PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Twelfth Delegated Legislation Committee

DRAFT CHEMICALS (HEALTH AND SAFETY) AND GENETICALLY MODIFIED ORGANISMS (CONTAINED USE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Wednesday 13 March 2019

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not later than

Sunday 17 March 2019

The Committee consisted of the following Members:

Chair: † David Hanson

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Antoniazzi, Tonia *(Gower)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clark, Colin *(Gordon)* (Con)
Cooper, Rosie *(West Lancashire)* (Lab)
† Fabricant, Michael *(Lichfield)* (Con)
† Glindon, Mary *(North Tyneside)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Linden, David *(Glasgow East)* (SNP)
† McCarthy, Kerry *(Bristol East)* (Lab)
† Morris, David *(Morecambe and Lunesdale)* (Con)
† Newton, Sarah *(Minister for Disabled People, Health and Work)*
† Paterson, Mr Owen *(North Shropshire)* (Con)
† Prisk, Mr Mark *(Hertford and Stortford)* (Con)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Yohanna Sallberg, *Committee Clerk*

† attended the Committee

Twelfth Delegated Legislation Committee

Wednesday 13 March 2019

[David Hanson *in the Chair*]

Draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019

8.55 am

The Minister for Disabled People, Health and Work (Sarah Newton): I beg to move,

That the Committee has considered the draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Hanson, and I thank all colleagues for coming along to this important statutory instrument Committee this morning.

It is really important that we reach a negotiated settlement with the EU, but it is our duty, as a responsible Government, to prepare for all eventualities, including leaving with no deal. This SI is one such contingency measure and will ensure that regulations governing chemicals and genetically modified organisms for contained use continue to be operable in a no-deal scenario.

I shall take this opportunity to reiterate that this instrument will deliver on our commitments to protect workers' rights as the UK leaves the EU by ensuring that health and safety regulation continues to provide a high level of protection in the workplace and for those affected by workplace activities. It will also deliver on the Government's commitment that as the UK leaves the EU standards of protection for people and the environment will remain at least as high as they are at present.

Together with ministerial colleagues in the Department for Environment, Food and Rural Affairs, we oversee a number of key regulatory regimes that affect the chemicals sector. Since the referendum, our joint programme has conducted particularly intensive work to ensure that there will continue to be a functioning regulatory regime for chemicals, with associated enforcement activity, in any exit scenario.

These draft regulations form part of the work being done to adjust our legislative framework in readiness for leaving the EU. I appreciate the technical nature of the regulations and that this instrument, as a composite of several different regulatory regimes, makes things particularly complex. The decision to present the proposals as a single instrument was for the benefit of the House—to reduce pressure on parliamentary time and to ensure that we can deliver an orderly exit. I ask hon. Members to please be assured that the proposals are sensible, proportionate and necessary.

If approved, the regulations will make necessary amendments to three retained EU regulations as well as EU-derived domestic legislation affecting the whole of the United Kingdom, including Northern Ireland. As stated, their purpose is to amend the relevant legislation to ensure that there is provision for an independent UK regulatory regime that maintains existing standards and protections. The Government's priority will be to maintain a legal framework to ensure the continued effective and safe management of chemicals to safeguard human health and the environment. That framework needs to be flexible enough to respond to emerging risks, while still allowing trade with the EU that is as frictionless as possible.

The first of the three retained EU regulations to be amended is the biocidal products regulation, which governs the placing on the market and use of products that contain chemicals that protect humans, animals, materials or articles against harmful organisms such as pests or bacteria. It is in place to ensure that those chemicals are safe for humans, animals and the environment, while improving the functioning of the biocidal products market. That market covers a wide range of products, such as wood preservatives, insecticides—for example, wasp spray—and anti-fouling paint to remove barnacles from boats.

Secondly, the classification, labelling and packaging of substances and mixtures regulation ensures that the hazardous intrinsic properties of chemicals are properly identified and effectively communicated to those throughout the supply chain, including at the point of use. That is done partly through standardised hazard pictograms and warning phrases associated with specific hazards, such as explosivity, acute toxicity and carcinogenicity.

Ruth Cadbury (Brentford and Isleworth) (Lab): The Minister said that this SI would protect workers' rights. Could she a bit more specific on exactly how?

Sarah Newton: I would be delighted to. As I will go on to explain, the regimes will be administered by the Health and Safety Executive, so the draft instrument will protect workers' rights by ensuring that we continue to have some of the safest workplaces in the world—we have a proud tradition of that. I am delighted that the team from the HSE that worked so hard on the draft regulations, and the lawyers that helped us to introduce them, are here today. They have done a fantastic job. I am sure we all agree that the HSE does a very good job, day in, day out, of promoting the wellbeing and safety of people in the workplace. The draft instrument will protect workers' rights by protecting workers from exposure to harmful chemicals.

Lastly, the export and import of hazardous chemicals regulation implements the Rotterdam convention and requires exports of listed chemicals to be notified to the importing country. For some chemicals, the consent of the importing country must be obtained before export can proceed. These regimes rely on EU processes to take and implement collective decisions. However, much of this business already operates at national level. Decisions at EU level are taken on the basis of evaluations and assessments undertaken by member states, or following consideration of scientific opinions reached by relevant expert committees. Under a no-deal scenario, the instrument will provide for these evaluations or opinions to inform a national decision, rather than informing UK input into an EU decision.

The HSE acts as a UK competent authority within the EU regimes for chemicals regulations, and therefore has capability and capacity that can be built on to enable it to take full UK regulatory authority responsibility. For example, across the whole of the EU, the HSE processes about an eighth of the biocidal active substance approvals and about a third of the biocidal product authorisations.

It is necessary to put in place arrangements for the HSE to recover its costs for work across the wider chemicals regimes, including on plant protection products. That is currently done by EU institutions, and a fee is charged. This approach to cost recovery is in line with HM Treasury policy and is a well-established procedure for charging industry for the various work and advice provided by the HSE—for example, on applications for approval of first aid training on offshore installations and pipelines, or the evaluation of safety cases made under the control of major accident hazards regulations.

The instrument also contains a small number of technical operability amendments to the Genetically Modified Organisms (Contained Use) Regulations 2014, which affect the use of GMOs in contained sites, such as laboratories, and currently refer to a number of European directives and regulations. These references, some of which are the responsibility of other Government Departments, will be updated to the corresponding repatriated UK domestic law. There are no policy changes or updates to duties, and all existing protections covering human health and the environment will be maintained and will continue to work in the same way post EU exit.

The UK chemical sector is our second biggest manufacturing industry and second largest exporter. It is also integral to the provision of essential products and technologies on which society relies. The draft instrument will provide clarity for the chemical industry and regulators, ensuring that the legal requirements for chemicals regulations are clear immediately after exit, and that certainty for consumers that the use of chemicals in the UK will continue to be desirable and safe.

Before closing, I stress that the devolved Administrations have provided consent for the elements of the draft instrument that are considered to be devolved. I hope that colleagues of all parties will join me in supporting the draft regulations and I commend them to the Committee.

The Chair: Before I call the Opposition spokesperson, let me say that the Minister ably presented the SI accompanied by four pings of a telephone. I am unable to identify which hon. Member had the phone, but I would be grateful if everyone would check and accordingly turn off the phone, so that the Opposition spokesperson is not also accompanied by pings.

9.5 am

Mike Amesbury (Weaver Vale) (Lab): I thank the Minister, and you, Mr Hanson; it is a pleasure to serve under your chairmanship. I sincerely hope there are no further pings. Hon. Members will be pleased to hear that I do not intend to offer a line-by-line commentary on the SI. It is vital that the regulation of UK chemicals and genetically modified organisms continues to operate effectively at the point at which the UK leaves the EU. Her Majesty's Official Opposition will not oppose the instrument, as the intent is to ensure the operability of the relevant legislation.

The chemical and pharmaceutical industry adds £18 billion of value to the UK economy every year from a total annual turnover of £50 billion. It employs 500,000 people directly and through supply chains, and has annual exports of £50 billion, with 63% of companies in the sector exporting what they make to the world. That is the highest proportion of any goods manufacturing sector in the UK economy.

Sixty per cent. of the exports go to the European Union, and 75% of the imports and raw materials come from the European Union; that is a vital point. The chemicals industry has been and remains a major presence in my constituency of Weaver Vale and the surrounding area, so the regulations are of particular interest to my constituents and many major employers including Ineos-Inovyn and Tata Chemicals.

The regulation and labelling of chemicals is an issue not only for those who manufacture, produce and sell them, but for all of us who use them on a day-to-day basis, whether directly in the form of household goods or medical products, or indirectly in relation to the food we eat and the environment we enjoy. As the Minister said, that means it is vitally important that we get the regulations right.

Although we welcome the general commitment to ensure that chemicals and GMO legislation continues to operate effectively after Brexit and the apparent intent to avoid any deregulatory impact, we have a number of questions about how that will work in practice. We also believe that the instruments cannot properly be considered in isolation, without recognising a wider problem of the uncertainty and instability of Brexit for the chemicals industry.

There is a lack of clarity regarding the Government's policy on genetically modified foods and what that policy will be in the future. The SI would give the Secretary of State for Environment the power to regulate genetically modified organisms within a research laboratory or biotechnological production facility that are not released into the environment. The Secretary of State has already said that the Government might take a positive attitude to gene editing to develop higher-yielding crops or more valuable livestock. The Opposition want to see guarantees that post-Brexit there will not be a more relaxed policy on GM than the one that the EU currently operates.

Crucially, the instrument is being laid at a time when the Health and Safety Executive—the body being tasked with picking up much of the work and responsibilities required to regulate the safety of chemicals and the workers' rights mentioned by the Minister—is dealing with budget cuts of 40% from 2010 to 2017, and when the Government have yet to respond to the most recent tailored review.

In short, we recognise the need for this statutory instrument, but we have concerns about the mechanisms to be used for delivery. We believe that the context in which they are being taken—one of cuts and potential chaos—has made the situation much more difficult and even more risky than it might otherwise have been. As such, we have a number of questions about today's proposals that need to be clarified. I intend to go through them in turn in the hope that the Minister may be able to answer some of them.

Paragraph 3.5 of the explanatory memorandum states:

"After Exit, the same UK regulatory scientists will recommend updates to ensure the continued protection of people, the environment, and the interests of UK business for the UK only, not as part of the EU system. Where ministers agree with the recommendation,

[Mike Amesbury]

they will issue a decision to this effect and the Health and Safety Executive (HSE) will then ensure that the updates are given effect from an agreed date, and alert duty-holders to changes."

What processes are in place for any scrutiny and to challenge the Secretary of State about decisions on recommendations, particularly if there is a scenario where the Minister does not agree with the scientific recommendation?

At present, there is scrutiny of regulation by the European Parliament and by member states through the Council of Ministers, as well as supporting committees at EU level. The existing system allows for industry, trade unions, non-governmental organisations and technical experts to contribute to shaping regulation, and it is vital that there is no reduction in scrutiny, challenge or consultation. These regulations do not provide for any equivalent means by which stakeholders and experts in the field can help to ensure that regulation is robust and fit for purpose. Can the Minister confirm that the Health and Safety Executive will be given all the necessary funding and support to carry out its new responsibilities?

Paragraph 3.7 refers to the

"well-established policy of HSE to set fees to recover the full costs of its regulatory activities".

What guarantees are in place to ensure that the HSE fee cost is considered proportionate and fair by all concerned, and that it accurately reflects the full cost of intervening? The tailored review of the HSE made clear the importance of the tripartite partnership for the HSE; indeed, assessing fair and reasonable costs can only be done on that basis. In the absence of a formal response to the report, it would be welcome to hear the Minister recognise the importance of the tripartite partnership for the Health and Safety Executive in ensuring good governance and effective health and safety.

Paragraphs 7.26 and 7.32 of the explanatory note refer to devolution. Given that we have no functional Assembly in Northern Ireland, how does the Minister intend to future-proof these arrangements with that and other devolved authorities? Paragraph 7.4 refers to the European Chemicals Agency's IT system being replaced with a UK system. Has sufficient progress been made in developing that system, and have additional staff been put in place to carry out this function?

The current regulations set out arrangements whereby evaluations of active substances are distributed between all 28 member states, and deadlines set for their completion —currently 31 December 2024 for completion of the review programme as a whole. In paragraph 7.8, it is proposed that that be replaced by a UK stand-alone review of 488 active substances, and the regulations give the Secretary of State powers to make regulations, extend deadlines and specify other matters.

We are told that details of how such a programme would operate are currently under development; a progress report from the Minister would be greatly appreciated. There are other major questions and consequences. We welcome the Minister's commitment that any reviews would be done to the same standards in protecting human and animal health and the environment, but might it mean some level of regulatory divergence, even for a short period of time, when some substances have been reviewed and passed fit or rejected in the EU, but not in the UK?

Since 2006, REACH—the European regulation on the registration, evaluation, authorisation and restriction of chemicals—has built up a comprehensive database on the safety of chemicals. The Government are now walking away from that vital source of data. Their current position appears to be that companies will provide all the data, but a survey by the Chemical Industries Association found that 75% of the companies taking part did not own the data that they would be required to register under a separate UK system. What assessment have the Government made of the ability of companies to provide the necessary data in the future?

We appreciate that fee recovery is suggested to cover costs in some cases, and that fees were payable to the European Chemicals Agency for some services, but in others—such as managing requests by suppliers for the use of alternative chemical names—fee charging was not planned. What guarantees are in place that the Health and Safety Executive has the capacity to undertake all the new functions and responsibilities assigned to it, given the scale of cuts that it has faced?

Is this new landscape not further evidence that the Government must urgently and constructively respond to the recommendations of the tailored review? The Opposition believe that the UK should continue to participate in REACH so that there is no reduction in scientific and technical collaboration with the European Union. More than 50 chemicals companies have already applied to use EU regulators for safety authorisations, to enable them to continue to do business legally in the event of a no-deal Brexit, as REACH authorisations held by UK companies would no longer be valid. That involves transferring registrations with REACH to EU-based companies, or asking customers to act as agents on their behalf.

Paragraph 10 of the explanatory memorandum sets out engagement with the chemicals industry in a no-deal scenario. A couple of roundtables, a few stakeholder meetings and a question and answer session are nowhere near sufficient to prepare for the massive major challenge that leaving the EU without a deal would present to a sector worth nearly £13 billion to the UK economy. That sector directly employs 100,000 people, many of them in my constituency, and it deserves better.

The Government appear unable even to respond adequately to the findings of those meetings. Paragraph 10.6 states:

"Consultations with stakeholders emphasised that they would welcome an approach that allows technical and scientific updates to the regulations be made in a flexible and timely way that will offer businesses sufficient time to make adjustments".

Minister, we are two weeks away from exit day. Earlier this week, I received a letter from Inovyn that states that

"any disruption will adversely affect the competitiveness of our business and the potential for future trade and investment."

It further states that UK businesses have invested in REACH to the tune of £0.5 billion and highlights concerns that that investment would be wasted in the case of a no-deal outcome. It also notes that contingency planning throughout the UK for a REACH alternative is already costing significant time and money. Those concerns are reflected by Tata and other chemicals organisations throughout the country.

The Government have not delivered updates in a flexible and timely way, or responded effectively to the industry's concerns. The proposals are necessary given

the situation that we are in, but the situation is not acceptable to the chemicals industry, those who work in it, or those who are tasked with enforcing it under a cloud of uncertainty, cuts and concerns. The Government must urgently deliver the clarity that the industry needs, and the funding and support that the Health and Safety Executive requires and deserves. The Opposition will continue to demand that they do so.

9.19 am

David Linden (Glasgow East) (SNP): It is always a great pleasure to serve under your chairmanship, Mr Hanson, and I rise to respond on behalf of the Scottish National party. Although we want to remain part of the EU because of the widespread damage and disruption that Brexit would cause, we understand that we must be pragmatic and respond to the UK Government's haphazard preparations.

Yesterday, I had a very productive meeting with the Minister about other policy matters. Speaking for myself, and perhaps for the Minister, too, she would probably prefer to get on with her day job than have to respond to the absolute chaos of a no-deal Brexit and all the regulations that have to be passed. That chaos means that we are running out of time to ensure continuity in whatever scenario we find ourselves in. That is why we have ended up in the perverse situation of having to pack several regulatory regimes together, to reduce the pressure on parliamentary time. That is absolutely chaotic and goes against the democratic principles of this House. During the Brexit referendum we were told that we would be taking back control. However, with just 16 days until Brexit, rushing through an SI on a Wednesday morning, it does not feel like we are in control.

The Minister rightly touched on devolution. We continue to push for devolved matters not to be legislated on without consent. Our work in that area has ensured that changes within this SI cannot be made without devolved consent. The Minister has put that on the record. Although the financial implications for leaving without a deal are relatively minor in this SI, there are still additional costs that organisations would not have had to meet had the UK remained a member of the single market and the customs union.

Like the Labour party, we will not oppose the regulations. I wanted to place on record the chaos we find ourselves in, whether that is last night or later tonight. It certainly does not feel like Parliament is taking back control at the moment.

9.21 am

Sarah Newton: I very much appreciate the spirit of the debate and the support from the Opposition parties for these really important regulations, which will provide the clarity and certainty that we know the industry needs. I will respond to as many of the questions that have been raised as possible.

First, for the benefit of Committee members who are not quite so familiar with the chemical industry as others, many of the questions directed to me were about the REACH regime, which is not the subject of these particular regulations. Today, in the House of Lords, they are considering the REACH regulations, which is the major set of regulations that control the chemical industry more broadly. This SI deals with a related sub-set that sits alongside that regime.

The REACH regulations are the policy responsibility of DEFRA. I work closely with the Department on that, because the HSE will be the operational side of delivering that regulatory environment. I assure all colleagues that the HSE has taken its responsibilities to consult with the industry seriously and thoroughly. Those consultations started in February last year and the HSE has met with about 1,000 chemical businesses and held many stakeholder events.

I know from the feedback that I have seen that the HSE's consultations and engagements with the industry, as it developed these regulations, have been welcomed. The thinking behind both these and the REACH regulations has been about minimising any disruption. They will grandfather a lot of the registrations over to make this as seamless as possible.

I was asked about our preparedness as regards computer systems. Of course, the words "Government" and "computer systems" sat next to each other fill most people with horror, but the computer system has been built and has undergone user testing. As far as I can see, we are well on track to be able to deliver the operational aspects of what we need to do.

Mike Amesbury: But the explanatory memorandum refers to using the current system, not the new system.

Sarah Newton: I was offering some reassurance about the REACH regulations. Although they are not what we are here to talk about today, I was addressing those concerns.

Michael Fabricant (Lichfield) (Con): On a point of order, Mr Hanson. With the air conditioning going and the Minister's unusually quiet voice, although I heard the hon. Member for Weaver Vale clearly, it is really very difficult to hear the Minister.

The Chair: I have noted the air conditioning, and I will ensure that it is turned down for future meetings. Minister, if you could speak up, please.

Sarah Newton: Thank you, Mr Hanson. I will speak up; I would not want my hon. Friend to miss a word of what I have to say.

The computer systems and the capacity of the HSE are there, and I reassure all colleagues that, for this work in chemicals, the HSE has not had any cuts at all. This part of the HSE is all based on cost recovery, not only from industry but from other Government Departments. The HSE is the operations division, if you like, for a number of Government Departments, particularly DEFRA, and those resources have not been cut. I reassure people that the HSE will of course have all the resources that it needs to undertake its vital work, not only in the areas that we have talked about today but in all the areas that it works in to keep us all safe in the workplace.

I have regular meetings with the HSE's chairman and its chief executive, who assure me that they have the resources they need. They have done a marvellous job, coping with cuts to some parts of their business by innovating and working in new ways. They have responded to those challenges and we should look at the results; they will show that we have some of the safest workplaces

[Sarah Newton]

in the world, and that will remain the case. I can absolutely assure hon. Members that the HSE will continue to have the resources that it needs.

There has been some discussion of the processes and decision making, so let me provide some clarity for those who are not quite as familiar with the HSE as others are. The HSE board includes representatives of trade unions and workers, and of employers. It has an excellent reputation for engaging with stakeholders and ensuring that we develop appropriate health and safety regulations and legislation, and really effective enforcement. That will continue.

The HSE has a huge amount of expertise, enabling it to make the right decisions about what we should be importing into this country, including chemicals that are safe to use for both our environment and human health. That work will all continue. The HSE is already a leading competent authority in the EU, so it will be more than able to continue to provide guidance to Ministers.

The ultimate accountability for the new regimes will be this Parliament. Ministers in this Parliament will be accountable to Select Committees, which do such a great job of scrutiny, and to Members of this House, so that they can scrutinise the decisions that Ministers take. From the HSE, through its scientific advice and into Parliament, we will be able to make decisions in this place to keep our citizens safe.

So as not to delay the Committee too much longer, if I have failed to address any specific points, I will of course write to follow up. In this House, we often have the opportunity to ask questions of the Minister responsible for the HSE and I am sure that Opposition Members will use those opportunities to seek the further clarity that they want.

What is so important about today is that whatever happens whenever we leave the European Union, and by whatever method we choose to use the European Union, we can be certain that these regulations will deliver the certainty and the safety for our citizens that we all want to see. I commend them to the House.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019.

9.28 am

Committee rose.