

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT FOOD AND FARMING (AMENDMENT)
(EU EXIT) REGULATIONS 2019

Tuesday 26 March 2019

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The Committee consisted of the following Members:

Chair: JAMES GRAY

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| † Antoniazzi, Tonia (<i>Gower</i>) (Lab) | † Rutley, David (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Blunt, Crispin (<i>Reigate</i>) (Con) | † Spellar, John (<i>Warley</i>) (Lab) |
| † Brock, Deidre (<i>Edinburgh North and Leith</i>) (SNP) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Timms, Stephen (<i>East Ham</i>) (Lab) |
| † Dhesi, Mr Tanmanjeet Singh (<i>Slough</i>) (Lab) | † Tracey, Craig (<i>North Warwickshire</i>) (Con) |
| † Drew, Dr David (<i>Stroud</i>) (Lab/Co-op) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Fysh, Mr Marcus (<i>Yeovil</i>) (Con) | |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | Mike Winter, <i>Committee Clerk</i> |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | |
| † Kendall, Liz (<i>Leicester West</i>) (Lab) | |
| † Latham, Mrs Pauline (<i>Mid Derbyshire</i>) (Con) | † attended the Committee |

Eleventh Delegated Legislation Committee

Tuesday 26 March 2019

[JAMES GRAY *in the Chair*]

Draft Food and Farming (Amendment) (EU Exit) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (David Rutley): I beg to move,

That the Committee has considered the draft Food and Farming (Amendment) (EU Exit) Regulations 2019.

It is an honour to serve with you in the Chair again, Mr Gray. These regulations group elements of four policy regimes: spirit drinks, wines, genetically modified organisms and agricultural direct payments. The purpose of this statutory instrument is to make purely technical or operability corrections, ensuring that these regimes continue to function as intended. The corrections deal with removing or amending references, converting EU procedures to UK procedures, and transferring EU functions to the UK.

For genetically modified organisms, the SI makes purely technical changes, to keep the retained EU legislation operable on exit from the EU. The operability changes will allow us to continue to regulate and enforce the applications process for consent to market genetically modified organisms in the UK. It will also allow us to continue to regulate the export of genetically modified organisms—both those that originate in the UK and those merely passing through the UK. The SI also seeks to correct minor errors in EU exit statutory instruments that have already been made.

John Spellar (Warley) (Lab): I seek a bit of clarity from the Minister; I was just looking through the documentation. Will we just carry on with the EU-directed regime, which is based not on science, but on hysteria against genetically modified organisms—particularly genetically modified crops? Alternatively, will we be able to use Brexit to get a policy based on science and agriculture, which would embrace that technology where appropriate?

David Rutley: The right hon. Gentleman makes an important point. Obviously, science will underpin our approach to genetically modified organisms, but it is worth noting that there are no genetically modified products in the approval pipeline, at least in the UK, and none is anticipated.

Mr Tanmanjeet Singh Dhesi (Slough) (Lab): My intervention will be somewhat different. Will the Minister confirm that there will be no watering down of the standards that we currently enjoy with regard to food and farming as a result of this statutory instrument?

David Rutley: The hon. Gentleman also makes an important point, one that the Opposition Front Benchers—perhaps I should call them the three musketeers—have consistently been making, with support from the Scottish National party spokespeople, too. I stress—as I have on numerous occasions, but it is worth doing it again for the record—that there is no intention whatever to water

down our standards. I wanted to make that point, because it is easy to get concerned about these issues. As the hon. Member for Stroud will recognise in his remarks, these regulations are about operability changes; they are not about changing policy.

John Spellar: There is a world of difference between watering down regulations that are clearly of proven scientific benefit to consumers, animals and the environment, and policies that are based purely on campaigns with a heavy degree of hysteria—particularly those against genetically modified crops, which have no proven negative impact on the health of the individuals consuming them. Is the Minister suggesting that we are not going to take the opportunity? There may not be an application, and that may be because the current policy is dictated by one or two European countries. Will we not become a bit more progressive and take a science-based approach?

The Chair: Order. If the Minister wishes to answer that question, he must do so strictly in the context of the statutory instrument before us.

David Rutley: With the guidance of Mr Gray, I will answer the right hon. Gentleman quickly. We will let science be our guide. However, as I said before, this statutory instrument makes no changes to policy, but purely to operability. I understand the right hon. Gentleman's point and I think I have answered it. We can have a long debate about GMOs, but this is not the day to do it—unless Mr Gray feels that it is.

The Chair: Order. Mr Gray feels very firmly indeed that this is not the moment for wider discussion of GM policy.

David Rutley: Thank you for the clarification, Mr Gray.

With respect to wines, this instrument will amend EU retained law to make it operable from the day of exit. The changes to existing EU law will allow us to continue to apply or enforce provisions relating to detailed winemaking practices, including the blending and analysis of wine. This SI will enable us to continue to ensure consumer confidence in wines, maintain our trade and production of wines, and protect the significant contribution this sector makes to the UK economy.

On spirit drinks, this instrument makes operable the regulation, protection of and methodology for analysis of spirit drinks once we exit the EU. The changes specify protection for the UK's geographical indications. This instrument will make the necessary operability amendments to ensure ongoing protection of US spirit drinks Bourbon whiskey and Tennessee whiskey, following the signing of the UK-US spirit drinks agreement in January. The instrument will also prevent the EU27 spirit drink geographical indication from being automatically protected in the UK after leaving the EU.

The amendments to spirits, together with those for wine, are part of establishing a geographical indication scheme in the UK. These changes are a component of a wider sweep of DEFRA legislation on geographical indications. For those who have been on the journey, these include the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019, debated

and approved on 13 March, and the Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019, debated on 20 March.

Finally, this instrument will also make minor technical amendments to roll over currently existing provisions in retained EU law on DEFRA's direct payment statutory instrument. The corrections relate to environmentally sensitive permanent grassland, buffer strips, field margins and the strips of eligible hectares along forest edges without production; the ratio of permanent grassland; and criteria for ecological focus areas. No policy change is made by the corrections, however. They address drafting errors in two of DEFRA's EU exit statutory instruments relating to direct payment. An error was made when we laid the earlier instruments and we have sought to rectify these errors at the earliest possible opportunity. I apologise to colleagues and members of the Committee for those minor errors, but these are necessary corrections and we must get the legislation right.

It is worth noting that this statutory instrument was originally laid under the negative procedure. However, the Lord's Secondary Legislation Scrutiny Committee recommended that the regulations be made under the affirmative procedure. The recommendation was based on the Committee's view that the proposed amendments go beyond what is required to maintain the operability of the law after EU exit by conferring a new duty on the Secretary of State in respect to GIs, which they believed could have a considerable commercial and economic impact. As a result of this view, DEFRA Ministers subsequently agreed that the instrument be made subject to the affirmative procedure.

This statutory instrument will apply to all devolved Administrations. DEFRA has consulted devolved Administrations on the amendments in this instrument and, where appropriate, they have consented to its coming into force. The policy on GIs is reserved, as it is about intellectual property, but, as we discussed last week in a similar Committee, the Government have been working closely with devolved Administrations to ensure that we have a well-functioning system across the UK.

Decisions to release or market genetically modified organisms are a devolved matter in Wales and Scotland, and a transferred matter in Northern Ireland. The devolved Administrations have been consulted throughout the process for bringing this instrument into force and they support that approach.

We have engaged extensively and listened to stakeholder views on the policy areas addressed in this legislation. The Government launched a public consultation in October 2018 seeking the views of stakeholders and the public about the proposed new UK GI rules, which this SI helps to bring into place. The majority of respondents supported the Government's proposals and we have engaged with any concerns raised by stakeholders. There was no consultation undertaken for direct payments and GMOs because the changes are entirely technical and intended to ensure that current provisions continue to be available after EU exit.

A technical notice and further guidance was recently published for GMOs. This SI makes minor corrections to earlier GMO-specific regulations. In October, DEFRA engaged with parties with an interest in GMOs, such as umbrella industry organisations representing agricultural-biotechnology companies, research establishments and

NGOs. An impact assessment has not been prepared for this statutory instrument because minimal impact on business is expected.

The purpose of this SI is to make purely technical or operability corrections to ensure that the policy regimes for GMOs, wines, spirit drinks and direct payments remain able to operate after our exit from the EU. For the reasons I have set out, I commend the statutory instrument to the Committee.

2.40 pm

Dr David Drew (Stroud) (Lab/Co-op): I am delighted to serve under your chairmanship, Mr Gray. We are at it again—now we are revising the revisions. Mistakes were made in earlier Committees, so we have had to come back and review them. In correspondence with me, and I am sure with the Minister, the Green Alliance has said:

“The pace at which draft legislation has been processed has been relentless, with many different areas covered each week. Parliamentary scrutiny has been creaking at the seams with MPs and peers often admitting they haven't had enough time to review the legislation thoroughly.”

I strongly concur, because we are here doing it morning, noon and night. This is the second of my three SI Committees today; no doubt the Minister and I will be engaging later, unless he is being given time off for good or bad behaviour.

The pace is a worry, because the legislation has been so rushed that mistakes were bound to be made, as we have been saying. As much as we love and trust the civil service, the rate of knots at which it is having to work begs the question of what will happen if some of it goes wrong. In this case, some of it has already gone wrong and we must correct what we did.

The Minister says that these are minor amendments—amendments of amendments—and I understand that. On 5 March, however, which is not that long ago, the European Statutory Instruments Committee noted that the explanatory memorandum says that the instrument “will, as far as possible, provide that retained EU law has the same effect as current legislation, ensuring that consumers and businesses are able, after exit day, to provide and make use of the same information, presented in the same way as before”.

I am not sure whether that is legal, political or something about interpretation, but it does not give me the greatest confidence that what we are doing will be completely right. It may be that some of it is not right and that we will be back here again next week amending the amendments.

In many respects, the regulations are fairly technical. I will not argue with my right hon. Friend the Member for Warley, who may have different views on GM. In fact, as we are not changing the policy—at least, I do not think we are—we cannot have that argument, as the Chair would tell us.

The Chair: I most certainly would.

Dr Drew: Such an argument would be unseemly, particularly within the Labour Benches, and this would not be the appropriate place.

I have several things to say to the Minister, because some points need to be brought out, including on minor amendments. Although he has said time after time—we

[Dr Drew]

have been here before—that there is no change in policy, the implication of the instrument is that there could be, and to some extent it opens the door to what the future policy changes could be. It is interesting that we are doing this now. As he said, we would not necessarily disagree with the direction of change, but the rate at which change is happening is significant.

I ask the Minister again what the implied costs are of the instrument. It is always said that there is no cost, which is why we do not have a regulatory impact assessment, but according to the European Statutory Instruments Committee, which scrutinised the instrument and moved it from negative to affirmative on 5 March,

“a significant new duty is being conferred on the Secretary of State.”

We cannot all be right. Either significant new duties—not powers—are being imposed on the Secretary of State, or they are not. I would welcome it if the Minister said something about that.

Again, the problem is that there has been little engagement with other organisations. By chance, I had a meeting with the RSPB this morning. I said, “We’re not getting much from you about SIs. We rely on you being the eyes and ears because you are dealing with how this will be implemented in practical terms”. The answer was, “We just can’t keep up with them. We have no capacity.” That was the RSPB, which has 2 million members. It has a fair number of staff and they cannot keep up. The NFU cannot keep up. It says something when the Opposition have to struggle through the policy issues and the organisations working on them with lots of specialists cannot keep up with the rate of change.

There have been some comments from the Nature Friendly Farming Network, which makes a point about the complexity of layers of policy changes, and the different way of looking at things. We are extracting things from EU legislation and bringing them into UK law. This may be a consolidation, but the Nature Friendly Farming Network implies that the changes afoot need to be scrutinised in much greater detail. Its biggest concern is the lack of requirement for independent scientific evidence and input in respect of the replacement of the European Food Safety Authority by competent authorities. I assume “competent authority” means our own Food Standards Agency, but does it have the capability, capacity and interest to be able to take on some of these great changes?

I may disagree with some aspects of GM, but my right hon. Friend the Member for Warley is right that those who believe that the agricultural industry has to change are looking at the science and technology—not necessarily genetic modification, but other ways of looking at how plant breeding takes place.

We have discussed pesticide regimes in a separate SI; those are very important in the regulation of GM. The Nature Friendly Farming Network argued that there should have been much more consultation with farmers and scientists on what is happening and how.

The major concern of the NFU is with no deal and its implications for British farming. It worries that some of the changes have been made in such a hurried way that the impact of a no-deal exit will create uncertainty;

I know the Minister will lecture us on why we could have a deal, but we have to look at the uncertainties. The reason why they matter is that this legislation could be enforced sooner rather than later. If it is not right, somebody somewhere is going to pay for the consequences. It is very important that we continue to ask these questions; I have not asked many today, because this legislation is more straightforward and we are revising the revisions.

However, the regulations are important. I am not impugning the civil service, which will understand them, but others who are involved in the issues have to understand them as well. It is vital that we get this right. I am worried about how this issue has come back. Are we getting it right, and what do we do if we get it wrong?

2.49 pm

Deidre Brock (Edinburgh North and Leith) (SNP): It is a pleasure to serve under your chairmanship, Mr Gray. I have concerns about the geographical indications for spirits. To be honest, I have concerns about the Government’s generally cavalier attitude to protected products and about the adverse effects that it may have as we plunge down the Brexit cliff towards the waiting rocks.

Specifically, I have concerns about the explanation offered in the explanatory memorandum that spirit drink geographical indications for products from the EU27 nations will be gone after Brexit and that we will retain only the UK ones. Why would that be considered a good thing? It is better for consumers here to know that the drinks they are consuming—especially alcoholic drinks—are the genuine article. If someone in Leith fancies a Calvados after dinner, they should be confident that it is Calvados, just as they would be confident in a good Scotch.

That decision is especially strange alongside the decision to recognise spirits from the US and the stated intention to recognise two Mexican spirits when negotiations are complete. That seems so strange that there must be some intent behind it. Is there something that has not been made clear to us that would necessitate such a specific diminution of the relationship with EU spirits producers and such a specific improvement in the relationship with US producers?

The curiosity of that anomaly is not lessened by the notes on engagement at the end of the explanatory memorandum. Under the GMO bit, there is a fair deal of engagement with companies interested in developing GMOs, with “establishments”—a strange word to use—interested in researching them, with NGOs and with environmental campaign groups. On wine, the devolved Administrations were involved in the detailed drafting and the provisions in the regulations, and industry and producer stakeholders were kept informed. On direct payments, stakeholders in England were consulted. On spirit drinks, though, the full text says:

“Defra has engaged with industry throughout the development of the new replacement regulation for 110/2008, and although no formal consultation has taken place with industry or the Devolved Administrations, stakeholders have been kept informed of progress.”

Why was there no formal consultation? Why was there no involvement of the devolved Administrations in the detailed drafting? Scotland, after all, has the bulk of the distilling industry, including 70% of the gin distilled in

the UK. I very much hope the Minister will offer us an explanation for this strangeness and some greater insight into why such an asymmetrical decision has been taken.

I also wonder what effect this approach will have on our own spirits that are sold in the EU27 after we leave. Is whisky's protection going to be diminished? Will Plymouth gin lose its protection in the EU? There is also a huge list of spirits drinks—nine full pages of the list in the EU regulation—that will no longer be protected in the UK. Will we now be open to poor-quality imitations?

Much of this SI seems fairly straightforward, but this issue needs some serious explanation before we are asked to approve the regulations. What is the rationale behind what appears to be a very strange idea?

2.53 pm

David Rutley: I thank hon. Members for their contributions. We have discussed some of these issues in similar Committees before.

In response to the hon. Member for Stroud, who made points about the view of the House of Lords sifting committee on this particular SI, it is worth noting that this SI was laid, as I said, under the negative procedure, and it was then recommended that it be laid under the affirmative procedure. That is what we have done and, clearly, we are debating it today.

Again, I just want to point out that the suite of legislation on geographical indications under the EU withdrawal Act confers new duties on the Secretary of State; that is in consequence of the Secretary of State taking on functions from the European Commission as a result of withdrawal. However, it is not the instrument that we are considering today that confers new legislative duties. For spirit drinks, for example, that was the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019, which we debated earlier this month. This instrument confers only administrative functions on the Secretary of State from the EU Commission.

The hon. Gentleman asked about costs. As I said in my opening remarks, there are no legislative duties being imposed on the Secretary of State by this instrument. In terms of the administrative duties that result from this instrument, there are no costs associated with those duties.

The hon. Gentleman asked about scientific advice particularly around GMOs. At the moment, decisions on things such as commercial cultivation of GM crops and the marketing of GM products are taken at EU level, with each member state having a vote, and the European Food Safety Authority issues an opinion on the application. For the UK, that EFSA opinion is considered by the Advisory Committee on Releases to the Environment, a statutory body of experts that provides Ministers with independent scientific advice that informs UK votes. If we are to leave, EFSA opinions are publicly available, so we will continue to have access to them. ACRE will continue to have a role in advising the UK Government on applications made to, for example, grow a GM crop in the UK. The final decision will be taken away from the EU and made in the UK.

The hon. Member for Edinburgh North and Leith made some important points, particularly on spirit drinks, and we have discussed some of them before. She asked about the consultation that has been going on. I assure

her we have a very strong relationship with the industry, through the Scotch Whisky Association. I was fortunate to meet the SWA in Edinburgh last November. That visit was one of the first things I did when I was able to get time away from the estate. We have a close dialogue with the Scotch whisky industry.

We recognise the geographic indication of Scotch whisky is pivotal to the industry and vital for the UK economy and the Scottish economy as well. We have not yet announced a decision on how EU GIs will be treated if the UK leaves the EU without a withdrawal agreement in place. The UK is not obliged to protect EU GIs after exit. The Government look forward to negotiations on the UK's future economic partnership with the EU, during which we will be able to discuss the relationship between the UK's new GI schemes and the EU schemes. In addition, we will warmly welcome any application from member states of the EU27, as we would from producers in the UK or from other countries around the world.

Deidre Brock: Is the Minister saying that current protections for those spirit drinks from Europe, which we have recognised up to this point, are no longer guaranteed to continue, and that it is very much dependent on negotiations?

David Rutley: I will reiterate what I said, because these are important matters: the UK Government have not announced how EU GIs will be treated if the UK leaves the EU without a withdrawal agreement in place. I also said that we look forward to further negotiations on the UK's future economic partnership with the EU. All these things will be considered in that round.

Dr Drew: I apologise, but I meant to mention that the annexe of geographical indicators is where most, if not all, of our specialist branded goods appear. What will happen to those? Will we have our own annexe to some future piece of legislation? Will we still be able to go to the EU and ask it to put various UK products on its list? I do not know if the Minister has a ready answer to that, but that issue was picked up by the Committee.

David Rutley: We will create our own UK GI scheme, which will protect UK GIs within the UK. We will publish guidance on the day that we leave. I talked about how we will recognise EU GIs in answer to the hon. Member for Edinburgh North and Leith. All those things will need to be negotiated and reviewed as we go further forward. However, I assure Committee members that we are working closely with key stakeholders, not least the SWA, as we take this work further forward. I promised the hon. Lady that I will meet her to discuss this in more detail. We will fix that up shortly. I know that this is a key interest for her, both in her role as a spokesperson and as a constituency Member of Parliament.

Once again, I am grateful for the contributions that have been made. This SI sets out operability changes that are technical in nature, important as they are. As a result of what has been said, I once again commend this SI to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 1.

Division No. 1]

AYES

Blunt, Crispin
Fysh, Mr Marcus
Hart, Simon
Hollinrake, Kevin
Latham, Mrs Pauline

Rutley, David
Stewart, Iain
Tracey, Craig
Vara, Mr Shailesh

NOES

Brock, Deidre

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Food and Farming (Amendment) (EU Exit) Regulations 2019.

3.1 pm

Committee rose.