

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT INTERNATIONAL WASTE SHIPMENTS
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Wednesday 27 February 2019

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Benyon, Richard (<i>Newbury</i>) (Con) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| Coaker, Vernon (<i>Gedling</i>) (Lab) | † Paterson, Mr Owen (<i>North Shropshire</i>) (Con) |
| † Coffey, Dr Thérèse (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) | Phillipson, Bridget (<i>Houghton and Sunderland South</i>) (Lab) |
| † Courts, Robert (<i>Witney</i>) (Con) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| † Dhesi, Mr Tanmanjeet Singh (<i>Slough</i>) (Lab) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| Hoey, Kate (<i>Vauxhall</i>) (Lab) | † Sturdy, Julian (<i>York Outer</i>) (Con) |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | Nina Foster, <i>Committee Clerk</i> |
| † Law, Chris (<i>Dundee West</i>) (SNP) | |
| † Martin, Sandy (<i>Ipswich</i>) (Lab) | † attended the Committee |

Ninth Delegated Legislation Committee

Wednesday 27 February 2019

[STEWART HOSIE *in the Chair*]

Draft International Waste Shipments (Amendment) (EU Exit) Regulations 2019

8.55 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 International Waste Shipments (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Hosie. This is one of a number of affirmative statutory instruments to be considered as the UK leaves the European Union, as provided for by the result of the 2016 referendum and as 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 the legislation controlling shipments of waste, which would otherwise be left partially inoperable, so that following our exit from the EU the law will continue to function as it does today.

The statutory instrument is quite lengthy and makes many adjustments. However, I assure the Committee that those adjustments represent no changes of policy, and nor will they have any impact on businesses or the public. The regulations do exactly what they say on the tin: they bring over what is required to ensure that, the day after exit, things operate just as they did the day before—no more and no less. Otherwise, I would have been breaking the ministerial code when I signed the transparency statement. There is no change in policy; the regulations are simply technical.

The territorial extent of this instrument is the United Kingdom. It applies to all of the United Kingdom, including the territorial sea adjacent to it. The legislation in this area is reserved, but this instrument has been the subject of extensive consultation with the devolved Administrations and the UK regulators.

Part 1 of the regulations contains technical introductory provisions. Part 2 corrects outdated references in the Transfrontier Shipment of Waste Regulations 2007 to the Northern Ireland Department of the Environment, which is now known as the Department for Agriculture, Environment and Rural Affairs. It also updates a reference to the legislation governing waste management licensing in Scotland to the current 2011 regulations. Part 3 makes technical changes to the Transfrontier Shipment of Waste Regulations 2007.

Regulations 14 and 15 omit references to “Community Regulation”. Regulations 16 and 17 omit regulations that implement provisions relating to an EU body and historic transitional provisions in the EU legislation from the 2004 and 2007 enlargements of the European Union.

Regulations 18 to 25 make provision for the UK plan for shipments of waste of May 2012 to continue to have effect and to be changed in the future. The amendments

provide that any future change must meet Basel convention objectives to have adequate disposal facilities, to minimise the movements of hazardous wastes and to ensure that shipments of wastes are allowed only if the state of export does not have the technical capacity or the facilities to dispose of the wastes in question in an environmentally sound manner.

Regulations 26 to 41 make technical changes to the offence provisions in the domestic regulations. These changes preserve the scope of existing offences and ensure that no new offences are created.

Regulation 42 omits regulation 60 of the Transfrontier Shipment of Waste Regulations 2007, which revoked previous versions of the domestic regulations. This change tidies up the law and is intended to make it clearer. Regulation 43 omits schedule 1, which also relates to historic transitional provisions in the EU legislation from the 2004 and 2007 enlargements of the European Union.

Part 4 makes technical changes by omitting references to the relevant retained EU law in annex 20 to the European economic area agreement, so far as that annex forms part of our domestic law. The references are no longer needed because the retained EU legislation on waste shipments has been amended so that it sets out all the rules that govern shipments to or from European Free Trade Association countries, for example by treating Liechtenstein as an OECD decision country.

Regulations 45 to 109 in part 5 make technical changes to the principal retained EU regulation on waste shipments, namely European Commission regulation No. 1013/2006. Regulations 46, 47 and 50 amend the scope of retained EU law to make clear that it applies to waste shipments to, from or through the United Kingdom. They also correct definitions and out-of-date references to EU legislation to ensure operability and to make the law clearer.

Regulation 48 amends definitions and makes technical changes to ensure that references to competent authorities and to the 2008 waste framework directive, which appear throughout the retained EU legislation, continue to be effective. Regulation 49 omits a deficient reference to the European Union.

Regulation 51 omits or modifies references to “the Community” and, where required, substitutes those terms with appropriate UK terms. It removes an obligation to inform the Commission about national law related to financial guarantees.

Regulation 52 amends EU provisions that allow the regulators to object to shipments of notifiable waste for disposal that are not in accordance with the principles of proximity, priority for recovery and self-sufficiency at EU and national levels. Those principles are currently defined in the context of an obligation to encourage the establishment of an EU network of waste disposal installations and consequently are no longer relevant to the UK. The instrument substitutes references to the principles with Basel convention obligations to have adequate disposal facilities, to minimise the movements of hazardous wastes and to ensure that shipments of wastes are only allowed if the state of export does not have the technical capacity or the facilities to dispose of the wastes in question in an environmentally sound manner.

Regulations 52 and 53 also make technical changes that preserve the existing powers to object to notifiable waste shipments for disposal or recovery where a destination site operates to lower environmental standards than those in the UK.

Regulations 54 to 62 and regulations 64, 66, 67 and 68 omit or modify references to “Community”, “within the Community”, “Member States” “within a Member State”, “competent authorities”, “the Commission” and “third”, as in third country, and where required substitutes those terms with appropriate UK terms. Regulation 63 removes a reference to an EU directive that is no longer in force, substituting it with a reference to the current EU legislation.

Regulation 65 omits article 30, which relates to border area agreements between member states. Regulation 69 omits all of title 3 of the EU regulations, which requires member states to set up systems for internal waste movements consistent with the system used between member states. Given that the UK has a system for internal waste movements, those provisions are considered redundant.

Regulations 70, 71 and 72 relate to the export of waste to EU and EFTA countries for disposal. The technical changes contained in the draft regulations maintain the control procedures for such exports and preserve the existing prohibition on exports of waste for disposal except to EU or EFTA countries. Approval to export waste to the EU for disposal is contingent on a third country providing appropriate justification. A requirement is included for the Secretary of State to provide such a justification to the competent authority in the relevant EU or EFTA country. Regulation 72 also omits redundant obligations to provide documentation to EU customs offices and substitutes references to EU customs officials’ duties to the duties of UK customs officials.

Regulations 73 to 79 make technical changes to maintain the existing controls and procedures that govern the exports of wastes to non-OECD countries, OECD countries, the Antarctic, and British and EU overseas territories and to EU member states for recovery.

Regulations 80 to 89 make changes to maintain existing procedures that control imports of wastes for disposal or recovery and controls on wastes that transit through the UK. The regulations also omit redundant obligations to provide documentation to EU customs offices and substitute references to EU customs officials’ duties to the duties of UK customs officials.

Regulation 90 omits redundant references to “the Community”, movements of waste “in the Community”, “Community legislation”, “third” and “third countries”. Regulation 91 makes a number of amendments to enforcement provisions. The provisions of article 50 have already been implemented in the UK through the Transfrontier Shipment of Waste Regulations 2007 and so some of those provisions will now be redundant and can be omitted. Regulation 90 also modifies those provisions that place obligations on member states to co-operate with each other so that such obligations now fall to the UK regulators.

Regulations 91 and 92 make changes that preserve obligations to provide reports to the secretariat of the Basel convention and omits obligations to provide information to the European Commission on the movement

of waste between EU member states. Regulation 93 makes changes to maintain obligations in respect to international co-operation. Regulation 94 omits redundant provisions that require member states to designate competent authorities and contact points to the European Commission.

Regulation 95 makes technical changes that preserve the power for the Secretary of State to designate places at which waste entering or leaving the United Kingdom is controlled. Regulation 96 modifies a provision such that the Secretary of State is required to notify specified information to the secretariat of the Basel convention, rather than the European Commission. The regulation also places an obligation on the Secretary of State to publish UK information previously published by the Commission.

Regulations 97 omits article 57, which relates to an EU body. Regulation 98 omits article 58a, which provides a power to the European Commission to amend annexes to the regulation. Regulation 99 omits article 60, which places obligations on the European Commission to review the regulations. Regulation 100 omits articles 62 to 64, which are considered redundant. Article 62 provides transition rules for shipments of waste approved under the previous EU legislation on waste shipments. Article 63 covers historic transitional provisions in the EU legislation from the 2004 and 2007 enlargements of the EU. Article 64 makes provisions for the entry into force and application of the EU regulations. Regulation 101 omits a reference to the direct applicability of the EU legislation to member states.

Regulations 102 to 104 make technical changes to instructions on the completion of forms. Regulations 105 to 108 update or remove references to redundant EU legislation. Regulation 109 modifies the questionnaire for reports on inspections and enforcement, omitting the elements of the EU questionnaire that related to movements of waste between member states. Regulation 110 makes minor technical changes to retained EU legislation that sets out the control procedures for exports of waste for recovery to non-OECD countries. Regulation 111 makes minor technical changes to retained EU legislation that provides a correlation table between EU customs codes and EU waste codes.

The statutory instrument addresses technical deficiencies in the waste shipment legislation, in order to ensure that the legislation will continue to operate effectively when we leave the EU. As I have said, it does not introduce new policy. In the development of the instrument, we have sought to ensure minimum disruption to businesses that are involved in the shipment of waste, by retaining existing law. No enforcement mechanisms or enforcement bodies are being changed, and there are no significant impacts on the enforcement bodies, such as the Environment Agency, or other regulators. The instrument has been designed to ensure the continuation of the current system for the control of waste shipments, and no significant direct impacts have been identified.

Should the UK leave the EU without a withdrawal agreement in place, 545 of the 556 existing approvals to ship notifiable waste to EU countries will continue to be valid. No new applications will be required to allow the export of those wastes and there will be no additional administrative costs associated with the approval process. Unfortunately, Spain is the only EU member state still to provide a response in respect to 11 approvals.

[Dr Thérèse Coffey]

My officials have met officials from the Spanish Ministry of Environment, and given that those shipments have previously been approved, there is agreement on both sides that it is important to avoid unnecessary duplication. Our principal export to Spain seems to be car batteries. We have had discussions with prominent exporters there, and there are certainly other countries in the European Union that could accommodate those materials, if necessary.

For those reasons, I commend the draft regulations to the Committee.

9.8 am

Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Hosie. The Opposition acknowledge the need for legislation to ensure that, post-Brexit, waste shipments can continue in a timely and effective manner between the UK and the European Union, but we will abstain on the regulations because of our concern about how the Government are tabling such secondary legislation with limited means of scrutiny.

The Government's last-minute rushing through of SIs has massively constrained our ability to examine in depth their real implications. We have not had the necessary time to consult all stakeholders or to satisfy ourselves that this SI raises any problems. We do not think that the Government have allowed themselves enough time to do that either, which is worrying.

The Commons sifting Committee agreed with the Government that the SI did not require debate in Parliament, but the Lords Committee disagreed. I understand that its decision was made in response to a EU document and because it had concerns about the lack of approvals issued by the UK and EU competent authorities that authorise the shipments of waste.

At the time of the Lords decision, there had been only 61 responses to the 533 letters seeking agreement to roll over the process of waste shipments after Brexit. The Minister assures us that now only 11 approvals have not yet been agreed and that the Department for Environment, Food and Rural Affairs is working with Spanish authorities to authorise the shipment of UK waste to Spain. However, that accounts for only 68,700 tonnes of waste, and there is a worrying degree of uncertainty for the exporters of that waste.

I thank the Minister for her update, but I must ask her how many businesses are waiting on these approvals. What happens if those approvals are not agreed before the UK leaves the EU on 29 March, and what would the cost be to businesses if there were no approvals? If the Spanish Government do not agree to those 11 approvals, is there a plan B in place? If so, can she tell us what it is? Given the risks involved, why have the Government not produced an impact assessment?

In the longer term, how are we going to proceed with waste policy? If, for reasons such as non-alignment between UK and EU waste legislation, we no longer have access to EU recycling facilities in future, where will that waste go? Will material that has previously been recycled at European facilities be incinerated in the UK? How can we ensure that it will not go to less suitable countries that have a dubious record in recycling waste that is registered as having been recycled?

China stopped taking UK waste about a year ago, but during the 12 months to October 2018 the UK exported 611,000 tonnes of recovered plastic packaging to other countries, such as Malaysia and Indonesia, which are both in the top 10 countries for the quantity of waste plastics polluting the oceans. The Basel convention supposedly prevents shipments of waste to countries without sound environmental management, but that has not stopped the UK shipping huge quantities of plastic to Malaysia and Indonesia, where much of it ends up in the sea. What confidence can we have in UK regulations preventing unsustainable waste exports in future? We need a comprehensive and robust strategy to reduce waste and improve UK waste and recycling infrastructure, to not only be more responsible for where our rubbish ends up but to benefit the UK economy and create green jobs.

Mr Tanmanjeet Singh Dhesi (Slough) (Lab): On the long-term vision, does my hon. Friend agree that rather than having a vision for building the nation's recycling infrastructure and dealing with core issues right now, the Government's waste strategy merely talks about voluntary action and distant target deadlines?

Sandy Martin: My hon. Friend is absolutely right. This is not a debate about the Government's waste strategy, but leaving the European Union will have an impact on it. The Government need to be cognisant of the fact that without an effective waste strategy that prevents pollution and encourages recycling, leaving the European Union will exacerbate the problem.

The SI cannot guarantee anything, because it is just an administrative tool, but there is a real danger that the UK will become a cheap and less regulated alternative for EU member states to offload their waste on us. What expert advice has the Minister obtained about whether the new arrangements could result in any additional environmental impact compared with our current legislative arrangement with the European Union?

This instrument is about the status quo and ensuring that the current environmental protections on the shipping of waste remain in place on the day of Brexit. However, it is clear that when it comes to the UK's waste and recycling strategy, the status quo is far from adequate. Plastics and other recyclable materials are piling up in the UK and are being dumped illegally on the other side of the world. Like every other SI in preparation for Brexit, this may be portrayed as simply a copy-and-paste job that amends references to the EU and replaces them with UK equivalents, but we fear that there may be real problems associated with leaving the EU that the Government have still not fully understood.

9.13 am

Dr Coffey: To respond to the hon. Member for Ipswich, seven businesses in England have been affected by the situation in Spain. I do not have the statistics for countries whose regulators are different from the Environment Agency, but I know that the agency has spoken to each of the seven businesses and they are making contingency plans. As I outlined in my opening comments, there are alternative places for people to send car batteries and other products that are currently being sent to Spanish recycling processors.

It is important to recognise that we are still part of the Basel convention, which itself has international laws. I have explained how we are taking the Basel convention, a lot of which was applied through EU regulations, into domestic law so that we continue to have those obligations. The hon. Gentleman referred to countries such as China not taking waste, but China does still take some waste. It is about the level of contamination. We were exporting a lot more paper waste than plastic waste to China, recognising that packaging often gets remade in China and other countries in Asia. Nevertheless, the Environment Agency, proactively and on an intelligence-led basis, works to target exporters in trying to prohibit, prior to export, the movement of waste that would otherwise be illegal. In some countries—including, I think, in Malaysia—waste seems to have been exported to an illegal business, and the Environment Agency was not informed that that business was illegal. Now that our intelligence is better, measures such as stop notices can be deployed more often, and we need an intelligence-led approach for that.

The United Kingdom has always had a strong legal framework for enforcing environmental protections on waste. In terms of EU countries offloading into the United Kingdom, we are all members of the OECD

and there is a convention that, in essence, countries can export to other OECD countries. The receiving country will designate the waste as what it considers to be either high or low risk, and processes are followed in that regard, including on what controls are needed when exporting or importing. EU regulations do not allow EU member states to export their waste outside the EU for final disposal, although that is allowed for recycling, so there is no risk in that regard.

We take waste for disposal from other EU member states, and the EU will need to change its rules if it wishes that to continue. I know of one example where the recycling processor has already made arrangements for that EU member state to divert, so instead of that waste coming to the UK facility, it will go to another facility within the European Union. Contingency plans and preparations are well developed in that field.

I think I have covered the points raised by the hon. Gentleman, and I hope that the Committee will approve this statutory instrument.

Question put and agreed to.

9.18 am

Committee rose.

