PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Thirteenth Delegated Legislation Committee

DRAFT NUTRITION (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Thursday 28 February 2019

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not later than

Monday 4 March 2019

The Committee consisted of the following Members:

Chair: Mr Nigel Evans

† Brine, Steve *(Parliamentary Under-Secretary of State for Health and Social Care)*
Burden, Richard *(Birmingham, Northfield)* (Lab)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
Kendall, Liz *(Leicester West)* (Lab)
McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Morton, Wendy *(Aldridge-Brownhills)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Throup, Maggie *(Erewash)* (Con)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Tracey, Craig *(North Warwickshire)* (Con)
† Warman, Matt *(Boston and Skegness)* (Con)
† Whitfield, Martin *(East Lothian)* (Lab)

Jeanne Delebarre, *Committee Clerk*

† attended the Committee

Thirteenth Delegated Legislation Committee

Thursday 28 February 2019

[Mr Nigel Evans *in the Chair*]

Draft Nutrition (Amendment etc.) (EU Exit) Regulations 2019

11.30 am

The Parliamentary Under-Secretary of State for Health and Social Care (Steve Brine): I beg to move,

That the Committee has considered the draft Nutrition (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to see you in the Chair, Mr Evans. I hope we can get through this Committee without talk of avocado—that will seem so random in *Hansard,* but I enjoyed it.

The people of the United Kingdom currently benefit from world-leading standards of safety and quality for nutrition and the regulation thereof. Our intention is that those high standards be retained and built upon following our exit from the European Union. The Department of Health and Social Care has prepared this statutory instrument to ensure that those high standards are maintained and that the UK possesses a functioning body of nutrition-related legislation that will uphold consumer protection standards and continue to safeguard our public health.

The SI covers a discrete aspect of nutrition legislation that is currently governed by EU law. It includes, first, the health and nutrition claims that food manufacturers can make for the foods they produce and sell to our constituents; secondly, the vitamin and mineral substances permitted for use in the food supplements that so many of our constituents take; thirdly, the vitamins and minerals that can voluntarily be added to fortify foods, such as breakfast cereals or soft drinks; and fourthly, the content of foods for specific groups such as young children, foods that are used for special medical purposes such as by people recovering from an illness, and total diet replacement foods for weight control purposes.

Chris Stephens (Glasgow South West) (SNP): Can the Minister confirm that infant formula will be covered by the statutory instrument? How would he respond to the concern that many of us have about the fact that standards are currently set by the European Food Safety Authority, whereas other places, such as the US, have lower standards?

Steve Brine: I will come on to directly address the hon. Gentleman's point about the replacement for the European Food Safety Authority; I thank him for raising that point. I mentioned foods for young children, which obviously addresses the other point that he made.

The instrument deals with an important area of legislation. Many thriving businesses operate in this space and employ many of our citizens. I reassure those citizens that our overarching aim is that businesses and other interested stakeholders seeking to submit applications, scientific dossiers, relevant files or notifications currently governed by the nutrition legislation amended by this instrument are not burdened with additional regulations or significant changes to the processes. Overall, our policy intention is to mirror the existing regulatory system and processes already in place as closely as possible, and the SI makes all the provisions necessary to do exactly that.

The amendments made by these regulations are primarily technical in nature. They include changing EU-specific references to ensure that they are effective in the UK after EU exit day, and transferring legislative functions from the European Commission to the appropriate UK authority. The amendments also ensure that all relevant EU lists, registers and annexes apply effectively from exit day, enabling continuity for businesses and maintaining the high standards already in place at EU level. Following exit day, any changes made at EU level will not apply in the UK, because clearly we will then be a third country.

One important change made by the SI is the transfer of functions from the European Food Safety Authority, which has already been referred to, to an appropriate expert committee in the UK. For nutrition and health claims, a new UK nutrition and health claims committee would assume responsibility for providing scientific advice to the four UK Administrations on any new claims made about products marketed within the UK's borders. That committee would operate in a similar way and to similar timescales as the current EFSA process, providing further continuity to business. I am pleased to confirm to the Committee that the process for recruiting specialist members is well under way: high-calibre applications were received, interviews took place earlier this month, and the committee is ready to come into effect if required. We will announce its members shortly.

Regarding the devolved Administrations, the SI allows for the relevant Commission powers to be transferred to the Secretary of State here in England, Scottish Ministers, Welsh Ministers and, in Northern Ireland, the Department of Health in Stormont, thereby making provision for each of the Administrations to make their own legislation. In addition, if consent is provided by the devolved Administrations, the SI gives the Secretary of State the power to make legislation for the whole of the UK where that is appropriate and agreed to.

The devolved Administrations have been involved with the drafting of the regulations at every stage. I want to state on record that I am grateful for their continued collaborative approach in this area, helping to make sure that this policy continues to operate at the same high standards after our exit from the EU as it does now, as expected by Members of this House, by me and, most importantly, by the British public.

Martin Whitfield (East Lothian) (Lab): The regulations specifically require the consent of the devolved authorities for the regulations to be made across the UK by the Secretary of State. As MP for East Lothian, may I welcome that explicit statement, which is perhaps lacking in some other instruments?

Steve Brine: Yes, you may.

Mr Robert Goodwill (Scarborough and Whitby) (Con): The Minister has not referred specifically to kava kava, a foodstuff that can have similar effects to alcohol and

that was banned by the United Kingdom in 2003 because of the effects it can have on the liver. Under EU regulations, we could not ban the transit of kava kava. Once we have left the EU can we actually ban its transit? Many people are worried that these goods can be bought online and the transit of kava kava may be intercepted as it passes through the UK.

Steve Brine: I cannot say that I am familiar with kava kava, but because we are closely aligning in this area, everything that we have agreed to thus far would be transferred. After exit day, as I said, nothing new would be transferred, but it would then be for the body I mentioned that is being set up and members appointed to it, through accountability to me, to the Secretary of State and to this sovereign Parliament, to make any changes that it deemed were appropriate. I have a funny feeling that my right hon. Friend might return to this subject after exit day, and he would be entitled to do that. I dare say it would be one of the benefits of taking back control.

As the statutory instrument proposes no significant changes to the current regulatory regime, we estimate that there will be no significant impact on the public sector. Regarding the impact on industry, we have consulted with industry and other interested groups through our public consultation, which ran in December. Our analysis of the consultation showed that overall respondents were supportive of the proposals, but more detail was sought on how they might work in practice. We published our consultation response on Monday 25 February. We are confident that the guidance, which my Department is due to publish shortly, will provide all the additional details that respondents requested. I will ensure that, after publication, it is copied to members of the Committee, who I am sure will retain an interest in this matter after we leave Committee Room 9 today. Respondents should be reassured that our guidance is currently being tested with stakeholders to ensure that it is fit for purpose, and exposes industry and other affected parties to minimal procedural changes.

The British public and food manufacturers will not lose out in any way from the amendments contained in this statutory instrument as a result of Britain leaving the European Union. I believe it is important to stress again that the amendments will provide continuity for businesses and ensure that the exceptional standards of safety and quality for nutrition regulation already in place will continue long after our exit from the EU. I have said time and again publicly and before the Select Committee, and I will repeat again now, that there is nothing about us leaving the European Union that in our view will degrade our capability or responsibility to the British public in this area. I am not sure I can be clearer about that. I commend the regulations to the Committee.

11.39 am

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): It is indeed a pleasure to serve under your chairmanship, Mr Evans, and to be here discussing this draft amending regulation. I thank the Minister for writing to me in advance and for his summary this morning. However, I have started all of my speeches on Brexit SIs with a caveat, and I will do so again this morning. I apologise for any repetition.

We are now just 29 days away from Brexit day, 29 March, as I am sure everyone is well aware. It is deeply concerning that we are still planning for a no-deal scenario when we are so close to the deadline. I know that we have many, many more public health SIs to get through in that time, and I am worried that we simply will not have enough time to prepare properly. I hope the Government will take no deal off the table.

I thank the Minister for his letter asking for my support on the regulations. He does have my support, but as always I have some questions, and as always I know he will try to answer them. The explanatory memorandum says that there will be a low level of impact on businesses, but no impact assessment has been made. It admits that there will be some additional administrative burden on businesses, but that it will only be an extra 30 minutes of additional paperwork for applications to make health claims in both the UK and the EU. Is the Minister convinced that that is a realistic assessment? The consultation response document says:

> "Some respondents raised concern that the consultation underestimated the additional burden caused for submitting a new claim."

Has the Minister made any assessment of that since the consultation document was published?

The consultation document was published sooner than anticipated, and I thank the Minister for that, but I am concerned about how short the consultation period was—only 10 working days. I know that we are fast approaching Brexit, but allowing such a short time for businesses, stakeholders and the public to participate in a consultation is alarming, particularly when legislation is drafted as a result. If we are going to get no-deal planning right, we need more time and expertise to look into such detailed legislation.

Throughout the consultation response paper, it is clear that respondents wanted more detail from the Government. We need more detail on risk assessments, management processes and on how mirroring EU regulation would work in practice. The devil really is in the detail and the Government have failed to provide any detail at all. Will the Minister tell us when we will have that crucial detail at our fingertips? Concerns were also raised about integrated supply chains, particularly if the UK failed to be aligned with EU lists on product labelling. Will the Minister address those concerns?

The UK has a long tradition of collaboration with the European Food Safety Authority. Does the Government have a commitment to working with EFSA in the event of a no-deal Brexit? I know the Government are in the process of establishing the UK nutrition and health claims committee, the UKNHCC—not a very catchy acronym or easy to say. What relationship will EFSA have with the UKNHCC in the event of a no-deal Brexit?

Mr Goodwill: The hon. Lady is painting a grim picture of a no-deal Brexit. Surely it is within her power to vote for the deal on 12 March and take the instruction that 61% of the people in Sunderland gave her at the referendum?

The Chair: Order. Let us not go too wide in our discussions.

Mrs Hodgson: I didn't start it.

The Chair: No, the shadow Minister did not start it.

Mrs Hodgson: I think the former Prime Minister, who has a very fancy hut where he is writing his memoirs, may be the one who started it, but perhaps it goes even further back than that. I will follow your advice, Mr Evans, and not get drawn into such a fascinating debate on who started it, and what we might be asked to vote for on 12 March, because we still do not know what that will be. I will tell the right hon. Gentleman my decision when I know what we are voting for.

There has been a recruitment process for that catchily-named organisation, the UKNHCC. If somebody could come up with a way to say that, that would be helpful, seeing as we could be talking about it in the future. When will the names of the members be made public? What will their expertise be? Will they be subject to any scrutiny?

Finally, I understand that we are only half implementing the Commission delegated regulation 2016/128. Most of that regulation, which relates to foods for special medical purposes, came into force in February 2019 and will be transferred into UK law, but the part that relates to food for special medical purposes developed to satisfy the nutritional requirements of infants will not apply until 22 February 2020. As a result, the UK will not implement that part of the regulation. Can the Minister confirm whether that is the case?

Page 35 of the regulations makes no reference to infants. Is that intentional, and can the Minister elaborate on what will happen to infants who need food for special medical purposes? If the UK does not implement that law, we will have different standards from the rest of the EU. Will that gap be bridged immediately?

Any changes to the legislation must be communicated effectively and in a timely manner to the agencies affected by the SI. As I said earlier, I am concerned that the clock is ticking much quicker than we would like. I hope therefore that the Minister will work urgently to ensure that any changes are made quickly and communicated clearly. With that, and without being drawn into a whole debate on Brexit, I look forward to hearing the Minister's response.

11.46 am

Chris Stephens (Glasgow South West) (SNP): It a pleasure to see you in the Chair of yet another Delegated Legislation Committee, Mr Evans. Like many of the other statutory instruments that we have considered in the last few weeks, this one looks like yet another example of entirely ill-thought-out no-deal planning legislation that gives next to no guarantees of protections in the event of no deal.

Although it is right that current lists are preserved in UK law, the falling away of the EU frameworks that we have come to rely on will mean that if the EU decides to ban or strictly regulate items, those decisions will not automatically be applied here. That worries us, as it creates different playing fields between the European Union and the UK, and could mean that a weaker regulatory regime and weaker standards develop in the UK. As I asked the Minister, if we were to implement lower standards than those of the EFSA, is there any real concern with respect to infant formula? There does not seem to be a clear plan, so perhaps he could clarify the position on infant formula.

Paragraph 7.18 of the explanatory memorandum states that a number of pieces of legislation enshrined in UK law by the European Union (Withdrawal Act) 2018 will be revoked because they

"are inappropriate to retain in their current form, and will be established in future guidance."

That means that EU regulations—binding legislative instruments—will be transferred into "guidance" at UK level. That is gross irresponsibility and sets an incredibly dangerous precedent. Also, where is that guidance and when will it be established? Will it be ready in time for a potential no-deal scenario to replace those EU regulations and decisions immediately? How can we guarantee that the Department will not use the opportunity to water down or make substantive changes to the spirit of the EU regulations and decisions?

The mass transfer of EU Commission and EU agency regulatory functions to UK bodies is another huge concern, as the instrument does not specify who would be responsible. It gives no assurance about which UK bodies are involved, apart from "appropriate UK Committees", "relevant authorities" or Ministers. That is a quite extraordinary transfer of responsibilities and functions, set out in paragraphs 7.24, 7.25 and 7.26 of the explanatory memorandum. What resources have been made available and what preparations are taking place for that transfer of responsibilities? It is hard to believe that any infrastructure has been put in place when there is not even any detail about exactly which bodies will take on those roles and responsibilities. Will all that be ready in the event of a no-deal Brexit? Only by some miracle perhaps.

On consultation and guidance, the explanatory memorandum states that

"A full consultation report will be published in March 2019."

Given that the Committee is considering the draft regulations in February, what exactly is the use of that? What if the consultation response indicates grave concern about much or any part of the draft legislation? It appears to be an utterly ridiculous situation. On top of that, it is stated that guidance documents for the industry will be available only in March 2019. That would be utterly laughable were it not so serious.

Our real concern is that this is a terrible piece of legislation. It is ludicrous that the Government are forcing MPs to debate it when we have seen neither the implementation guidance nor the full consultation response. Therefore, I will be voting against the statutory instrument today.

11.50 am

Steve Brine: I am sorry to hear the hon. Member for Glasgow South West say that he will vote against the instrument. I do not think it is a terrible piece of legislation at all. It is sensible legislation that aligns us with the European Union after exit day, as is our intention.

The hon. Member for Washington and Sunderland West said that it is disturbing that we are still preparing for no deal. Well, it would be more disturbing if we were not. Bluntly, the House has an opportunity on or before 12 March to see that no deal does not happen. If it decides to decline that opportunity, it has another opportunity after 12 March to see that it does not happen. Last night's votes in the House may have given

an indication as to what that would be, but I could not possibly comment. The hon. Lady probably has the votes app on her phone as much as I do. In terms of who started this, well—

The Chair: Order. Can I say that I am finishing it?

Steve Brine: Maybe it is set in stone. Members can work out what I mean by that.

The hon. Lady asked lots of different questions. About the impact on business, we appreciate that there may be an additional administrative burden on companies that would have to submit claims to the UK and the EU if they wish to make the claim in both areas, but our intention is that procedures for submitting claims in the UK will closely follow those already in place for the EU. We have been in that family for some 40 plus years.

Leaving the European Union is a complex process, to put it mildly. It is not just about trade deals, reciprocal healthcare and citizens' rights. It is about complex supply chains at every level of business, and there is a complex supply chain around nutrition regulation. It would be an act of foolishness on our part to diverge too far and we do not intend to do that. We estimate that the application paperwork should take only 30 minutes to complete, and rightly so.

In terms of future divergence with the EU, we will make sure that we continue to review the situation to make sure we stick to regulatory alignment with the EU, as deemed appropriate by the Government and ultimately by this House, which holds the Government to account. I am content, as is the Government, that the SI maintains regulatory standards and nutrition policy in a no-deal scenario, and therefore an impact assessment is not required. I have already said that businesses will have to spend a short time on administration.

We completed an equalities impact assessment. We found that the measures set out in the instrument do not have an impact on any of the protected characteristics as defined in the Equality Act 2010.

The hon. Lady asked why the consultation period was just 10 days. To be factual, it was not. It was 11 days—*[Laughter.]* That is #factualnews. A consultation's duration is generally determined by the proposals it contains, and in this case we are proposing to mirror the existing regulatory regime as closely as possible, ensuring minimal disruption to business. With that in mind, we consider the consultation period to be entirely appropriate and in line with Cabinet Office consultation principles.

We received 31 responses to the consultation—a case of quality over quantity. We are pleased that they included responses from a broad spectrum of groups, including manufacturers, trade bodies, members of public and one local authority. The response was supportive of the proposals to mirror the existing regulatory framework, as I have already said. We are working with the Department for Business, Energy and Industrial Strategy's business insight group—now there is a catchy title—to sight the industry on proposed guidance and to obtain its feedback.

Infants are deliberately not mentioned in the SI, because the issue does not apply on exit day. Our current policy intention is to make domestic legislation that is consistent with regulation 609/2013. That includes requirements for foods for special medical purposes developed to satisfy the nutritional needs of infants and for infant and follow-on formula, which are important. The Department will issue further advice on that once the EU exit position is clarified, which clearly is yet to happen.

I was asked whether the UK will continue to be a member of EFSA after we leave the EU. I have said no. The nature of our future relationship with EFSA will be subject to negotiation with the EU, and that is not just in terms of the withdrawal agreement. The SI provides for the appropriate expert committee—I appreciate that the acronym is not ideal—to assume EFSA's functions in a no-deal scenario, which will guarantee certainty.

The hon. Member for Glasgow South West asked what will happen in relation to products banned in the EU after exit day. As I said in my opening remarks, products that EFSA approves after exit day will be for it to approve for the remaining member states. In terms of the relationship between our new committee and EFSA, we have a long tradition of close scientific collaboration with EFSA in this country. We value it greatly and very much hope and intend that to continue in the future. If EFSA makes a decision on a product, it would be most unlikely that our new committee, whatever it is called, would not take notice of that. We want to continue close regulatory alignment in this policy area so that the public have confidence and so that, returning to my first point, businesses do not face an undue burden in getting products covered in both areas.

Public Health England is in the process of recruiting specialist members for the UKNHCC, including the chair. The recruitment was open and transparent: it was advertised on gov.uk from 8 November to new year's eve; high-calibre applications were received and the shortlisted candidates were interviewed last week. The committee is ready to come into effect if required. I do not have the names here, but I know that recommendations for appointments to the committee have been shared with the devolved Administrations. They have confirmed that they are content with the calibre and experience of the recommended individuals. Appointment letters will be issued shortly; once accepted, they will be published. I have already said I will publish that to members of the Committee.

Finally, guidance is being developed and tested with industry to ensure that it is fit for purpose, is closely aligned and clearly communicates to business any changes in the process that would occur in a no-deal scenario. That guidance will be published shortly—certainly before exit day, which we still hope will be 29 March.

Mrs Hodgson: On a point of clarity on the lack of mention of infants, I heard what the Minister said, but there is a lack of clarity on whether there will be a gap between the situation in the EU and the regulations here. Will that gap exist? Will there still be a difference? I know he is sort of saying that he cannot say what the position will be at the moment, but will he seek to ensure that there is no gap?

Steve Brine: Not only will I seek to ensure that there is no gap, but I will very much take that as feedback from Her Majesty's Opposition on the regulations and ensure that it is fed through to the new committee as it is formed. I understand the concerns expressed by the hon. Lady and the Scottish National party spokesman in that regard.

Question put.

The Committee divided: Ayes 9, Noes 1.

Division No. 1]

AYES

Brine, Steve
Goodwill, rh Mr Robert
Huddleston, Nigel
Morris, James
Morton, Wendy
Throup, Maggie
Tomlinson, Michael
Tracey, Craig
Warman, Matt

NOES

Stephens, Chris

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Nutrition (Amendment etc.) (EU Exit) Regulations 2019.

12.1 pm

Committee rose.