PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Monday 1 April 2019

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not later than

Friday 5 April 2019

The Committee consisted of the following Members:

Chair: Sir Roger Gale

† Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
† Hammond, Stephen *(Minister for Health)*
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Mann, John *(Bassetlaw)* (Lab)
† Menzies, Mark *(Fylde)* (Con)
† Morris, James *(Halesowen and Rowley Regis)* (Con)
† Morton, Wendy *(Aldridge-Brownhills)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Peacock, Stephanie *(Barnsley East)* (Lab)
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Throup, Maggie *(Erewash)* (Con)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
Turley, Anna *(Redcar)* (Lab/Co-op)
Zeichner, Daniel *(Cambridge)* (Lab)

Jeanne Delebarre, *Committee Clerk*

† attended the Committee

Fifth Delegated Legislation Committee

Monday 1 April 2019

[Sir Roger Gale *in the Chair*]

Draft Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

4.36 pm

The Minister for Health (Stephen Hammond): I beg to move,

That the Committee has considered the draft Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019.

I think I can say on behalf of the whole Committee without reservation that it is a pleasure to see you in the Chair, Sir Roger.

The Government's priority is to ensure that the high standards of food safety and consumer protection that we enjoy in this country are maintained when the UK leaves the European Union. This instrument is crucial to meeting our objective of a functioning statute book after exit day. Food additives, flavouring enzymes and extraction solvents are important substances referred to collectively as food improvement agents.

4.37 pm

Sitting suspended for a Division in the House.

4.52 pm

On resuming—

Stephen Hammond: These substances perform technological functions in or on food during its production or storage. Examples include preservatives, which are highly effective in protecting consumers from dangerous pathogens. They are used to improve the taste, texture and appearance of food. Common examples are artificial sweeteners and flavourings. In general, they are not sold to the final consumer but are traded between businesses.

As all hon. Members know, the Government's top priority is to secure a deal, but at the same time it is the responsibility of a responsible Government to prepare for all possible scenarios. An extension to article 50 does not rule out no deal as a possible scenario. It is therefore absolutely right that the Government continue to prepare for no deal, and this instrument is part of that preparation. We are committed to ensuring that the UK's legislation and policies function effectively in a no-deal scenario. It is for that scenario that these draft regulations have been laid before Parliament.

The instrument is to be made under the powers in the European Union (Withdrawal) Act 2018. It makes the minimum necessary amendments to retained legislation that governs the use of food improvement agents. It was due to be debated on Tuesday 19 March, alongside four other instruments on regulated products in food. Minor drafting errors were identified and have now been rectified.

The Government remain committed to ensuring high standards of food and feed safety and consumer protection. We will ensure that what we enjoy now is maintained in any deal or no-deal scenario. The instrument will ensure that the controls contained in the 11 retained regulations that govern food improvement agents continue to function effectively after exit day.

There will be no change in how food businesses are regulated or run. All existing food improvement agents permitted for use in the UK prior to exit day will continue to be permitted immediately after exit, and conditions and requirements attached to their use will be preserved. That will ensure continuity and clarity for UK food businesses and for those exporting their food products to the UK, and will maintain existing levels of public health protection and food safety.

I wish to make it clear to the Committee that, as with previous statutory instruments presented to the House by the former Minister, my hon. Friend the Member for Winchester (Steve Brine), the instrument makes no policy changes. It makes only essential changes that are necessary to ensure that we have an effective and fully operative statute book on exit day. The instrument's primary purpose is to ensure that legislation continues to function effectively after exit day. The amendments are critical to ensure minimal disruption to food controls in the event that we leave the EU without a deal. The changes also ensure that a robust system of controls will underpin the ability of domestic businesses to trade, both in the UK and internationally.

I stress that food safety will not be affected by the short delay caused by the instrument's withdrawal and re-laying before Parliament. The existing list of permitted substances, along with their specifications and conditions of use, will be retained by virtue of the European Union (Withdrawal) Act 2018. The Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013, which provide for the enforcement of provisions relating to those products, remain operable.

In the unlikely event that urgent action is required on unsafe foods in any short interim period between exit and the coming into force of the instrument, the Food Safety Act 1990 and retained EU food law will continue to provide food safety protections for consumers. That legislation, which has already been corrected, allows for enforcement action to be taken against placing any unsafe food on the market.

The instrument makes no changes to policy, beyond the minor and technical amendments to correct deficiencies arising as a consequence of the UK leaving the EU. Those deficiencies concern the assignment of functions to EU institutions on processes to which the UK will no longer have access and on which it can no longer rely. The instrument assigns powers and responsibilities that are currently incumbent on EU entities to the appropriate UK entities.

Under EU legislation, the European Commission currently holds a range of powers and functions to enable new substances to come on to the market, to amend the current conditions of use and purity criteria, and to remove substances from the permitted lists. The instrument transfers those powers from the Commission to Ministers in England, Scotland and Wales, and to the devolved authority in Northern Ireland. It also transfers responsibility for risk assessment from the European Food Safety Authority to UK risk assessors. The Committee should

note that all powers in that category relate to technical, scientific and administrative adjustments that may be necessary to respond to changing circumstances.

Risk assessment and the oversight of food controls will be essential to ensure that food remains safe, whether it is imported or produced in the UK. The Food Standards Agency and Food Standards Scotland are responsible for protecting public health in relation to food, and will continue to be independent science and evidence-based Government departments. Those functions will be delivered through an increased risk assessment capacity that has already been put in place.

The instrument will revoke EU regulation 257/2010, which places no obligations on the UK. That regulation established a programme for the European Food Safety Authority to re-evaluate the authorised food additives that were assessed for safety prior to 2009, which ensured that those substances remained safe for the general population in the light of the latest scientific data and technological developments. To date, re-evaluations for all colours, preservatives, antioxidants and aspartame have been completed, while re-evaluations for remaining food additives are ongoing. The official deadline for the completion of the re-evaluation programme is the end of 2020. All the EFSA's re-evaluations are published online and will remain accessible to the UK after it exits the EU. Through the Foods Standards Agency and Food Standards Scotland, the UK will continue to scrutinise the European Food Safety Authority reports as we do now, alongside other robust scientific evidence, and will consider if action on the UK authorised list is necessary.

By way of further assistance, the Committee may wish to know that article 26 of regulation (EC) 1333/2008 will be retained on exit day. It preserves the duty placed on producers or users of a food additive to immediately notify the UK of any new scientific or technological information that may affect the safety assessment of a food additive. The UK has sufficient safeguards and expertise in the Food Standards Agency and Food Standards Scotland to ensure that food additives on the UK authorised list are actively kept under review on an ongoing basis. Consequently, there is no need to establish a UK re-evaluation programme and replicate work already far advanced by the EFSA.

This instrument will have no impact on the food industry, as there are no changes to the controls on the use of substances. There are also no changes to the authorisation process for any new substances, except that the roles of the European Commission and the European Food Safety Authority will be replaced by relevant UK entities. To support the changes, the Food Standards Agency intends to publish detailed guidance on the UK authorisation processes. Scientific data requirements in support of applications will remain the same, and the same package of data can be submitted to the UK and the EU, avoiding any unnecessary additional burden.

This instrument is a necessary measure to ensure that the high standard of food safety and consumer protection we enjoy in this country is maintained, and that the relevant regulations continue to function effectively after exit day. Due to the instrument being laid under the European Union (Withdrawal) Act 2018, the scope of its amendments is limited to achieving that objective. At an appropriate point in future, the Department will review whether the UK's exit from the EU offers us opportunities to re-appraise current regulations while continuing to ensure that we protect the nation's health and food safety standards. I urge hon. Members to support the instrument, which I commend to the Committee.

5.2 pm

Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): It is a pleasure to see you in the Chair, Sir Roger. We are very happy that you joined us by stepping in for your colleague. I thank the Minister for introducing the statutory instrument and summarising its provisions after it was withdrawn two weeks ago. I welcome him to his position, although I am not sure if it is permanent. I know he was already a Health Minister, but by taking on the public health brief, he will know he has big shoes to fill. His predecessor and colleague, the hon. Member for Winchester, who resigned from his ministerial position last week, was a formidable and accomplished Minister who I had a lot of respect for, and I wish him well.

Things are constantly changing and developing with Brexit, as we know. I would like to express once again my severe regret that almost three years since the referendum, the Government have failed to significantly prepare or lay sufficient Brexit legislation before the House in a timely manner. As I am sure the Whip especially will know, we have been very busy of late, and we have missed the 29 March deadline. Unless the Government can compromise on a way forward and secure support from across the House today or very soon, we are heading towards no deal on 12 April. In that scenario, this legislation will be vital. I hope that this week—I have been saying this for many weeks now—will be the week we achieve a good deal with the EU that will protect jobs, workers' rights, our environment and, most importantly, our economy.

This SI was due to be debated two weeks ago, but was withdrawn from the Order Paper at the last minute. Can the Minister please illuminate and explain why that was? So far, an explanatory memorandum has accompanied all the statutory instruments that we have debated, apart from this one. Is that because the explanatory memorandum for the original draft still applies, or because the Government have omitted to provide one? I would be grateful if he could explain the reason for the delay and set out the differences between the two versions of the SI.

Throughout the debates on SIs, I have raised concerns about the time available to scrutinise them. This SI perfectly highlights my point that without a clear summary being available to the Opposition of what the SI is designed to achieve and what consultations the Government have undertaken, it is almost impossible to scrutinise the legislation properly in the given timeframe. There has been a lack of time to scrutinise properly the Food Standards Agency SIs that the Government have brought to the House and crucial details have been omitted from them, which industry representatives have raised concerns about, too. Now that the leaving date has changed, what conversations has the Minister's Department had with the industry about what these SIs will mean for their businesses and day-to-day working, and has the Department provided more information and reassurance to them?

Food improvement agents are used in or on food for a technological purpose during its production or storage. They are also used to improve the taste, texture and appearance of food. Examples include artificial sweeteners, preservatives and flavourings. The majority of us will

[Mrs Sharon Hodgson]

come into contact with food improvement agents daily. However, the Minister must appreciate that, for medical reasons, not everyone is able to consume food improvement agents. The relevant legislation provides specific labelling requirements for certain food products sold to consumers. An example would be mandatory warnings on products containing aspartame, as it is a source of phenylalanine, which could be detrimental to those suffering from PKU—phenylketonuria. Any reduction in standards for food labelling and mandatory warnings on products could be dangerous for people with dietary requirements. What may seem unnecessary to people who do not have those dietary requirements will be vital to those who do. What assurance can the Minister give that this legislation will not put PKU patients, in particular, in danger? I am particularly concerned that it could make the PKU diet even more difficult to maintain if warnings are removed from food labelling.

This SI will revoke for the whole of the UK a regulation that established a programme for the re-evaluation of approved food additives, as it is not thought appropriate or necessary to retain that legislation for the UK. Will the Minister elaborate on why that is? The SI goes on to say that there are other mechanisms by which new and emerging scientific data must be brought to the attention of decision makers by applicants. Will he please tell the Committee what those mechanisms are? The former Minister wrote to me about this SI, saying:

"I would like to reassure you that the UK will continue to monitor scientific evaluations and outputs from international assessment bodies such as EFSA and The Joint FAO/WHO Expert Committee on Food Additives…to ensure that we remain alert to emerging scientific analyses."

Has this Minister made any assessment of how long it would take to update regulations in the event of any new scientific analysis? What will happen if our European neighbours decide that a food additive is unsafe? Will we follow the lead of our neighbours? How will those decisions be made? Under these changes, if an application is made for a new additive to be introduced, will that be made public, and if not, why not? What will be the arrangements for collecting data, monitoring the effectiveness of the regulations and regularly reporting?

The Food Standards Agency will take on a lot of responsibility in this area after Brexit. Is the Minister confident that the agency is prepared and properly resourced to take on that extra burden? The health and safety of the public is paramount in all this, and I hope he ensures that safeguards are in place so that food containing any food improvement agents that are found to be harmful is quickly removed from the market. I look forward to his response.

5.10 pm

Brendan O'Hara (Argyll and Bute) (SNP): It is a pleasure to serve under your chairmanship, Sir Roger. May I, too, express my delight at your arrival? This is the latest in the seemingly never-ending procession of statutory instruments we have had to examine because—let us be frank—the Government's self-imposed, ideologically driven red lines led them stubbornly to refuse to take no deal off the table, despite that being the will of Parliament.

Like the hon. Member for Washington and Sunderland West, I am not surprised in the least that the earlier SI was pulled because errors were found. The speed and volume in which SIs are being put through the House makes such mistakes almost inevitable. I am genuinely pleased that the minor drafting errors were spotted and have been rectified, but what about the inevitable mistakes in the hundreds of other SIs we have discussed? Which errors have not been picked up? It will be left to others after us to pick up those mistakes, wherever they may be.

Given where we are, we acknowledge that preparations for a potential no deal have to continue. It is important that existing food improvement agents permitted for use in the UK prior to our leaving the European Union will continue to be permitted for use, and that all conditions and requirements attached to their use will be maintained. For that reason, like the official Opposition, we do not oppose the SI. However, we do have some questions.

Although it is right that European legislation will be preserved in UK law, the falling away of EU frameworks that we have come to rely on will mean that, where the EU decides to ban or strictly regulate an item, that will not automatically be the case here. That will create an uneven playing field between the EU and the UK. I fear we may be heading down a path whereby a weaker regulatory regime and standards develop in the UK. I hope the Minister can address that.

What resources have the Government made available to ensure that the new bodies will have the power to undertake their new duties adequately? Although the regulations may provide for the same powers, surely staff will have to be trained to implement those new powers. What steps have the Government taken to train them? I read in some of the background to the regulations that the Government estimate it will take less than 60 minutes for staff to read and understand the proposed regulations, and to disseminate the key information onwards. How was that estimated? Is the Minister satisfied that, if the organisations involved in the regulation of food look at the guidance for less than an hour, that will cover all bases? Given the paltry amount of time the Government claim that will take, is he satisfied that nothing will slip through the net?

I also seek clarity about exactly what will replace the EFSA. How will it operate, what teeth will it have, and how confident is the Minister that those new organisations will stand up robustly to both the industry and special interest groups? This is another piece of hasty legislation that is being pushed through. Sadly, once again, it is indicative of this Government's utterly shambolic approach to Brexit.

5.14 pm

Stephen Hammond: Let me try to address hon. Members' questions and comments. The hon. Member for Washington and Sunderland West asked what errors were identified in the SI and what has been done to rectify them. As I said in my opening remarks, they were relatively minor drafting errors, mainly due to style rather than content. For instance, there was a drafting error in regulation 16(b), where an obligation to inform the Food Standards Agency and Food Standards Scotland of the receipt of an application for a product to be included on a list was not included for smoke flavourings. That has been corrected.

There was a comment about the failure to comply with proper legislative practice, which related to whether some text should have been prepared and presented as a footnote instead. Although it was considered that we

did not have to follow that practice, we have followed it. I hope the hon. Lady will be satisfied that they were relatively minor drafting errors. She was right to make the supposition that the original explanatory memorandum still applies to this, as it did to the other three regulations that were introduced in this batch.

The hon. Lady asked about the impact on industry. As I hope she took from my words, the instrument will have no impact on the food industry. There are no changes to the controls on the use of substances or to the authorisation process for new substances, except, as we have said and as I tried to explain—I hope she took the point—that the roles of the European Commission and the European Food Safety Authority will be replaced by the relevant UK entities. I have also made the point that scientific data requirements in support of applications remain the same, so the package of data that must be submitted remains the same. Therefore, there should be no unnecessary additional burdens.

The consultation that took place with industry was open for six weeks between 4 September and 14 October, but, because it is so important that food safety and standards are maintained, it was left open for another week so that any latecomers could be included in the analysis. In total, 50 responses were received, of which some 82% supported the Government's approach. I hope the hon. Lady is reassured that industry has been consulted, that it understands the impact on it—that is, that there is very little impact—and that it is satisfied.

The hon. Lady asked about aspartame and the PKU impact. No changes are being made to labelling. Therefore, PKU sufferers will continue to see labelling as they do now.

Both the hon. Lady and the hon. Member for Argyll and Bute raised the subject of the European Food Safety Authority. As I said at the beginning, the instrument will not change the FSA's top priority in the UK, which is to ensure that UK food remains safe. The FSA has strengthened its risk analysis. The hon. Gentleman asked whether capacity has been strengthened, and I can tell him that capacity and resource for risk assessment and risk management have been strengthened. The FSA is also expanding its access to scientific experts who can provide the necessary scientific advice and other scientific services to meet any potential increased need for risk assessments.

Brendan O'Hara: On a point of clarification, are the Food Standards Agency and Food Standards Scotland expected to take over all the existing functions of the EFSA?

Stephen Hammond: As I pointed out, the UK will still have access to the re-evaluation programme until the end of 2020. All those re-evaluations will be undertaken through the Food Standards Agency and Food Standards Scotland. The draft regulations, along with other instruments, will transfer the functions of the EFSA to those bodies—*[Interruption.]* Inspiration has reached me to confirm that point.

The hon. Gentleman asked how we will ensure that we have the required expertise and resource to maintain standards in the UK. As I said, we have already put in place extra capacity and access to extra scientific advice. We are also looking at expanding the role of scientific advisory committees, to help us to uphold the principles of protecting public health and maintaining consumer confidence through openness and transparency.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019.

5.21 pm

Committee rose.