic?

Kit Malthouse: My hon. Friend has put his finger on the button. From the start of this sitting, it has been obvious that all this is not really about the EU construction products regulation; it is about a rejection of the whole process of properly preparing the country for all eventualities. I know that the hon. Member for Garston and Halewood regards herself as an assiduous Member of Parliament, but I am afraid that I cannot compensate for her dilatory approach to these regulations by producing a paper that she has had well over a month to look at and research.

Maria Eagle: I was simply raising the reasonable suggestion that if we are being asked to look at detailed amendments to a regulation, to which the Minister is referring, it is normal practice—it certainly was when I was a Minister—to have enough of every document that an instrument is amending in the Committee Room for Members to consult and look at during our proceedings. That is not unusual; it was quite normal when I was a Minister and it is not unreasonable. I am not angry, but I do not think it is reasonable for us to have proceedings such as these without being able to see those documents as we consider the SI. It was quite normal when I was a Minister to ensure that all those documents were present in the room, so it is a matter of some concern that on this occasion they were not.

Kit Malthouse: I note the hon. Lady's concern. I would have assumed that, in her no doubt extensive preparation for this sitting, she would avail herself of the facilities in the Library and elsewhere to find those documents and study them, if she was giving a speech or preparing interventions on this subject, but I note her concern for the future.

Mr Leslie: Will the Minister give way?

Kit Malthouse: No.

Back to the point: the general policy is to keep the same requirements but convert them into a UK regime. These regulations do not change the key requirements currently in place. This instrument would ensure that the same standards applied immediately after exit day as applied before the UK left the EU.

The effect of these regulations can be considered in five parts. First, they would preserve current European harmonised standards as UK designated standards. This would mean that, immediately following exit day, the UK's product standards under the CPR would be identical to those under the EU's regime, so there would be no change to the standards that businesses must meet. Thereafter, new UK standards would be designated by the Secretary of State, informed by expert advice from the national standardisation body.

Secondly, where a third-party conformity assessment is required for UK standards, it would be undertaken only by approved bodies established in the UK. These regulations grant approved body status to current CPR conformity assessment bodies based in the UK. Where

an approved body undertakes the third-party conformity assessment that would be required under the relevant UK standard, the manufacturer must affix the new UK mark, which would be established under a separate instrument laid by the Department for Business, Energy and Industrial Strategy. Details of the mark and guidance for industry were published at the weekend.

Thirdly, alongside the domestic arrangements that I have outlined, we are putting in place a continuity approach for products that comply with the European regime. This would mean that products meeting requirements under the European CPR could continue to be placed on the UK market without any need for retesting or additional marking. This would apply in all cases where the relevant UK and EU product standards remain the same, provided that any third-party conformity assessment has been carried out by an EU-recognised conformity assessment body. As I have mentioned, all EU and UK standards will be the same immediately after we leave the EU. These arrangements are intended for a time-limited period, and we would ensure that businesses are given sufficient notice in advance of this period coming to an end. This approach would ensure that goods continue to flow into the UK market and would help to minimise disruption for businesses and consumers, which is vital to support the UK's housing and infrastructure ambitions.

Fourthly, there would be an optional route available to enable products that are not fully covered by a UK-designated standard to be UK-marked. This would work in a very similar way to how the CPR currently works on an EU-wide basis.

Fifthly, and finally, this instrument would give the Secretary of State regulation-making powers to enable the UK to make technical updates to the CPR framework. This would replicate the role of the European Commission under the CPR to make "delegated and implementing acts". This provision is necessary to ensure that the UK's CPR regime can respond to technical progress and to new or emerging issues. This would enable Parliament to scrutinise any new measures, and provides a similar level of oversight to that of the EU's regime. Transferring this function is in line with the Government's approach, across multiple policy areas, to transferring functions currently within the remit of EU authorities to the relevant UK bodies. Transferring this power to the Secretary of State would be the most effective way of ensuring that the regime remains fit for purpose after the UK's exit from the EU, while allowing for an appropriate level of parliamentary scrutiny.

I should note that the regulations also make a number of technical operability fixes to correct deficiencies arising from EU exit in the market surveillance regime provided for under domestic legislation.

Our overall approach to the amendments is completely in line with the policy and legal intent of the withdrawal Act and enacts the policy that the Government set out in a technical guidance note to industry in September. The regulations serve a very specific purpose: to prioritise stability and certainty if the UK leaves the EU without a deal or an implementation period. Thereafter, they provide a stable basis for Parliament to change the law where it is in the UK's best interests.

To conclude, I believe that the statutory instrument is necessary to ensure that construction products regulation continues to function appropriately if the UK leaves the

[Kit Malthouse]

EU without a deal or an implementation period. I hope that colleagues will join me in supporting the draft regulations, which I commend to the Committee.

6.10 pm

Dr Roberta Blackman-Woods (City of Durham) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey. I thank the Minister for outlining the purpose of the statutory instrument and for giving me some interesting reading over the weekend when, thankfully, there was a lot of snow in Durham and I was snowed in, otherwise I am not entirely sure I would have got to the end of it. I gently say to him that the regulations are very complicated. It would be helpful if he assisted the Committee in its deliberations as much as possible, which means ensuring that information is available not only to himself, but to all members of the Committee.

I am pleased that the Minister made clear that we are having to consider the SI only because the Government have refused to take off the table a no-deal scenario for leaving the EU. It would probably make much more sense to all of us in this room if the Government had, instead of having to go through this lengthy process with all the costs involved—instead of going through SI after SI to try to put in place arrangements to allow for a no-deal scenario—just agreed to take no deal off the table.

If the Government are irresponsible enough to get us to a no-deal situation, I guess we have to recognise the importance of the SI. We must pay attention to the safety of construction products, which is always important, but is especially so post Grenfell. Given that, I can see why the SI is needed.

Paragraphs 2.2 to 2.9 of the explanatory memorandum clearly set out how the Construction Products Regulations 2013, accreditation systems and notifiable bodies work under EU law. It is clear that the system must change immediately if no transition arrangements are in place for leaving the EU. The Opposition recognise that the regulations are needed and we will not press them to a vote, but I have some questions for the Minister.

Paragraph 2.14 of the explanatory memorandum states:

“Existing European harmonised standards will become UK ‘designated standards’”

and “will be identical”. How long can we expect them to be identical? Will the Minister set down a particular period before they can be reviewed or changed?

Secondly, the statutory instrument presents two routes to designate a standard. Will the designation be the same as currently? What dictates the route chosen? Is it that the Secretary of State mandates a UK standardisation body to develop a standard following appropriate consultation, or does the Secretary of State designate that a harmonised standard adopted by the EU standardisation body should be adopted? The instrument states that will happen on a case-by-case basis, but what does that mean in practice? What criteria are to be used?

Paragraph 2.17 makes it clear that existing notified bodies will become approved bodies, but new ones can also be created. Does the Minister intend to ask the Secretary of State to approve new bodies, and is the

process outlined in paragraphs 40 and 41 in part 8 of schedule 1 the same one that is currently used to designate such bodies under EU law?

I understand from paragraph 2.19 of the explanatory memorandum that products that meet the EU construction products regulation will be able to be used in the UK. What is less clear, and I would appreciate the Minister saying something about this, is whether the EU, and indeed the rest of the world, will accept the new UK mark.

Paragraphs 2.20 and 2.21 of the explanatory memorandum could be read as quite alarming, and I would be grateful for reassurances from the Minister that providing a route to UK marks for products not fully covered by the CPR will be exactly the same as at present, and that that route will not lead to a lowering of the quality and safety of products entering the UK.

There are other areas of possible concern. For example, paragraph 19 in part 5 of schedule 1 gives the Secretary of State the power to withdraw the reference to the designated standard where it is no longer considered appropriate. We need more explanation of how and why that would happen, and critically an assurance that that provision would not be used to dilute standards, but only to improve them.

Also in part 5, paragraph 28 states:

“The Secretary of State may make regulations, in accordance with Article 60, to establish classes of performance...of...products.”

Again, we need reassurances that any changes to those classes, and how they are applied, will be about improving the quality of products and their safety, not diluting them once new classes are made.

Moving on to paragraphs 40 and 41 in part 8, can the Minister confirm that the process for designating approved bodies will be exactly the same process as used at present, and that the power to remove them under paragraph 50 will be the same as at present?

Lastly, can the Minister tell us what paragraphs 70 and 71 in part 12 mean? They are clearly about market surveillance. Again, we need to know whether the system of surveillance will change or remain exactly the same.

6.18 pm

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (SNP): I thank everybody who has worked so hard on the regulations, and I thank the Minister for the discussions that he has had with the devolved Governments on these issues.

It is important that regulations maintain standards and safety, while ensuring minimal disruption to business right across the United Kingdom. I agree that there has to be flexibility, and that ongoing scrutiny is essential. Will the Minister say what discussions have been had with the EU and beyond on the recognition of the UK mark?

6.19 pm

Kit Malthouse: The hon. Member for City of Durham asked a series of questions. I hope to answer them all; if I fail to, I am happy to write to her with some detail.

Although they are intended to be time limited, the hon. Lady is right that the regulations do not denote a time. That would be a matter for the Secretary of State,

but fundamentally we will consult industry, as we have done in drafting the regulations, before we make any further changes.

On the hon. Lady's question about harmonisation, as standards are introduced at EU level, our intention is, again, to consult business. As she will know, we are effectively going through a reform of the building regulations, and in particular the construction product process post Grenfell, and that process is necessarily very consultative with industry as we go. We are very keen to buy them in to a change of culture, both within the industry and regarding a new system of regulation around building safety and in particular around products. Frankly, that will be quite a large amount of work for the Department and the industry over the next few years, so it is vital that we stick together.

As for the EU accepting the UK mark, I do not believe that that matter has yet been concluded. It is obviously a matter for the EU; people would have to ask the EU about that. One would hope that, given that things will be identical—certainly initially—the EU would accept the UK mark, but that is obviously subject to the final agreement.

Dr Blackman-Woods: Can the Minister say something about the rest of the world, as well as the EU? What process do the Government have in place to ensure that the EU and other countries accept this mark?

Kit Malthouse: As I am sure the hon. Lady knows, the recognition of UK products around the world is subject to a number of agreements, some of which go via the EU and some of which do not, and are global, forming the regulatory regime that is constructed by other bodies.

We want to try to ensure through these changes to regulation that there is as much continuity—certainly initially—for the industry as possible, and that where there may be divergence or changes that are deemed to be in the best interests of the UK in the future, that is done on a very consultative basis with the industry, because although we may have views in the UK about how we want our building products to be manufactured and constructed, we obviously also have to bear in mind their saleability overseas, and where possible, we want to avoid manufacturers having to create two or more products for different sorts of markets.

Much of the attraction for somebody like me who voted to leave the EU is that we can play a much greater part in a global regulatory environment around particular product areas where we excel and where we will do well, because although there is a common regulatory environment within the EU, the hon. Lady will know that that is not true across the whole of the globe. We think that some of those growing markets in India, China and South America would benefit from having a global direction in terms of regulation, and we want to be able to play a part in that. For example, it is quite obvious that pharmaceuticals is moving to a global regulatory alignment, and that can be nothing if not good for a country such as ours, which leads in that sector.

The hon. Lady asked about trading standards being able to enforce this regime. On exit day, UK rules and standards will be the same as the EU's. That means that the risk of products that do not comply with UK rules

entering the UK will be no higher than it is now. The approach to enforcement is now, and will continue to be, intelligence-driven and risk-based.

The hon. Lady also asked a number of questions that were essentially about whether I am able to bind future Secretaries of State or Governments into an ever-upwards ratchet. Certainly, my own aspiration would be that any divergence, whether it is regulation of classes of performance or other matters to do with these products, should lead to an improvement in standards. However, as I say, I cannot speak for future Ministers, Secretaries of State or indeed Governments who might decide to do something other.

Dr Blackman-Woods: Does the Minister understand that that is the crux of the issue about this particular instrument? A number of consumers and citizens of this country are concerned because, when we leave the European Union, we do not want the quality and standards of our building products or any other products to be part of a race to the bottom. Therefore, I think that he needs to give the Committee at least a degree of assurance that at least this Government will seek to improve the standards of quality and safety, and will not weaken or dilute them.

Kit Malthouse: I am happy to give the hon. Lady exactly that assurance. As I said earlier, all this work is taking place against the backdrop of our overall work on building regulation and product standards, and indeed product testing, and the entire regime around these products. Our aspiration is to maintain or improve standards—hopefully, improve. Having said that, in the regulations before us we are keen to retain some flexibility, as I said in my speech, to cope with changes in technology and new developments, positive and negative. We now sadly know that, to our cost and in tragic circumstances, aluminium composite material cladding is not a product that should be allowed on the market. There are big questions to be asked about whether the building regulation regime and a product standard regime were functioning correctly.

Retaining flexibility to cope with new standards, technology and developments in the industry is important, not least because the UK is a world leader in some of these developments, and new products might emerge for which the EU, should we separate without a deal, does not have a regulatory regime that is immediately equivalent, and we might need to create one in real time. Who knows? There might be graphene-coated products that come forward for use in construction. We are certainly spending a lot of time and energy on modern methods of construction. The Government are supporting new forms of manufacturing homes, particularly offsite homes, but we need to retain a little flexibility.

Finally, the hon. Lady asked about market surveillance. As far as I can see, the current situation will not change, and our ability to take enforcement action is unchanged by the regulations.

The Government believe the regulations are needed to ensure that the construction products regulations continue to function if the UK leaves the EU without a deal or an implementation period. I hope the Committee has found the sitting informative and will join me in supporting the regulations.

Question put and agreed to.

6.27 pm

Committee rose.

