PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifteenth Delegated Legislation Committee

DRAFT ENVIRONMENT AND WILDLIFE (LEGISLATIVE FUNCTIONS) (EU EXIT) REGULATIONS 2019

Thursday 14 February 2019

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Monday 18 February 2019

The Committee consisted of the following Members:

Chair: Ian Austin

† Beckett, Margaret *(Derby South)* (Lab)
† Black, Mhairi *(Paisley and Renfrewshire South)* (SNP)
† Cartlidge, James *(South Suffolk)* (Con)
† Coffey, Dr Thérèse *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Cooper, Rosie *(West Lancashire)* (Lab)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Fysh, Mr Marcus *(Yeovil)* (Con)
† Grant, Mrs Helen *(Maidstone and The Weald)* (Con)
† Hollinrake, Kevin *(Thirsk and Malton)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Mackinlay, Craig *(South Thanet)* (Con)
† Martin, Sandy *(Ipswich)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Morris, Grahame *(Easington)* (Lab)
† Nandy, Lisa *(Wigan)* (Lab)
† Stewart, Iain *(Milton Keynes South)* (Con)
† Wragg, Mr William *(Hazel Grove)* (Con)

Yohanna Sallberg, Elektra Garvie-Adams, *Committee Clerks*

† attended the Committee

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[IAN AUSTIN *in the Chair*]

Draft Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

11.30 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey): I beg to move,

That the Committee has considered the draft Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019.

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

The draft regulations are an affirmative statutory instrument on the environment, for consideration in respect of the United Kingdom leaving the European Union in accordance with the result of the 2016 referendum and subsequent agreement by Parliament. Their purpose, under the European Union (Withdrawal) Act 2018, is to provide for public authorities in the United Kingdom to exercise a series of limited legislative functions that under EU legislation are currently conferred on the European Commission.

In each case, the legislative function was conferred on the Commission so that it could sort out the technical details of a specific EU regime and adapt to changes without the frequent need to refer back to the European Council and Parliament. The powers are vital to the functioning and development of the legislation, but they are strictly limited to specific technical and administrative matters. The functions are not the kind for which, in the domestic context, we would generally require primary legislation; rather, they are suitable to be dealt with by secondary legislation, or administratively.

Examples of the functions include specifying what forms are to be used; amending technical annexes to reflect advances in scientific and technical knowledge; and updating annexes to reflect changing requirements under international agreements. A good example would be a change under the multilateral convention on international trade in endangered species, known as CITES. In 2016, at the last conference of the parties, which I had the joy of attending, we adopted a decision to change the listing status of more than 500 species of wild animals and plants. The Commission subsequently amended the basic EU CITES regulation by a 2017 regulation. After we leave the EU, the UK authorities need to be able to continue updating such technical details for domestic purposes, to ensure that the legislation keeps pace with change, including technological developments and our international commitments, without the need for primary legislation every time that a change in such matters is required.

This coming May I hope to attend the CITES conference of the parties. It is highly likely to make further technical changes to the convention, and we will need to reflect those in our national legislation within the 90 days allowed under the convention. As I have suggested, it would be difficult, if not nigh impossible, to comply through primary legislation.

Until now, Parliaments and Assemblies in the United Kingdom have had little input into how such powers are exercised. With two minor exceptions, the draft regulations provide that the legislative functions coming to the UK will be exercised through secondary legislation, which is subject to scrutiny by our Parliaments. The exercise of the functions in specified cases also requires consultation with interested parties and expert bodies—for example, regulation 9 on industrial emissions or regulation 12 on CITES.

In other cases, the principles of good public administration and the Government's own 2018 consultation principles will ensure that relevant expert advice is sought where appropriate, and that those affected by any policy developments are properly consulted. The regimes will otherwise continue to function similarly to how they do now.

Kerry McCarthy (Bristol East) (Lab): I am glad that the Minister mentioned the need for expert advice. The Department for Environment, Food and Rural Affairs, however, is incredibly stretched at the moment, so what assurances will she give on sufficient expert scientific or technical input before statutory instruments are brought before the House? It is one thing to say that Parliament gets to scrutinise, but we are not experts, and experts need to be involved.

Dr Coffey: To use the example of CITES, such bodies will often input into consideration of changes to species to be protected in future. At the moment, Parliament gets no say on that whatever; it just gets done through international agreement, with the EU just changing it so it is there. There is an element of the different sorts of science experts that we have in the United Kingdom, but we will not necessarily need to limit ourselves to the United Kingdom alone in consideration of scientific expertise in the future. A key differential is that now Parliament will have a say on bringing such things into UK law. That is a step change from what we have today.

The draft statutory instrument makes a number of adjustments, but I assure the Committee that there is no change of policy, and there will be no impact on businesses or the public. Regulation 2 confers functions under the EU regulation on persistent organic pollutants, often known as POPs. That includes, for example, a power to amend POPs waste concentration limits, for the purpose of adapting to scientific and technical progress; and to ban, restrict or modify the use of POPs in accordance with international agreements.

Regulations 3 and 6 confer functions under the EU regulations on illegal timber and timber products. The functions include a power to recognise licensing schemes in partner countries to form the basis of licensing, and to amend the list of timber products to which the licensing scheme applies.

Regulation 4 confers functions under the EU regulation establishing a European pollutant release and transfer register. The functions include a power to take measures to initiate reporting on releases of relevant pollutants from diffuse sources where no data exist, and to adopt guidelines for the monitoring and reporting of emissions.

Regulation 5 confers functions under the EU regulation on trans-frontier shipments of waste. The functions include a power to establish and amend technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information.

Regulation 7 confers functions under the EU regulation on the Nagoya protocol on access to genetic resources, and the fair and equitable sharing of benefits. The functions include a power to establish and amend procedures for monitoring user compliance and for recognising best practice.

Regulation 8 confers functions under the EU regulation on mercury. The functions include a power to specify the forms to be used for export and import restrictions, and to set out technical requirements for the environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury.

Regulation 9 confers one legislative function contained in an EU directive. That directive relates to industrial emissions, and the power relates to determining best available techniques for preventing or minimising emissions from activities covered by the directive.

Regulations 10 and 11 confer functions under the EU regulations governing the use of leghold traps and the import of pelts and goods. The functions include a power to grant derogations from the ban on the import of pelts and other products, and to determine the appropriate forms for certification of imported goods incorporating pelts of listed species.

Regulation 12 confers functions under the EU regulation implementing CITES. The functions include a power to establish restrictions on the introduction into the UK of listed species, and to provide for derogations from certain provisions.

Kerry McCarthy: Will the Minister give way?

Dr Coffey: Might I suggest that the hon. Lady makes a contribution to the debate so that I will be able to answer her questions fully?

I have explained that we will exercise those powers by laying statutory instruments before Parliament, which is not what happens today, as I have pointed out. For the sake of completeness, I draw the Committee's attention to the two minor cases in which administrative procedures will be used, rather than secondary legislation. They relate to aspects of the POPs and leghold traps regimes. In the first case, the administrative function being conferred concerns the determination of the format for the provision of information by the competent authority; in the second case, it concerns the publication of model forms for use by importers. To be clear, the draft regulations concern administrative elements, rather than a change in policy.

In addition to the above measures, the draft regulations amend the retained direct EU legislation, where that is necessary to make it function properly after exit. An example of such an amendment is changing references from "Community legislation" to "retained EU law".

All the legislative functions covered by the draft regulations fall within the environment and wildlife policy areas of DEFRA. We have decided to deal with them in a single instrument that is subject to the affirmative procedure. The draft regulations allow the nine so-called "home" instruments, which would otherwise separately confer each legislative function, to be subject to the negative procedure. In each case, the conferral of legislative functions was the only element in the "home" SI that required the affirmative resolution procedure. The structure of the regulations will allow the exercise of legislative functions by UK bodies in those areas of the environment to be considered together.

The draft regulations extend and apply to the whole of the United Kingdom. They deal with both reserved and devolved matters. In the case of reserved matters, the legislative function will be conferred on the Secretary of State to exercise on behalf of the whole UK. We have consulted extensively with the devolved Administrations about legislative functions that relate to devolved matters and, where appropriate, they have consented to our proceeding by means of the regulations. Where matters are devolved, functions are conferred on the Secretary of State and Ministers for the devolved Administrations. The default position is that each Administration will exercise a function separately. Where devolved Administrations consent on a case-by-case basis, however, the Secretary of State will be able to exercise functions on their behalf.

I point out that we are making technical amendments, in effect to allow us to continue to undertake our international obligations on such matters in a way that would not be possible if we did not have the powers. I hope that I have explained to the Committee how the European Commission does that now.

11.40 am

Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Austin. Once again, we are discussing a statutory instrument that tries to make provision for a workable regulatory framework after Brexit in the event of our crashing out without a deal. Each time, Labour Members have spelled out our objections to the Government's approach to secondary legislation, but I make no apology for doing so again because the volume of EU exit secondary legislation undermines accountability and proper scrutiny.

The Government claim that no policy decisions are being taken, but establishing a regulatory framework necessarily involves matters of judgment and raises questions about resourcing and capacity. The potential cumulative impact of all this secondary legislation will be immense, especially in some sectors. Because of the limited accountability that it allows, secondary legislation ought to be used only for technical, non-partisan, uncontroversial changes. Instead, the Government continue to push through contentious legislation without the opportunity for proper in-depth scrutiny. In that light, the Opposition put on record our deep concern that the processes regarding the draft regulations are not as accessible and transparent as they should be.

The draft regulations need to be seen in the context of the withdrawal agreement and the draft Environment (Principles and Governance) Bill. The draft Bill is not capable of maintaining current EU protections because it does not create an effective body that can make judgments binding on public bodies or Departments, or impose meaningful sanctions. The public can have no confidence in the Government's proposed environmental watchdog if it is appointed by and reports to DEFRA.

[Sandy Martin]

In any case, there will be an environmental governance gap from leaving the EU until the date when the proposed watchdog starts to function, even if the proposed Bill is not delayed.

It is essential not to allow Brexit to be used as an excuse to reduce or weaken our environmental protections. If we are to keep in step with any environmental improvements, the Government must ensure that the UK commits to non-regression on environmental standards with the EU, and they must give that commitment legal clout in the environment Bill.

The explanatory memorandum to the draft regulations states:

"This instrument does not make changes to substantive policy content."

It will, however, allow UK authorities, particularly the Secretary of State, to make changes that could have a significant environmental impact. The powers of the EU Commission under the persistent organic pollutants regulation will be transferred to the Secretary of State, who will be empowered to amend the draft regulations by statutory instrument subject to the negative procedure. There is nothing in the draft regulations to prevent the present Secretary of State or any subsequent incumbent from watering down the regulation of POPs. If they did so, the negative procedure would give Parliament precious little control over their decision.

The aim of the European Parliament in passing the POPs regulation was to phase out their use as soon as possible or restrict their production and use, minimise POP releases and establish provisions regarding POP waste. The Commission currently has the power to amend POP waste concentration limits and ban or restrict their use in accordance with international agreements, but where is the provision in this SI to ensure that the Secretary of State will only tighten the regulation, or that he will do so in step with other countries? The devolved nations will have their own arrangements, which may afford more democratic control, but in England, Parliament is not taking back control of the regulation; it is passing it to the Secretary of State.

The European pollutant release and transfer register is a publicly accessible electronic database that implements a protocol of the United Nations Economic Commission for Europe to facilitate public participation in environmental decision making, as well as contributing to the prevention and reduction of environmental pollution. But where is the breadth and depth of expertise available throughout Europe—let alone the resources—to inform a British version of the register? How can we possibly do anything other than take our cue from Europe on these matters, without any longer having the power to influence them? Surely the same is true of the Nagoya protocol. The Commission has the power and duty to establish and monitor the use of a register of genetic resources collections. Transferring them to the Secretary of State will take away the valuable shared knowledge and practice that we currently enjoy.

Again, with the shipment of waste regulation, the Commission has the power to establish the technical and organisational requirements for the practical implementation of electronic data interchange; to establish procedures governing the export of wastes; to maintain a correlation table to support enforcement; and to amend to reflect international agreements and changes in other EU legislation. Those functions are to be transferred to the Secretary of State, but what possible sense does it make to replicate all that activity at a national level? How much additional cost will be involved? How will the UK keep in step with any changes in EU legislation? If we do not, how will we be able to maintain our shipments of waste to EU countries for treatment? It is all very well for the Secretary of State to talk about developing our own recycling facilities, but we cannot do that for all our waste by December 2020, let alone by 29 March.

In the regulations regarding wildlife and trade, the powers to amend, for example, to add a country to the list of approved countries from which we will be allowed to import animal pelts, will transfer to the Secretary of State. However, whether he or any subsequent Secretary of State decides to stiffen or relax such regulations will be a matter for further regulation and not easily challengeable by this Parliament or anyone else.

Kerry McCarthy: That was going to be my question to the Minister. There is keen public interest in ensuring that we do not promote the fur trade in any way, shape or form. It is one thing to say that discussion at the European level does not have direct democratic oversight, but it is a big discussion, involving lots of countries and with a big political debate around it; if we are talking about a Committee such as this one, or perhaps the Secretary of State or an official exercising functions in an office somewhere in Whitehall, I worry that the policy agenda will move on without our realising that something we would not have accepted is happening.

Sandy Martin: I totally agree with my hon. Friend. We would much prefer provision in every single regulation to make it clear that the Secretary of State cannot relax or move backwards on any current EU regulations under a statutory instrument subject to the negative procedure. That is the major flaw of a large number of such instruments. With most of the transferred powers, the functions can be exercised by the Secretary of State without a requirement to obtain expert or technical input or the need for consultation with those likely to be affected. That is a recurring theme.

Despite the reassurances of the Secretary of State—I mean, of the Minister—sorry, an instant promotion there.

Dr Coffey: In my dreams!

Sandy Martin: Despite the reassurances of the Minister, the draft regulations do not contain a requirement for future changes to be agreed with the devolved Administrations. It is hard to see how the regulations will operate effectively.

Craig Mackinlay (South Thanet) (Con): It is a pleasure to serve under you, Mr Austin. Is the hon. Gentleman saying that he prefers any strengthening or reduction of environmental matters to be done remotely from the UK in the corridors of Brussels by a Commission of people whose names he does not even know and over

whom we have little influence? The UK has almost no decision-making powers. To have them domestically, open and transparent to all, is surely a way forwards in strengthening or changing legislation in accordance with what the UK wants, rather than the rather remote practice now. I find it surprising that he denigrates domestic Ministers but seems to praise greatly those he does not even know the names of. Is that a correct summary?

Sandy Martin: The hon. Gentleman's intervention goes to the very heart of whether it is sensible for this country to be a member of the European Union. I could answer him in the course of a two-hour speech, but I will limit myself to the basic point that most of the provisions in the draft regulations, if not all, cover things that can only be done effectively if all countries agree to do them together. That is the whole point of the European Union: it is a way to ensure that all European countries agree to do things together. What will most likely happen is that we will continue to have to follow the same sorts of regulations that the European Union follows; the only difference will be that we have no say over what they are.

Despite all that, however, the amendments proposed in the draft statutory instrument do not alter the operation of existing EU regulations, so we do not intend to oppose them.

11.50 am

Mhairi Black (Paisley and Renfrewshire South) (SNP): I will keep my comments very brief. Given that no real policy change is being proposed, we will not be opposing the draft regulations. However, I echo some of the concerns raised by the hon. Member for Ipswich. A lot of promises have been made by the Secretary of State and the Prime Minister about the maintenance of environmental standards, but they are just verbal guarantees. We need to see them enacted in law as, given the last couple of months, I am sure no one could blame us for being hesitant to take the Government at their word.

If any policy alterations are to be made in the future, all the relevant powers and authorities must respect the devolved settlement. I put that on the record so that the Government can heed our concerns.

As there is no actual policy change, and some work has been conducted with devolved officials, we do not oppose the regulations.

11.51 am

Dr Coffey: It is a pleasure to respond to the points raised. I saw the hon. Member for Ipswich last Friday in his constituency, when we had the great joy to be together for the opening of the Ipswich flood barrier, which was a great occasion. The hon. Gentleman said that the draft regulations need to be seen in connection with the draft Bill, but the whole point is that this is about the EU (Withdrawal) Act. I can only bring forward regulations that are connected to the operability of regulations in the UK in the future once we have left the European Union. This is not a change of policy, nor is it about raising concerns about putting non-regression clauses into the regulation. That would be a policy change—it would be something else to do—and the draft regulations are simply about operability.

The hon. Gentleman refers to the POPs regulation being passed by the European Parliament. He will know that it was also passed by the European Council, so we have been involved in several of the regulations, and I believe we have the competence to continue to do that. The key point, which my hon. Friend the Member for South Thanet made, is that at the moment this Parliament has no say, and the European Parliament has no say, and the Council has no say, on the regulatory changes that the European Commission undertakes in order to keep pace with the changes required by international agreements or other scientific changes. That power is rightly being brought back here, to the Secretary of State, or to devolved Ministers where the matter has been devolved. We have pointed out very clearly that we will bring those powers forward through statutory instruments, apart from in the case of two issues that are about what the form looks like. I do not think it would be a good use of parliamentary time to have regulations on how a new form is composed. We are considering those simple, straightforward issues today.

I recognise the hon. Gentleman's point about countries agreeing to do things together, and he will be aware that most of the points that we are discussing are in international agreements, such as aspects of the Nagoya protocol. Once the United Kingdom is no longer part of the European Union, we will attend those discussions in our own right and will then need to find ways to bring changes into our legislation.

I respect the devolved Administrations, which is why we talked extensively with them about how to take the legislation forward. Although I am sure that we want to have a common framework, and the four nations are working together on that, and we will have international obligations, there may be times when the Scottish Government, the Welsh Government or the Northern Ireland Administration may want to do things in a slightly different way to achieve the same outcomes. That is what devolution is all about.

I am pleased by the comments made my hon. Members recognising that this is simply a straightforward, technical, operability change. I look forward to future debates, such as when we come back from CITES in May 2019, when I hope we will have protected even more species around the world and we will be bringing forward a statutory instrument to discuss those changes, if that is necessary.

Question put and agreed to.

11.55 am

Committee rose.