PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT OZONE-DEPLETING SUBSTANCES AND FLUORINATED GREENHOUSE GASES (AMENDMENTS ETC.) (EU EXIT) REGULATIONS 2019

Tuesday 26 February 2019

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not later than

Saturday 2 March 2019

The Committee consisted of the following Members:

Chair: Mr Virendra Sharma

† Bradley, Ben *(Mansfield)* (Con)
† Burns, Conor *(Bournemouth West)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Coffey, Dr Thérèse *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Cunningham, Alex *(Stockton North)* (Lab)
† Cunningham, Mr Jim *(Coventry South)* (Lab)
† Double, Steve *(St Austell and Newquay)* (Con)
† Gaffney, Hugh *(Coatbridge, Chryston and Bellshill)* (Lab)
† Grant, Bill *(Ayr, Carrick and Cumnock)* (Con)
† Heald, Sir Oliver *(North East Hertfordshire)* (Con)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† McGinn, Conor *(St Helens North)* (Lab)
† Mc Nally, John *(Falkirk)* (SNP)
McGovern, Alison *(Wirral South)* (Lab)
† Martin, Sandy *(Ipswich)* (Lab)
† Seely, Mr Bob *(Isle of Wight)* (Con)
† Stewart, Iain *(Milton Keynes South)* (Con)

Sarah Rees, *Committee Clerk*

† attended the Committee

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Tuesday 26 February 2019

[Mr Virendra Sharma *in the Chair*]

Draft Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019

2.30 pm

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 Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Sharma. The purpose of the instrument is to correct deficiencies in retained EU law so that the United Kingdom can continue controlling the use of ozone-depleting substances and fluorinated greenhouse gases once we leave the European Union. It is one of a number of affirmative statutory instruments to be considered as the UK leaves the EU, as provided for by the result of the 2016 referendum and subsequently agreed by Parliament.

In line with the European Union (Withdrawal) Act 2018, the regulations simply make technical, legal amendments to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable, so that, following our exit from the EU, the law will continue to function as it does today. I can assure the Committee that these amendments do not represent a change of policy, and nor will they have a significant impact on businesses or the public. We have worked with the devolved Administrations on this instrument, and where its application extends to them, they have given their consent.

The regulations may be somewhat technical but, a bit like a well-known chemical, they do exactly what it says on the tin: they bring over the regulations that are required to ensure that things operate just as they did the day before—no more and no less. If they did any more, I would have broken the ministerial code in signing the transparency statement. So there is no change in policy, and the regulations are simply technical.

Ozone-depleting substances, such as chlorofluorocarbons —often known as CFCs—damage the earth's ozone layer, increasing the risk of skin cancer and damaging the wider environment. Almost all uses of these chemicals have been phased out under the UN Montreal protocol. EU legislation implements that agreement by restricting ozone-depleting chemicals to certain limited uses where there are no viable alternatives, such as in fire extinguishers on aircraft. It also requires all imports and exports to be licensed to help monitor global compliance.

Fluorinated gases have replaced ozone-depleting substances for many uses, including in refrigerants, aerosol propellants and other industrial processes. They are still powerful greenhouse gases, and, through legislation that we have agreed, we require their use to be phased down. It was only a couple of years ago that the Kigali amendment to the Montreal protocol was agreed and subsequently ratified, with the United Kingdom being the first European Union nation to ratify.

The 2018 Act will retain the EU legislation in UK law after exit day, and most of the provisions will operate without amendment, including requirements to minimise leakages and for technicians handling these substances to be properly trained and certified. However, without changes, some crucial elements would not function. Most importantly, the restriction on the amount of gas that can be sold is currently achieved through quota limits placed on importers and producers. The European Commission directly allocates the quotas to individual producing and importing businesses. The regulations therefore transfer those quota allocation powers to the Secretary of State and the devolved Administrations, establishing a separate UK quota system. Instead of an importer or a producer getting a single quota from the Commission, limiting how much they sell in the EU28 market, they would get two quotas, one from the European Commission for sales on the EU27 market, and one from the Secretary of State for sales on the UK market.

My Department contacted all companies currently supplying the UK to ask how much they placed on the UK market, to determine as accurately as possible the correct quota allocations. That data was cross-referenced with other market information to ensure that the UK supply remains as close as possible to current levels. The UK consumption of hydrofluorocarbons calculated through that process is 11.2%, which closely aligns with the percentage of our population relative to that of the EU, which is 12%. My Department has also recently completed the IT systems needed to operate the UK system, and well over half the businesses currently supplying the UK have already registered on the system to ensure that they can continue operating in the UK.

On the specific changes the instrument makes, regulation 2 omits a redundant reference from the EU legislation in the existing UK enforcement regulations. Regulations 4, 5 and 25 in part 2 and regulations 37, 38 and 56 in part 3 facilitate the transfer of functions to the Secretary of State and the Environment Agency with respect to England and to the devolved authorities with respect to Wales, Scotland and Northern Ireland. A number of the regulations throughout the instrument transfer powers from the Commission to the appropriate UK authorities by amending references to the Commission and the Union. A number of other regulations update cross-references to other legislation that have changed since the EU regulations were drafted.

Regulations 7 and 9 reduce the maximum limit values for the use of certain ozone-depleting substances to reflect the lower usage in the UK relative to the rest of the EU. That is done pro rata, based on the population of the UK relative to that of the EU. Regulations 11 and 20 delete redundant provisions, while regulations 15 and 48 amend dates to reflect the operation of the provisions from the point at which we leave the European Union. Regulation 43 enables training certificates issued in EU member states to continue to be recognised in the UK, to ensure that technicians trained in the EU can continue to work in the UK.

Regulation 48 requires the authorities in one part of the United Kingdom to consult the authorities in other parts before establishing their own F-gas quota system. Regulation 50 enables companies holding EU quota authorisations that are needed to import equipment containing HFCs to exchange those authorisations for a UK version so that they can continue to use them to import to the UK. Regulation 59 allows for the adjustment of HFC quotas should it become clear that, as a result of splitting from the EU quota system, UK supply is below the level it would have been had we not left the European Union.

Finally, we have taken a power through the Environment (Amendment Etc.) (EU Exit) Regulations 2019, which have already been approved, for regulators to charge businesses a fee to cover the cost of operating a UK system. That will cover the estimated £500,000 per annum administrative costs faced by the Environment Agency and is in line with the long-established principle that the polluter, rather than the taxpayer, should pick up the cost of regulating.

Most aspects of the EU regulations fall within devolved competence, so most functions are being transferred to the Secretary of State and Environment Agency with respect to England and to the devolved authorities with respect to Wales, Scotland and Northern Ireland. However, the Devolved Administrations have agreed that, for our exit day preparations, they will remain part of a single, UK-wide system, particularly for the purpose of allocating quotas. That means that, immediately after exit, the Environment Agency will allocate quotas for the whole UK market.

The devolved Administrations have all agreed to this instrument, and discussions are under way on the governance arrangements for the operation of the system and the joint decision-making process. Should any Administration wish to diverge from a UK-wide approach in future, they will need to consult the other Administrations to ensure that preparations on both sides can be made.

As we leave the EU, we are ensuring that we have the necessary regulations in place. That is particularly important in relation to ozone-depleting substances, especially as the regulations currently in law, which we must ensure we fully transpose, will be responsible for delivering one third of the Paris agreement.

2.38 pm

Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. The Opposition understand the importance of this ozone-depleting substances and F-gas regulation statutory instrument, which seeks to ensure that the relevant legislation continues to operate effectively at the point at which the UK leaves the EU. However, we will be abstaining today, due to our concern about the limited timeframe in which the Government are scheduling this secondary legislation and the limited means of scrutiny that that offers us.

The last-minute nature of many of these SIs has made it extremely difficult for us to examine in depth the real implications they will have or to involve other organisations in that examination. In particular, the explanatory memorandum that came with this SI was clearly written at some stage during the middle of last autumn and therefore leaves all sorts of questions unanswered. The Minister attempted to answer some of them just now, but it would have been extremely helpful to have those answers in writing. If I ask her any questions that she has already answered, I hope she forgives me for not having been able to twig exactly which questions she was answering.

If the Government allow the United Kingdom to leave the EU without a deal, it is critical that regulations are in place to prevent the dangerous emission of unregulated ozone-depleting gases and F-gases. If the UK regulatory framework turns out not to be as effective as it could have been, that will be one more extremely good reason for us not to leave without a deal.

Only a few decades ago, we were close to destroying our planet by emitting ozone-depleting substances, creating holes in the ozone layer and allowing harmful ultraviolet light to pass through the earth's atmosphere, damaging animals, plants and, of course, human beings. We are still seeing a huge increase in the number of skin cancers around the world as a result. However, the Montreal protocol in 1987 was spectacularly successful. It is a very good example of how international agreements can make a real difference to the way people behave, and the ozone layer is now showing signs of gradual recovery.

As the UK continues to phase out the use of ozone-depleting substances, we cannot allow the success of the Montreal protocol and our international commitments to be put at risk. Will the Minister therefore give me an absolute assurance that the regulatory regime will not fail to keep the use of ozone-depleting substances to an absolute minimum, and that the UK will continue to abide by its international treaty obligations, as stated in the 1987 Montreal protocol?

The maximum limit values for the use and emission of certain ODSs have been set at 12.4% of EU values, on the basis that when the EU regulation was made in 2009, the population of the UK was 12.4% of the population of the EU. What scientific advice has the Minister received about whether that figure is justifiable? It strikes me as an arbitrary figure that is based on populations 10 years ago. I suggest that changes in population, in industrial practices or in other regulatory regimes may mean that the use and emission of ODSs is higher in Britain than in other European Union countries. Surely, Britain is more advanced in many ways than an awful lot of other European Union countries. The Minister said—again, forgive me if I misinterpreted her—that her Department's examination of companies using F-gases in Britain showed that 11.2% would be a more sensible limit. What is the basis of the 12.4% limit? Is it purely arbitrary and based on population?

Man-made fluorinated gases are less harmful to the ozone layer but very harmful in respect of climate change, so it is really important that we restrict their use. Given that we have fewer than 12 years to act to limit the catastrophe of climate change, we really need to ensure that emissions of those very powerful greenhouse gases are kept to an absolute minimum.

The Committee on Climate Change stated recently that policies had failed to produce the expected reduction in emissions. The 27% reduction in F-gases we should have achieved actually turned out to be a 3% rise. Does the Minister agree that that is not a particularly good marker for the ability of the UK regulatory regime

[Sandy Martin]

to reduce F-gases in the future? What more does she believe the Government need to do to ensure that emissions of F-gases do not continue to increase?

Leaving the European Union without a deal would leave an enormous governance gap in climate change laws after our exit. Although the Committee on Climate Change monitors, reports and advises, it will not be given the power to enforce those laws, and it is not clear what will happen in the gap before the proposed new office for environmental protection is set up. I would be most obliged if the Minister told us what will happen in that gap.

The explanatory memorandum says the Secretary of State will publish details of the mechanism for allocating quotas and the format for companies to report on the use of ODSs and F-gases through an IT system that will be "completed in early 2019." How early in 2019 will that be? Is it ready now? Will it be ready by 29 March? Will it overrun, as IT systems have in the past?

The explanatory memorandum states:

"The Secretary of State will have a power to increase each company's HFC quota"

in the event that it becomes apparent that we should have a higher quota. I am not sure whether the Minister has adequately addressed that point. It occurs to me that allowing for such an increase could lead to companies that would benefit financially from a slightly higher quota claiming the maximum possible level of quota. How do the Government intend to prevent that?

The explanatory memorandum suggests the Government still do not know how much HFC is being used in the United Kingdom. I am not quite clear why they do not know and why, given that this was likely to be a problem, it has not already been worked out. How can we be sure that the regulations will only allow the power to use HFCs to be used within the limits as set down?

We are told that F-gas training certificates that have been issued in the European Union will be valid in Britain, but will certificates issued in the United Kingdom be valid in the EU? Are any certificates issued in the United Kingdom? Do we train any of these technicians ourselves? Do we have any intention of training any such technicians, or will we continue to rely on the EU for all our training and all our technicians?

It is clear that the explanatory memorandum was written in the autumn of last year. It would be much easier to examine the SI and hold the Government to account if we knew the up-to-date answers to the questions that were asked in the autumn of last year, when the explanatory memorandum was written.

The Environment Agency is being used to deal with charges to businesses, but we do not know when those charges will be ready to proceed. Has the guidance been published? Will the charges be ready to be put in place on 29 March? How will the system be financed during the period before the charges come into operation, if they are not ready to come into operation on 29 March?

There are so many unknowns with these regulations, and I believe that a lot of that is due to this Government being ill-prepared for a no-deal Brexit. It is another example of how leaving the European Union will create more, not fewer, regulatory problems for the United Kingdom. Some of the regulatory problems will be visited on the businesses that are trying to operate under this scheme. Legislation is being rushed through without substantial time for scrutiny. I am deeply appalled by the difficulty of holding the Government to account on these draft regulations, the provisions of which, if they were to go wrong, could prove a real danger to the health and happiness of the people of this country.

2.48 pm

Dr Coffey: I am pleased that the hon. Gentleman praises the Montreal protocol. Of course, it was under Margaret Thatcher that the United Kingdom joined it; she was one of the great leaders who recognised the climate change challenge at that time. The hon. Gentleman is right to say that the protocol has been successful. Apart from perhaps the UN convention on desertification, it has been the most successful of all the binding international environmental laws.

I am conscious that, right across the House, we continue to seek more action on this issue. It is important to get the regulations right. The hon. Gentleman is accurate to say that the explanatory memorandum was written in the autumn—technically the winter. The draft statutory instrument was initially laid in December 2018, alongside the explanatory memorandum. There was a drafting exchange with the Joint Committee on Statutory Instruments, and the draft instrument was withdrawn and relaid, but there was no need in my view to update the explanatory memorandum.

The hon. Gentleman asked a series of questions about the 12.4%. It is important that he understands that quotas are not allocated to countries, which is why we do not have definitive knowledge of exactly how much CFCs or HFCs are being used in this country. Quotas are allocated, in effect, to producers, which then sell them to companies here in the UK, or a UK company could sell them to somewhere in, for example, Spain. It will vary based on where it is needed and where the production of different materials may be.

That is why we have done the work we have, and why the European Commission also contacted companies. The Commission has not shared its information with us, but we believe that ours is largely accurate. That is why we have given ourselves, to some extent, an element of flexibility to review the situation. It is not that we wish to have an unduly uneven playing field in the ongoing operability of the functions.

We recognise that the 12.4% is, to some extent, arbitrary. It was decided by the EU at the time, based on usage in the UK. That data is aggregated at EU28 level, so populations and, therefore, the consumption of goods are a reasonably good way for these things to be allocated. That is in line with the regulation that brought all this into effect.

The IT system is ready and open, and businesses are accessing it. It has been financed through Government funding. Future charges will be for the overall regulation system. I do not believe that the guidance will be ready on 1 April, but it will be ready fairly soon, and the Environment Agency will have the budget it needs to do the work it does. It is a case of how we then reclaim those costs.

I do not agree with the hon. Gentleman that we are not prepared for leaving the European Union. He will be aware that the Government's position is that we want

to leave with a deal, and we are still working on that. I do not have the political declaration to hand, but from recollection I do not believe it specifically refers to continuing to have a shared EU quota for F-gases. What we propose, working with the Governments of Scotland, Wales and Northern Ireland, is the right way forward to make sure we have a quota system that works for us.

We are still full members of the Montreal protocol—we never gave up our seat—and we will continue to pay into the Montreal protocol assistance fund to help developing nations around the world accelerate moves towards using less harmful gases in their everyday manufacturing and in things such as air conditioning, refrigeration and so on. On that note, I believe the draft regulations are fit for purpose, and I commend them to the Committee.

Question put and agreed to.

2.53 pm

Committee rose.