PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT PLANT PROTECTION PRODUCTS (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

DRAFT PESTICIDES (MAXIMUM RESIDUE LEVELS) (AMENDMENT ETC.) REGULATIONS 2019

Thursday 21 February 2019

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Monday 25 February 2019

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The Committee consisted of the following Members:

Chair: Siobhain McDonagh

† Burghart, Alex *(Brentwood and Ongar)* (Con)
† Clark, Colin *(Gordon)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Drew, Dr David *(Stroud)* (Lab/Co-op)
† Dunne, Mr Philip *(Ludlow)* (Con)
† Eustice, George *(Minister for Agriculture, Fisheries and Food)*
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Garnier, Mark *(Wyre Forest)* (Con)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Harrison, Trudy *(Copeland)* (Con)
Law, Chris *(Dundee West)* (SNP)
McGinn, Conor *(St Helens North)* (Lab)
† Martin, Sandy *(Ipswich)* (Lab)
† Stewart, Iain *(Milton Keynes South)* (Con)
† Trevelyan, Anne-Marie *(Berwick-upon-Tweed)* (Con)
† Zeichner, Daniel *(Cambridge)* (Lab)

Dominic Stockbridge, *Committee Clerk*

† attended the Committee

Third Delegated Legislation Committee

Thursday 21 February 2019

[Siobhain McDonagh *in the Chair*]

Draft Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

11.30 am

The Minister for Agriculture, Fisheries and Food (George Eustice): I beg to move,

That the Committee has considered the draft Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019.

George Eustice: These are two of a number of affirmative statutory instruments to be considered as the UK leaves the European Union, as provided for by the European Union (Withdrawal) Act 2018. They ensure that pesticide regulations remain operable after 29 March when we leave the European Union.

Plant protection products, commonly called pesticides, are currently regulated by means of EU regulation 1107/2009 concerning the placing of plant protection products on the market, and associated regulation 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin. Those two regulatory regimes are closely related and currently rely on centralised EU processes and mechanisms, although much of the business of the regimes is already conducted at national level. Decisions at EU level are taken on the basis of evaluations and assessments undertaken by member states, such as those undertaken by our Health and Safety Executive.

In future, those evaluations will inform a national decision rather than informing UK input to an EU decision. That means that much of the infrastructure and expertise we need is already in place in the UK, which will provide a good degree of continuity when we implement the UK-wide regime. The Chemicals Regulation Directorate, which sits within the HSE, already has around 150 staff working on pesticides, which is a considerable resource. We are known as probably the most advanced and developed country in Europe in terms of technical expertise.

Under the current system, a chemicals company that seeks an authorisation for a new active substance will go to a member state to have its technical information and scientific data evaluated. Those technical evaluations are currently conducted in the UK by the Chemicals Regulation Directorate. UK authorities already do around 30% of all the assessments of new products that take place in the European Union—we are known to be very efficient at doing that work and chemicals companies often choose to come to the UK.

The CRD then produces a draft assessment report, which contains a technical evaluation, looking at issues such as eco-toxicity, human health impacts, the fate of the chemicals in the environment and their efficacy. That draft assessment report is then submitted to the European Food Safety Authority which, in some cases but not all, runs a simple peer review process using a committee of experts. Following that process, EFSA reaches a final conclusion and makes a recommendation to the Commission. That recommendation is ultimately approved as a decision by one of the European Union's standing committees—in this case the Standing Committee on Plants, Animals, Food and Feed.

In future, we will still run all that information. Instead of having an EU peer review process, we will use the UK Expert Committee on Pesticides, and rather than the EU running a public consultation, there will be a requirement on the HSE to run the public consultation.

The regulations are designed to achieve a number of things. First, all decision-making functions and powers are repatriated from the EU to national level in the way that I have explained. That includes approval of all active substances and a number of related functions, such as the precise nature and format of the documents required and some of the renewals processes that are currently provided for in EU law.

Secondly, a mechanism is established to give effect to national decisions by listing approved active substances on a new statutory register in the form of a publicly available online database. This replaces the current EU mechanism for giving effect to decisions through a large volume of tertiary legislation that establishes the register.

Thirdly, other EU tertiary legislative powers will be repatriated. These are the powers to set out the principles and decisions and the thresholds and end points that should inform decisions. The powers will be exercised in future through statutory instruments rather than through tertiary legislation from the EU. A few very minor things, such as the precise format of dossiers and of assessment reports, can be dealt with administratively.

As I have explained, EU processes set out in the regulations are replaced with new national processes. The functions are retained where they remain relevant in a national context. Examples are consideration of specific technical issues specified in the regulations, public consultation on active substance applications, provision for consultation with independent specialists where appropriate, and final decision making.

National arrangements for independent scientific advice and assurance are in place. We already have advisory committees of experts and academics—the Expert Committee on Pesticides and the Expert Committee on Pesticide Residues in Food. They are preparing to meet the challenge of any additional advice that they will need to give. They are already looking at the forward pipeline of potential renewals and new product applications that they would need to consider, and reviewing whether they have the right skills balance in their existing committee structures and seeking to recruit additional ones where they deem that necessary.

Sandy Martin (Ipswich) (Lab): Under the current regime, the EU produces in the order of 50 additional regulations per year. Once the powers have been repatriated to this country, will there be very close alignment of this

country with the new regulations being produced in the EU? If not, how will we be able to maintain our ability to trade with the EU given our need to demonstrate that our pesticide standards are at least as good as the EU's?

George Eustice: It is obviously open to us as an independent country to choose independently to adopt processes and have things similar to those in the EU if we want to. There is nothing to prevent us from doing that, but I believe that, when it comes to pesticides, it is very important to base our decisions on the correct scientific and technical interpretation of the risk to the environment and to health. We have instances where European countries have sometimes done the calculations wrong and authorised products that they should not have authorised. We would not want to follow them if they had made errors in their analysis. The important thing is that, as I have said, the CRD has the best scientific experts on pesticides in the EU definitely and possibly in the world. It is very important that we rely on that to protect the rigour of the process and do not simply slavishly follow decisions that come from elsewhere.

The EU regime's power to establish a rolling active substance renewals programme will be replaced with a power to establish a national renewals programme to ensure that we are able to take renewal decisions as necessary from day one of exit.

Some elements of the current regime that rely on EU membership will no longer be able to operate. For example, the mutual recognition provisions for fast-tracking product approvals between member states in the same zone will no longer be relevant. However, as I said earlier, the UK will be able to take account of relevant assessments by other countries' regulators in our own national assessments. Similarly, parallel trade permits for products rely on the sharing of information between member states and will no longer be relevant. Current parallel trade permits at the point of exit will remain valid for a transitional period of two years after exit or until the extant expiry day—whichever comes sooner. Transitional measures have been put in place, ensuring that changeover to the national regime is smooth. For example, we have measures to ensure that all current approvals and authorisations remain valid after the point of exit and measures to make provision for the handling of applications in train at the point of exit.

We are also taking forward a separate instrument, as I mentioned at the start, that was laid on 12 February. The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 make some further minor changes relating to plant protection products and maximum residue levels. Those regulations are being made under the negative procedure. It is essentially a wash-up revocation and miscellaneous amendments SI to deal with changes that have come late in the day from the European Union. As Members will understand, there is a constant torrent of regulation in this space, so it is important that we make any necessary updates at the end of the process.

Those separate regulations also reinstate the original wording of article 46 of regulation 1107/2009 in place of the replacement article 46, which was to be substituted by regulation 5(24) of the draft Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, which we are debating. That reinstatement is because the correction of article 46 made by the original drafting inadvertently altered the grace periods permitted under the article as it operates currently. In the new regulation, we have reverted to the original text.

The main changes in the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 are very similar to those in the first instrument. First, the regulations repatriate all decision-making functions and powers, such as the setting of maximum residue levels, from the EU to the national level. Secondly, a mechanism is established to give effect to national maximum residue limit decisions by listing them on a new statutory register in the form of a publicly available online database.

EU processes set out in the regulations are replaced with new national processes. The functions are retained where they remain relevant in a national context, such as the valuation functions specified in the regulations. National arrangements for independent scientific advice and assurance are in place with our two highly respected expert committees. The requirement for reviews of EU maximum residue levels to ensure that they are set appropriately has been replaced by a provision for reviews at the national level. That has been necessary to ensure that it is practical and realistic for the UK to deliver acting alone. More realistic timelines to undertake reviews in a national context have therefore been set. They better match the real time that this work takes in practice in the EU at the moment.

The power to establish an EU residue monitoring programme has been replaced by an equivalent national power to put in place a national monitoring programme. The current EU programme looks three years ahead, so the UK's obligations under the programme for the next three years are retained. That will ensure that the same standards of protection are maintained after exit. Transitional measures have been put in place to ensure that changeover to the national regime is smooth. For example, all MRLs in place at the point of exit will be carried over.

I make one final point clear to the Committee. There is a constant flow of EU tertiary regulations, typically with several each month giving effect to decisions on active substances and maximum residue levels. Two minor transitional provisions in the regulation on maximum residue levels, which were laid before Christmas and relate to regulation 396/2005, and which convert EU MRLs into our new statutory register, have already become redundant due to amendments made to that regulation by the EU in January. As I mentioned earlier, last week we introduced the draft Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019. Among other amendments, it will revoke the two transitional provisions that have been overtaken by events in the EU. Both SIs will be made together once the draft instrument laid last week has passed through the necessary parliamentary processes, which will ensure that our regulations link correctly to retained EU law as it is on exit day.

I want to make one final point. I appreciate that the SIs are very lengthy—they are longer than many of the other exit SIs. Hon. Members will note that there are large schedules at the back of the regulations that contain a long list of revocations of EU regulations that we no longer need, since those pieces of tertiary legislation were essentially the vehicle that delivered a message that will be recorded on our statutory register in the future.

[George Eustice]

The vehicle itself is no longer needed and is redundant, which is why there are so many revocations at the back of these statutory instruments.

I hope I have explained the process to hon. Members and reassure them that we have a very high degree of technical expertise. Although we operate under an EU regime, in practice most of the technical work is done by our national authorities, which are well equipped to continue to do this task after we leave the European Union.

11.46 pm

Dr David Drew (Stroud) (Lab/Co-op): It is a pleasure to serve under your chairmanship again, Ms McDonagh. I get up every day and wonder what I am going to do today, and then I remember that it is another SI. This is the third one I have been on this week. It was moving animals in the first one, and fertilisers yesterday on the Floor of the House. Today we have pesticides. This is probably the most complex and, potentially, the most controversial, because some believe that we should bear down on pesticides. I know the Minister has read every page and has notes. He will be pleased that I will not refer to the instruments page by page, but some important issues must be put on the record. Hopefully my hon. Friend the Member for Ipswich will choose to question the Minister about some of them.

The Opposition's biggest criticism is that the preamble in EU law is missing—we have not brought it across—which means that the interpretive effect and the broader legal framework is not there. I am sure the Minister will comment on that. It matters because it relates to where this fits with the withdrawal Act. We are trying to replicate in a very short time something that has been in place for 45 years. The preamble says, for example, that

"public health should be given priority over the interest of crop protection".

What is the Government's attitude to that? The minimum residue levels are set in consultation with the ESFA. Does our Food Standards Agency have the capability, let alone the capacity, to take on the role?

There are all sorts of issues in dealing with banned substances. There are rules for third countries, minimum data requirements and continuous monitoring. I have a huge list, which I am sure the Minister will at least know about. The reality is that he did not mention those points. Where are we in terms of the monitoring and evaluation of something as crucial to pesticides? We have not necessarily abrogated that to the EU because much of the work has been done in this country, but the process and protocol will be difficult to replicate, at least in the short run.

I am indebted to the Pesticide Action Network, which is a good organisation. I do not necessarily agree with it on every aspect, but it has done me proud, because I do not have time to go through every page of the statutory instruments. It has identified six areas, some of which were rehearsed when the Lords discussed the measures in November. It is interesting how long they have taken to get to this place—normally the scrutiny in the two Houses happens fairly rapidly.

PAN's first critique is about the loss of oversight, checks and balances, and the significant consolidation of power, and not just in Westminster—much of it is devolved. What accountability is there for the oversight, checks and balances that come with the powers that we are granting to the Minister? That matters because, for all its faults, the EU has a process with EFSA that is subject to scrutiny in this country. As my noble friend Baroness Jones of Whitchurch said in the other place:

"At the moment, we have in the EU a thorough process of evaluation of products. The responsibilities for risk assessments are shared out across member states. There are clear decision-making roles for the European Food Safety Authority, the rapporteur member state, individual member states and the European Commission. All this is supported and backed up by access to the best scientific advice. While no process is perfect, there is considerable assurance that within the EU a detailed assessment of the risks has been carried out and cross-checked."—[*Official Report, House of Lords,* 12 February 2019; Vol. 795, c. 1831.]

Presumably, that will pass to HSE, which has faced dramatic cuts in the last decade and more. It will be interesting to see what additional staff it will get as the competent authority. We talk about 150 people, but how many of those will be in HSE?

The second argument is about the weakening of the requirement to obtain independent scientific advice. The Minister made the point that there will be independent evaluation, but my concern has always been—this is not recent; I had it in my previous incarnation—that much of the research money received by the academics who end up on the evaluation boards comes from the companies. That is what happens to ensure that we are at the front end of the science. The conflicts of interest are not easy to overcome. I am interested to know how independent is "independent"? How easy will it be to set something up in a short time that not only reflects that independence, but ensures that what we are doing is appropriate, not bureaucratic and safety conscious? Human health must be our primary consideration.

The third point is about the weakening of other standards, which is partly about deadlines. The Minister touched on the EU's requirements to review minimum residue levels within 12 months of an active substance being authorised. The worry is that the Government, under the powers they are taking, seem to have a lot more discretion about what they do and when. PAN advances the criticism that it is less obvious how the Government will pursue emergency interventions and what the timescales will be. As my noble friend Baroness Jones said, the explanatory memorandum states that the renewal programme will

"need to be proportionate for one country alone to deliver",

which the UK obviously is. How will the Government transpose that into British law to ensure that it is appropriate and carried out properly?

The fourth point is that the important parts of the regime are left unclear, or details will be filled in later. Again, the Minister was open about that. We will need to have other SIs because the situation will evolve. As my hon. Friend the Member for Ipswich said, things are changing within the EU and we may not be able to keep up to date because of our short-term pressures. We therefore have to be very clear on our response and how we will be able to guarantee—we want to sell into the European market—that we are doing the right things in the right way.

Fifthly—colleagues will be pleased to hear that I will not be much longer—there is a lack of capacity and lack of investment in stand-alone regimes. We are currently

part of a very sophisticated process. I have mentioned the HSE. There will be considerable interest in what mechanism the Government put in place at both an academic level and a scrutiny level to ensure that it is fit for purpose and that things are happening as they should.

The chemical division of the HSE has 150 people. I am not clear whether the Minister will get an additional 150 people or the same 150 people will be doing what they already do. Will they be doing what they are doing now and a lot more because they are a stand-alone organisation? They will not be part of a wider process even though they have been key to that wider process.

I will not go through them, but there are some mistakes in the drafting, which I will be happy to send notes on—no doubt PAN has sent them to the Government already. It would be interesting to know whether they have been picked up.

To conclude, pesticides are very important. Pesticides are crucial to farmers—there are farmers on the Government Benches who know how important they are. They are also very important to people's health. If we get this wrong and let the wrong things go on the marketplace, we will pay the consequences.

More than anything, this is about trading arrangements. Again, we are now trying to put in place, in a great deal of hurry, a sophisticated system to replicate what is already there, and I wonder about the timescale. It will be difficult if we crash out—how capable are we of doing this from the start of April without question marks about safety and about the appropriateness of the scrutiny mechanism? More particularly, how will the consumer be absolutely guaranteed that what is happening is happening in the right way and not a hostage to fortune?

11.57 am

Mr Robert Goodwill (Scarborough and Whitby) (Con): I will make one point very briefly. May I ask the Minister, when he sums up, to give an assurance that we will truly have an independent plant protection products regime in the United Kingdom, and that it will not be the case that if, for example, the European Union bans a product, perhaps because of a political campaign rather than because of scientific evidence, or because of misapplication of the precautionary principle, that we will be forced to follow suit? Would that apply to withdrawal periods for pesticides? He talked about maximum residue levels, which are determined in practice by the withdrawal period. It may be that we have different climatic conditions in the UK whereby we could apply different withdrawal periods to achieve the same safe residue level.

11.58 am

George Eustice: I want to draw on some of the points made by the shadow Minister, the hon. Member for Stroud. I will return to the comments of my right hon. Friend the Member for Scarborough and Whitby at the end.

The first thing to note is that the current regulation that governs active substances is Regulation (EC) 1107/2009. Our own HSE was largely instrumental in the drafting of it. I have to point out to the hon. Member for Stroud that the then Labour Government voted against that infrastructure despite the fact that we had been involved in drafting it on the basis that they did not agree with the hazard-based principle. Nevertheless, we as a Government are bringing across the existing regime, with all its imperfections, including the hazard-based principle. We are bringing it over exactly as it is and placing it on the UK statute book.

To address the point raised by my right hon. Friend the Member for Scarborough and Whitby, who is obviously anxious to do things better, yes there are indeed opportunities to do things better and to refine the system, but that is a discussion for another day. We are absolutely crystal clear that the EU (Withdrawal) Act is about bringing across the existing regulatory structure. It seeks to make no policy changes whatever, and the regulations make no changes whatever.

To draw on the point about HSE resources, probably only the eight largest member states the European Union have any meaningful capacity to do such work on pesticides. The UK is renowned in Europe for being the leader in terms of the scale and scope of our expertise. As the hon. Member for Stroud says, we have 150 experts on pesticides in the chemical regulations directorate. We have identified that there will be an additional workload. Scoping work has suggested that the directorate will probably need another 40 members of staff. The directorate has commenced that work, and we have identified that we will probably need to give it an additional £5 million a year to do it. The hon. Gentleman should recognise that the directorate already does the bulk of the work. It is simply fiction to think that the European Union does it. The European Union has an oversight role and owns the regulations, but the actual work—the technical evaluation—is already done by our own Health and Safety Executive.

Dr Drew: If we are not doing that work for the EU, the EU will have a huge hole. Obviously, we will have to check food that comes into this country because of the potential that the EU now might not be as effective. Is that not the reality?

George Eustice: It is very much the case that I would be open to saying that, as part of any future partnership, we should still have wider European technical working groups, so that the European Union can continue to benefit from British expertise but, at the moment, we are obviously not at the point of being able to advance discussions at that level of detail—as things stand, we are struggling to get a withdrawal agreement agreed by both sides at all.

Sandy Martin: Is there not a danger, Minister, that the people with the expertise will find that there is a more ready market for their expertise in the rest of the European Union, and that they will take their expertise back to the European Union rather than remaining in this country?

George Eustice: I do not think so because we will still need to comply with the regulations in the UK. The opportunities offered by Brexit to all DEFRA agencies add up to an exciting time. Rather than slavishly following EU law as we have had to do for decades, we have the opportunity to think through from first principles what good policy looks like, and to shape it independently.

[George Eustice]

Let me give hon. Members a sense of the scale of the renewal programme. Each year, usually around seven new active substances come on to the market, so the workload involved in assessing those is relatively modest, but dozens of active substances need to be reviewed every year. As the shadow Minister pointed out, currently under EU law the maximum residue limits are supposed to be reviewed within a 12-month period, which never happens. The European Union routinely breaks its own rules and typically takes up to three years to do that job.

We have to ask ourselves an important question. Is it better to rush things through in a hurry to hit some 12-month deadline, and to do things in a rather slipshod fashion, or is it better to take the time it takes to do the job thoroughly so that we have an absolutely proper understanding of any changes in the science on MRLs, and ensure that we have available all the necessary data on which to base a decision, and then be realistic about that timescale? The position we have taken, having discussed that with the HSE, is, "If you are going to do the job, do it properly; and if you are going to do it properly, be realistic about the time it takes to gather the raw data." The HSE believes that a three-year window makes more sense than 12 months, and that in practice the EU works to that deadline anyway regardless of its own rules. We think it is better to have rules that we can abide by and that make sense than to have rules, as the EU does, that are routinely broken.

On peer review of the scientific advice, as I pointed out, we have the Expert Committee on Pesticides. Just as the EU currently puts together a peer review panel to look at the technical assessments done by the CRD, we envisage that the Expert Committee on Pesticides and the Expert Committee on Pesticide Residues in Food will be able to carry out a peer review process on the work done by our CRD officials.

The hon. Gentleman also raised the issue of accountability. It is important to recognise that, under the current system, there really is no political accountability. As I said, the blizzard of tertiary regulations that come from the European Union go to a standing committee, where things are decided. After that, there is no parliamentary process in the European Parliament. As far as our Parliament is concerned, those regulations do not even warrant an explanatory memorandum to tell hon. Members what has been done. This is the simplest of all delegated Acts, of which there is zero political scrutiny at present.

In the future, there will be a maintained register, a national consultation run by the HSE and a peer review process run by the ECP, with its minutes published in the same way they are now for product authorisations. We will have a very open and transparent process that people with technical expertise will be able to probe and challenge, and people who seek to understand why a particular product is on the statutory register will readily be able to find the information they require.

In conclusion, I believe we have the expertise in place to run both regimes effectively. We have also taken on a scoping exercise to recruit additional staff and provide additional resources to the CRD. We have the expertise. The statutory instruments will ensure that we have an operable set of regulations that change nothing and bring across the EU regime. I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019.

DRAFT PESTICIDES (MAXIMUM RESIDUE LEVELS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Resolved,

That the Committee had considered the draft Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019.—*(George Eustice.)*

12.8 pm

Committee rose.