

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT KIMBERLEY PROCESS CERTIFICATION
SCHEME (AMENDMENT) (EU EXIT)
REGULATIONS 2019

Tuesday 5 February 2019

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 9 February 2019

© Parliamentary Copyright House of Commons 2019

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

- | | |
|--|--|
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † McFadden, Mr Pat (<i>Wolverhampton South East</i>) (Lab) |
| † Cleverly, James (<i>Braintree</i>) (Con) | † McInnes, Liz (<i>Heywood and Middleton</i>) (Lab) |
| † Duncan, Sir Alan (<i>Minister for Europe and the Americas</i>) | Mann, John (<i>Bassetlaw</i>) (Lab) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Freer, Mike (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † Stewart, Bob (<i>Beckenham</i>) (Con) |
| † Grant, Peter (<i>Glenrothes</i>) (SNP) | † Twigg, Derek (<i>Halton</i>) (Lab) |
| † Hands, Greg (<i>Chelsea and Fulham</i>) (Con) | † Umunna, Chuka (<i>Streatham</i>) (Lab) |
| † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | Jeanne Delebarre, <i>Committee Clerk</i> |
| † Hoey, Kate (<i>Vauxhall</i>) (Lab) | † attended the Committee |

Seventh Delegated Legislation Committee

Tuesday 5 February 2019

[MR NIGEL EVANS *in the Chair*]

Draft Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019

2.30 pm

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

That the Committee has considered the draft Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Evans.

During the 1990s, the trade in conflict diamonds was a significant cause of instability, particularly in Africa. The Kimberley Process certification scheme is an important tool for reducing conflict in Africa and elsewhere. Great strides have been made since its inception in 2002. Today, more than 99% of the global supply chain of rough diamonds is certified as conflict-free.

From the beginning of the Kimberley process, the UK has been represented by the European Union. Together with our European partners and other participants, the UK has been active in support of the Kimberley process and its principles: increasing transparency, ensuring that trade is limited to Kimberley process participants, and applying effective controls.

The Kimberley process is not a treaty and has no basis in international law. It is simply a grouping of interested states known as the “participants”, which have decided to enact domestically the same process for verifying the trade in rough diamonds at their borders. They then made the political decision to permit the trade in rough diamonds only with similarly minded states within the Kimberley process. Its legal effect, therefore, comes from domestic legislation. Hence, if we are to continue to participate in the process after we leave the EU, as we intend, the draft regulations are essential.

As Members will be aware, until 29 March 2019 the UK remains a full member state and is subject to all the rights and obligations of EU membership. Those include trade arrangements that fall within the EU’s common commercial policy, such as the Kimberley process. Under the terms of the withdrawal agreement, we have agreed with the EU that it will notify international partners that the UK is to be treated as a member state during the implementation period. That would mean that the UK continues to participate, represented by the EU, and that the UK trade in Kimberley process-compliant rough diamonds would continue.

In the event that we are unable to enter an implementation period, our participation through the EU would end. UK trade would be frozen until our application for participation was approved by the other participants in the Kimberley process. In either case, this draft legislation

will ensure that we continue to comply with the requirements of the Kimberley process. It will secure our borders, prevent any non-compliant rough diamonds entering the UK supply chain and send a strong message to would-be smugglers that the UK is not a recipient of conflict diamonds.

James Cleverly (Braintree) (Con): Will my right hon. Friend give way?

Sir Alan Duncan: May I first explain the logic fully? Perhaps my hon. Friend will save his comments for later in the Committee sitting, when I shall be happy to answer.

The draft regulations will also reassure the Kimberley process bodies of the UK’s commitment to the scheme ahead of our application for independent participation. The instrument does not undermine the wider EU withdrawal negotiations, nor does it assume no deal. Instead, it lays the groundwork for our future relationship with, and independent participation in, the Kimberley process. That matters because maintaining our relationship with the process is an intrinsic element of our international commitment to conflict prevention. It is also pivotal to how we support UK business to operate responsibly in post-conflict and difficult environments.

In 2017, the UK’s exports in rough diamonds outside the EU were valued at £67 million. We expect that to continue. The Government Diamond Office implements the Kimberley process in the UK and works closely with Border Force to ensure that we meet the minimum standards set by the process.

As an EU member state, we are a well-respected participant in the Kimberley process, and we expect to remain so as an independent participant. We have already informed the EU of our intention to initiate our application. Demonstrating that we have appropriate legislation in place is a fundamental part of that application process. That is the purpose of the instrument, which, once passed, will apply even if we are not a participant immediately at the point that the UK leaves the European Union or after any implementation period.

I welcome the opportunity to hear any comments. The regulations are essential to the process I have described and I commend them to the Committee.

2.36 pm

Liz McInnes (Heywood and Middleton) (Lab): It is important to have clarity about the Kimberley process certification scheme in future. It is right that the UK should continue to participate in international initiatives to stop the trade in conflict diamonds to ensure that the purchase of diamonds does not finance violence in Africa.

I have several questions to ask the Minister in the interests of clarity. The explanatory memorandum does not give a great deal of detail about the consequences of the legislation, specifically the potential damage to trade if the UK’s application to the Kimberley process is delayed. I ask the Minister to provide further information to enable us to make informed decisions.

The document that describes why the measure was brought to the special attention of the House states that it,

“gives the Secretary of State power, by statutory instrument subject to the affirmative procedure, to make further amendments to the Council Regulation where he or she ‘considers that this [Council] Regulation is no longer effective to ensure that the law of the United Kingdom is consistent with the international Kimberley Process requirements’.”

It also states that,

“this mechanism allows no more than is appropriate”,

which raises concerns about how clear the powers are. I should be grateful for clarification from the Minister on that point.

On the broader impact of Brexit on the diamond trade in the UK, it is my understanding that 94% of our trade in that area is with the EU. That will most likely disappear after Exit day, regardless of the outcome of our application to the Kimberley process. After we leave the EU, trade will probably go directly to the EU, rather than via the UK, as before. Has the Department made any assessment of the cost of that to the UK?

Finally, on the lack of any impact assessment, I find it unsatisfactory that the documents state that no impact assessment has been done because it is not believed that there is any impact. I do not think that is a good enough reason not to do an impact assessment. The point of doing an assessment is to ascertain what the impact is. I thank the Minister for his remarks and I should be grateful if he would clarify those points.

2.39 pm

James Cleverly (Braintree) (Con): I have family from Sierra Leone; it was the place of my mother’s birth. The country was racked with conflict, in large part driven by the illegal diamond trade. Does the Minister agree that this statutory instrument not only helps to ensure that the trade in illegal rough diamonds is curtailed, but sends a powerful signal to our international friends and partners that, irrespective of our membership of the EU, the UK stands by its moral commitments to some of the poorest countries in the world? By passing this statutory instrument, the UK Government will be sending a very powerful signal to Sierra Leone, in particular, which has a longstanding relationship with this country, that we take its plight seriously and that we are doing everything we can to ensure that conflict does not arise again in the future.

2.40 pm

Peter Grant (Glenrothes) (SNP): It is a pleasure to serve under your chairmanship, Mr Evans. I thank the Minister for his comments.

I will not oppose this statutory instrument, because it is important that the protection that is achieved through the Kimberley process continues, and it is vital that the United Kingdom remains part of it. I would obviously much rather that we did not have to go through this, and I very much hope that this statutory instrument is not needed, because it will come into force only if we leave the EU without a deal. Given that nobody is openly supporting that, it would be an unfortunate, if not ridiculous position for us to be in.

What difference does this statutory instrument make to the United Kingdom’s ability to influence the direction of the Kimberley process and its participating countries in the future? Does it make it easier for the United Kingdom to address some of the weaknesses and limitations

in the existing process? Although the Kimberley process is effective to an extent in stopping the trade of rough diamonds where it is likely to finance armed violence against a country’s recognised Government, it covers only rough diamonds, not cut or polished stones. Does the United Kingdom expect actively to promote an extension of the scheme to cover the trade in finished or polished diamonds?

The definition of conflict diamonds appears to refer only to the use of the diamond trade to finance violence against the recognised Government of a country. There is no doubt that, in the recent past, the Governments of some of the biggest diamond-producing countries in the world have used the diamond trade to finance repression and violence against their own people. That has certainly happened in Zimbabwe, and it may have happened in the Democratic Republic of the Congo and other diamond-producing nations. In addition, appalling human rights abuses all too often go with the diamond trade and the diamond business. A country’s natural resources should be used for the wellbeing and welfare of the people of that country, and international traders and speculators should get only what is left. That is quite clearly not what happens in the diamond trade.

It is important that, where there are massive fortunes to be made through the exploitation of natural resources, those who do the work and face the physical risks of carrying it out get fair reward for their time and labour. People who work in the diamond mines in a lot of those countries certainly do not get that, and their families get next to nothing. All too often, miners are killed in accidents because the safety precautions are inadequate. Although the Kimberley process helps to cut down—although not to eliminate completely—one way in which the substantial wealth that diamonds represent can be abused, it does not even begin to touch some of the other ways that it can be misused.

It is a constant source of shame to us all that so many of the people who are involved in creating some of the most valuable and highly sought-after goods on the planet live and work in utterly intolerable conditions. At the moment, none of that is addressed through the Kimberley process. I hope the Minister will give us some kind of indication of how the UK might seek to use its influence to ensure that, in the future, those whose labours produce so much wealth for so many people have a chance to enjoy a fair share of it for themselves.

2.44 pm

Bob Stewart (Beckenham) (Con): The Kimberley Process certification scheme was established in 2003. Although it is a great system and I totally support the draft regulations, we must not consider it perfect. The scheme is not perfect; blood diamonds are still used by various regimes for different reasons, as the hon. Member for Glenrothes outlined.

We should obviously continue with the process, but I was not sure whether the Minister was implying that we would not be able to buy stuff until we get this—will he respond to that? We cannot get diamonds into this country if we do not get the draft regulations through—is that right?

2.45 pm

Kate Hoey (Vauxhall) (Lab): I welcome the comments of both the Minister and the shadow Minister. The draft regulations are one of the many important statutory instruments that need to be passed before 29 March, whether we leave with or without a deal, so I welcome it.

Although I should probably know this, I would like to check it with the Minister: exactly how many countries participate in the Kimberley process? As part of the EU, we have been a member for a long time. Is there any doubt at all in his mind about whether a participant in the process might try to stop us joining? Is the process of becoming a member subject to a majority vote, or is it simply a matter of automatically becoming a participant when we leave or the implementation period is finished?

Will the Minister also remind me whether Zimbabwe is a participating country? If so, that draws attention to what the hon. Member for Glenrothes said—that some changes need to be made to the way that the process works. We as a country, when we are there in our own independent right, might be able to help make such changes.

2.47 pm

Sir Alan Duncan: I am grateful to hon. Members for their comments and questions. Let me endeavour to answer them in turn.

I will respond first to the hon. Member for Heywood and Middleton, on the Opposition Front Bench. Among other things, if we were not a participant, others would not trade in rough diamonds with us, so we would be out of the trading system that has emerged on the back of the Kimberley process. Potentially, that could lead to a weakness in the policing of the trade in rough diamonds.

The cost would be the same as now. Likewise, the impact is unchanged, hence the absence of a need for an impact assessment. The point that I would make is that the draft regulations are simply the transposition of the EU-based regime to an autonomous UK one, so that we can participate autonomously. I suppose the parallel is with the Sanctions and Anti-Money Laundering Act 2018: we used to do all sanctions with the EU, but now we will be able to do them on our own. The regulations are one of the changes necessary to adjust to us leaving the European Union.

In response to the hon. Member for Vauxhall, 82 countries are members, which include Zimbabwe. We are confident that our existing participant status will be embraced by the 81 as we reapply on a slightly different footing.

My hon. Friend the Member for Braintree is absolutely right to emphasise again the importance of this regime in addressing some of the worst aspects of conflict and rapacious behaviour in war-torn areas. My hon. Friend the Member for Beckenham is also right that this is not

a perfect regime, but it has been a successful and improving one, given what was there before, which was quite simply nothing.

The hon. Member for Glenrothes asked about influencing direction. We would remain a full participant, and would be so on our own, so inasmuch as we could influence direction in the past, we will still be able to do so in future. The draft regulations are a transposition of the regime—that is what such statutory instruments are for—which does not open up immediately any scope for adjusting, improving or amending, because that is not what the changes before us are intended to do.

Bob Stewart: I thank my right hon. Friend for allowing me to intervene again. May I ask whether, on 30 March—assuming that we leave on 29 March, as we will—Hatton Garden, say, will be able to import legal diamonds into the country? Is that what this is all about?

Sir Alan Duncan: There is a distinction between polished and rough diamonds—

Bob Stewart: I am sorry.

Sir Alan Duncan: So this is about a particular category of diamond. The draft regulations mean that if we were a participant, anything legal in the Kimberley process would include us in that process; if we do not pass them today, it would not.

Let me answer one more question put to me about the powers. The Kimberley process requires participating Governments to certify the origin of rough diamonds and to put in place effective controls to prevent conflict diamonds entering the supply chain. That is done through the Kimberley Process certification scheme, of which we would be a part if the draft regulations go through. In the process, each international shipment of rough diamonds must be accompanied by a Kimberley Process certificate relating to that specific shipment. In other words, the certificate is valid for one specific journey only. The certificates are issued by the exporting country's Kimberley Process authority, which has controls in place to verify that the shipments are conflict-free.

As I outlined in my opening speech, the draft regulations are crucial to our participation in the Kimberley process and, in turn, to our conflict prevention objectives and obligations. The instrument is fully consistent with the Prime Minister's commitment to be a supportive member of the European Union until we leave, and it will ensure the UK's continuous compliance with the scheme. It has the added advantage, Mr Evans, of making me a greater expert in rough trade than even you, sir. I commend the regulations to the Committee.

Question put and agreed to.

2.52 pm

Committee rose.

