

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

COMMON AGRICULTURAL POLICY AND  
MARKET MEASURES (MISCELLANEOUS  
AMENDMENTS) (EU EXIT) REGULATIONS 2019

*Tuesday 7 May 2019*

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**The Committee consisted of the following Members:**

*Chair:* SIR HENRY BELLINGHAM

- |   |   |
|---|---|
| † Bacon, Mr Richard ( <i>South Norfolk</i> ) (Con)                            | † Green, Kate ( <i>Stretford and Urmston</i> ) (Lab)  |
| Beckett, Margaret ( <i>Derby South</i> ) (Lab)                                | † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con) |
| † Chishti, Rehman ( <i>Gillingham and Rainham</i> ) (Con)                     | † Jones, Mr David ( <i>Clwyd West</i> ) (Con)         |
| Cryer, John ( <i>Leyton and Wanstead</i> ) (Lab)                              | † Mackinlay, Craig ( <i>South Thanet</i> ) (Con)      |
| † Debbonaire, Thangam ( <i>Bristol West</i> ) (Lab)                           | † O'Hara, Brendan ( <i>Argyll and Bute</i> ) (SNP)    |
| † Drew, Dr David ( <i>Stroud</i> ) (Lab/Co-op)                                | Phillips, Jess ( <i>Birmingham, Yardley</i> ) (Lab)   |
| † Gaffney, Hugh ( <i>Coatbridge, Chryston and Bellshill</i> ) (Lab)           | † Seely, Mr Bob ( <i>Isle of Wight</i> ) (Con)        |
| † Goodwill, Mr Robert ( <i>Minister for Agriculture, Fisheries and Food</i> ) | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)  |
| † Grant, Bill ( <i>Ayr, Carrick and Cumnock</i> ) (Con)                       | Dominic Stockbridge, <i>Committee Clerk</i>           |
|   | † <b>attended the Committee</b>                       |

## Second Delegated Legislation Committee

Tuesday 7 May 2019

[SIR HENRY BELLINGHAM *in the Chair*]

### Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019

4.30 pm

**The Minister for Agriculture, Fisheries and Food (Mr Robert Goodwill):** I beg to move,

That the Committee has considered the Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019, No. 812).

As usual, before I start, I would like to declare my farming interests, as set out in the Register of Members' Financial Interests.

The purpose of this statutory instrument is to ensure that legislation recently introduced by the European Union relating to the common agricultural policy, or CAP, is retained in an operable form in UK law at the point of UK withdrawal from the EU. Since the previous Department for Environment, Food and Rural Affairs SIs—the Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 and the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019—were laid the EU has made changes to the legislation, and this SI ensures that those changes will be reflected in UK law on exit. We have also taken the opportunity to make minor corrections to other DEFRA exit SIs.

I must explain to the Committee why it was necessary to us the urgent affirmative procedure for this statutory instrument. The Government have always said that the urgent procedure under the European Union (Withdrawal) Act 2018 would be used only as a very last resort, and we have taken as much care as possible to avoid using it. However, it was necessary to enact this critical SI in advance of a possible no-deal exit on 12 April 2019, because during March 2019 the European Commission introduced two new amending EU CAP regulations, and it is essential that the UK retains those amendments in an operable form after exit.

Specifically, the regulations were EU regulation 2019/288, which applied to all member states from 1 March 2019 and relates to direct payments to farmers under the CAP, and European Commission delegated regulation 2019/428, which took effect from 26 March 2019 and relates to marketing standards in the fruit and vegetable sectors under the common organisation of agricultural markets, the CMO. We concluded that the urgent procedure was the only viable route available to us, as at that point a statutory instrument laid before the House through the usual processes might not have passed the necessary parliamentary procedures in time to come into effect on 12 April 2019, when we were so disappointed that we did not leave the European Union—[*Interruption.*] Well, we on this side of the House were disappointed.

The instrument also corrects a number of minor and typographical errors and, in the case of regulation 3(3), a duplication in a small number of previous DEFRA EU SIs. None of those errors have policy implications, but we are taking advantage of this opportunity to attend to them, to help to ensure that the statute book is error-free.

As Committee members will be aware, agriculture is a devolved policy area and of special importance to all parts of the UK, and Scotland is represented in the Committee today. We have therefore worked closely with the devolved Administrations to agree the context of this UK-wide statutory instrument. It reflects the UK devolution settlements and the status quo, whereby relevant authorities in England, Northern Ireland, Scotland and Wales operate the CAP direct payments network and enforce CMO marketing standards in the fruit and vegetable sector within their representative territories.

I know that the Labour Opposition might be tempted to ask about consultation. I assure them that this statutory instrument has not been subject to a formal consultation because it only makes technical amendments to the EU exit SIs that DEFRA has already laid before the House, and does no more than is strictly necessary to ensure that the regulatory baseline applicable in the UK under EU CAP and CMO legislation is maintained after exit.

As explained in a previous Committee debate on EU exit strategy instruments on 25 March 2019, when we debated a number of statutory instruments on the common agricultural policy, the UK Government have pledged to continue to meet their commitments to funding in the agriculture sector. This SI, by taking account of the EU's recent regulatory updates, fine-tunes DEFRA's EU exit instrument on direct payments, to ensure that the recently introduced flexibility afforded to member states to manage their budgets between pillar one and pillar two for scheme year 2020 will be truly reflected in the retained EU legislation.

Turning to the direct payments amendments, the EU direct payments provisions amended by this instrument will enable the UK relevant authorities, by which I mean the devolved Administrations as well as DEFRA in England, to continue to have the flexibility to decide whether to transfer funds from the direct payments budget to the rural development budget via an inter-pillar transfer. That provision was available across the UK in previous years of the CAP. It was used by England, Scotland and Wales at that time, but was limited up to and including the 2019 direct payment scheme year. As the Committee will be aware, that flexibility extends to up to 15%.

DEFRA had already intended to address that regulatory gap for the 2020 scheme year via domestic legislation, but the EU decided to make the inter-pillar transfer provision available to member states for the 2020 scheme year. That decision came into effect through new EU regulation 2019/288 on 1 March and DEFRA has taken the earliest available opportunity to account for the changes in the regulations. The regulations will retain the valuable flexibility afforded to EU-relevant authorities, which will enable direct payment and rural development funding levels for 2020 to be maintained in line with previous years.

On the CMO, the regulations amend provisions of an existing EU statutory instrument as regards marketing standards for mixes of fruit and/or vegetables and

citrus fruit. The EU has recently refined its regulations on marketing standards for fruit and vegetables to align them with the latest United Nations Economic Commission for Europe marketing standards. It has also clarified that marketing and labelling requirements for small packages of mixed fruit and/or vegetables apply equally to mixes of fruit, mixes of vegetables and mixes of fruit and vegetables. Those updates came into effect on 26 March.

The version of the EU marketing standards regulation that will be retained in UK law on exit will include the update. We want to ensure that the regulation is operable in the UK at the point of leaving the European Union by taking the amendment into account. The updates made by these regulations are therefore technical in nature to ensure that labelling changes are applied consistently and to update references to other provisions, which will provide clarity to stakeholders.

We have used the opportunity provided by the regulations to make minor technical amendments to four exit statutory instruments related to the CAP that were made by DEFRA between February and March. By way of example, regulation 3(3) omits a duplicate provision. Regulation 6(2) amends a phrase in a non-operative section of the domestic statutory instrument that describes the provision of retained EU legislation to ensure that the terminology is consistent with the exit statutory instrument that amends the provision described. We use the word “appropriate” rather than “relevant” authority. Neither amendment has a practical implication but merely tidies up the statute book.

The other corrections are essentially typographical, such as the use of the word “of” instead of “or”, taking account of different phrasing in the EU regulation, and correcting an instance where the text quoted in the statutory instrument does not match the text in the retained EU regulation. None of the errors have any policy implications, but I am pleased that we were in a position to use the opportunity to make the regulations to remedy them and to ensure that our statute book is absolutely correct and can operate without ambiguity.

The regulations bring the amended retained EU legislation into line with subsequent legislative amendments by the EU and correct a small number of errors. As with previous measures, that is purely to make policy operable in no-deal scenario. In the event of the withdrawal agreement being agreed, the regulations will be deferred to the end of any associated implementation period.

**The Chair:** Before I call the Opposition spokesman, if anyone wishes to remove their jacket, they are welcome to, because it is quite warm.

4.39 pm

**Dr David Drew (Stroud) (Lab/Co-op):** I am delighted to serve under your chairmanship, Sir Henry, and to see the Minister in his place. I will not delay hon. Members for too long, but it is important to make some of the considerations clear, as we have throughout the process of making these statutory instruments. We are now amending the amendments and we have to make sure that is done with due consideration and care.

I want to check with the Minister—he can nod approvingly—that we are talking about five SIs in total, rather than four. Four are implied in one place but five are mentioned in another.

**Mr Goodwill:** Yes, we are. As I have said, the two major provisions are to do with, first, the ability to switch from pillar one to pillar two and, secondly, the labelling of citrus fruit products. The others are merely typographical and other drafting measures; the hon. Gentleman will be pleased that we spotted before he spotted them and that we are able to correct them.

**Dr Drew:** I thank the Minister. It is always useful to know exactly what we are dealing with, otherwise something could come back to haunt us in due course because we thought we had dealt with it but we had not.

It is a difficult process. Because of the delay—I am not going to argue about why that is taking place—we face having to amend existing SIs because the Commission has made further changes. That is what the Minister alerted us to. That is right and proper, but I am still confused about the terminology in the explanatory memorandum that the Minister repeated. We are considering the notion that the

“marketing standards for mixes of fruit and vegetables apply to mixed packages ‘of different species of fruits, of vegetables or of fruits and vegetables’”.

To say that that is obscure is obvious—I would use the pejorative before that. This is complicated. At one level, the changes are purely typographical and about trying to bring things up to date that have gone through alterations elsewhere. On another level, the measure is important, because it talks about the relationship between pillar one and pillar two.

I want to be absolutely clear that the Government are not pulling a fast one, and that they will be able to make good some of the problems that we have had. The Minister is a farmer and he knows that it is a source of aggravation in the farming community that farmers do not get their direct payments on time through the Rural Payments Agency. We spent a lot of time in Committee on the Agriculture Bill—we would love to have the Bill back, so we could amend it accordingly—and on previous SIs trying to clarify exactly where the Government’s direction of travel is taking us. We know that we will be paying farmers for public goods and environmental supports, but it would help if that was clarified at this stage through the various SIs.

My one concern about the instrument is that clearly, in Europe, some ability is being introduced to improve flexibility, but the danger is that rather than taking the direction of travel that we would want to go in in this country, which is towards greater payments under pillar two, it is possible that, because of the shortcomings of the existing system, it could be taken as an opportunity to further enhance the pillar one payment system. That matters because the British Government—previous Governments and this Government—have failed to entirely deliver on their obligations under pillar two. That is clear from the rural payments, which some of us would certainly want to be enhanced, and from some of the other opportunities through pillar two—including the obvious one, environmental payments.

The other point is that we could be back here again. If we go as far as October, we will have to consider further amendments to some of the SIs that we have made—and because it is DEFRA, we have made an enormous number of them. It would be useful to know from the Minister what work is going on to see what further amendments we will have to make. For the

[Dr Drew]

benefit of my colleagues—well, my one colleague who is not on the Front Bench—and of the SNP spokesperson, we have had more than 120 DEFRA SIs. It would be worrying if we had to revisit an awful lot of those because of the updates and changes, even if some of those changes were purely typographical. It would be useful to have an indication from the Minister on how often we will have to re-engage in the process, because we will have to do that if the secondary legislation demands it.

In conclusion, the instrument is obscure but it is important that we get it right, which is why some hon. Members would ask why we are doing this in May when we might have to further amend it in advance of October. Those are the points that I wanted to make and I welcome what the Minister has to say in response.

4.45 pm

**Mr Richard Bacon** (South Norfolk) (Con): I will not detain the Committee for long, Sir Henry. It is a pleasure to serve under your chairmanship; I always feel that Committees go better when someone from Norfolk is in the Chair.

I have a question for the Minister, which relates to paragraph 8.1 of the explanatory memorandum. It came to a surprise to many of us, in the week when we thought we were going to leave the European Union—that is to say the week of 25 March, the Friday of which was 29 March, which is named as exit day in the European Union (Withdrawal) Act 2018—that in fact, that Act had not been commenced. Although it sits on the statute book as an Act of Parliament, it does not have legal force. Paragraph 8.1 of the explanatory memorandum says:

“This instrument is being made using the powers in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures”

and so on. My question for the Minister is this: has the European Union (Withdrawal) Act 2018 now been commenced? If it has not, how is it possible for this instrument to be made using the powers contained therein? Is it the case—I understand this is possible, but I do not know—that section 8 of the Act has been commenced, even though the rest of it has not?

4.46 pm

**Craig Mackinlay** (South Thanet) (Con): It is always a pleasure to serve under your chairmanship, Sir Henry. Following on a little from what the hon. Member for Stroud was saying, the legislative procedures of the EU march ahead in the background, and one of its amendments to a regulation is responsible for the instrument that we are considering. The CMO marketing standards legislation came into effect on 26 March, meaning that the original statutory instrument—a no-deal SI, or a “getting ready for exit day” SI—needed amendment through what we are doing this afternoon.

I ask the Minister whether I am to understand that, from now until October at the earliest, we will be revisiting a lot of the statutory instruments that have been put through over the past few months. There have been lots of them, put through with great haste, for obvious reasons. Will we be revisiting a lot of them as

the Europeans’ legislative agenda marches ahead, doing what it has always done? I can only assume that in days past, when the EU was putting out such measures, they came through under the negative procedure and did not really get looked at in this place, apart from the European Scrutiny Committee perhaps having something to say about them.

If the withdrawal agreement is ever agreed—it is a very big if—the implementation period would also mean Committees such as this doing very similar things: amending regulations as we stay in step with the EU during that period. While we all love serving on Delegated Legislation Committees, such Committees could be a regular feature over the years ahead.

4.48 pm

**Mr Goodwill**: I am pleased that the hon. Member for Stroud is on his mettle, and has asked some very pertinent questions. The first point I make to him, and indeed to my hon. Friend the Member for South Thanet, is “why wait until 31 October?” I have had three opportunities to vote for the withdrawal agreement; the hon. Member for Stroud could have taken those opportunities to get the deal over the line, but has yet to do so.

It is indeed the case that, while we are still in this position of limbo—I do not think that is an unreasonable term to use—we will have to update our legislation to bring us in line with changes made in Europe. In answer to one of the points that the hon. Gentleman has made, we fully engage with changes that are taking place in Europe, not only through our Members of the European Parliament but through our excellent officials who operate in UKRep in Brussels. On Tuesday of next week, I will be at the Agriculture and Fisheries Council in Brussels, where as long as we are members of the European Union, we will continue to engage and play a full part in the processes that are developing policy.

I have to say, however, that on the last occasion I was in Luxembourg, at the same meeting, I did not participate in the discussion on the future of the common agricultural policy—although, based on what was said in the room, it will be much easier to get agreement within the UK than within the member states of the European Union. There was a lot of talk about making progress, but an awful lot of vested interests, and national interests, were seemingly being supported. I think I have said before in Committee that leaving the European Union will give us a chance to tailor make our policy to fit the situation in the United Kingdom, particularly in the devolved Administrations.

The short answer to the question raised by the hon. Member for Stroud about whether we are pulling a fast one is no; the regulations merely allow for the situation in previous years, so that inter-pillar transfers of up to 15% can be made from year to year. England has availed itself of 12%, Scotland 9.5%, and Wales 15%—the full amount. Northern Ireland has yet to avail itself of that and, with the lack of any political direction in Northern Ireland, I suspect that that will continue to be the case. I assure the Committee that the devolved Administrations will still be able to decide their flexibility in that regard.

The hon. Gentleman made a fair criticism about our performance in delivering many of the payments that farmers have earned and expect. I am pleased to report

that the performance on the basic payment scheme has been much better this year than in previous years. However, I am the first to admit that we have failed to deliver on obligations under agri-environmental schemes. That is one of the reasons why the administration of those schemes has been taken away from Natural England and put in the hands of the Rural Payments Agency, which, as I say, is upping its game.

Will further amendments be necessary? That may well be the case as EU legislation continues to evolve, but I hope that we can get agreement as soon as possible on the withdrawal agreement. As I said at the outset, this is no-deal legislation, which we would need in place in the event of leaving. If we move into the implementation period, we will of course continue to apply EU legislation until the point at which we actually leave. Other legislation will likely be introduced in the event of EU legislation that may come into direct effect in the UK. We stand ready and prepared to ensure that that will happen.

The last point, which was made by my hon. Friend from Norfolk, somewhere—

**The Chair:** South Norfolk.

**Mr Goodwill:** Thank you. My hon. Friend the Member for South Norfolk asked whether the European Union (Withdrawal) Act 2018 is in force. Many of the sections of the Act were brought into force on Royal Assent, including section 8 under which the regulations are made. I hope that satisfies him.

In closing, the statutory instrument will provide important and necessary continuity for stakeholders and CAP beneficiaries by bringing our amended, retained EU CAP legislation in line with recent amendments made by the EU, and by correcting some small errors in previous statutory instruments that we have identified. I urge Members to agree to the amendments proposed to those instruments, and I commend the regulations to the Committee.

*Question put and agreed to.*

4.53 pm

*Committee rose.*

