

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT TRADE IN ANIMALS AND RELATED  
PRODUCTS (AMENDMENT) (NORTHERN  
IRELAND) (EU EXIT) REGULATIONS 2019

PLANT HEALTH (AMENDMENT) (NORTHERN  
IRELAND) (EU EXIT) REGULATIONS 2019

*Monday 13 May 2019*

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**Friday 17 May 2019**

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

*Chair:* SIR ROGER GALE

- |   |   |
|---|---|
| † Badenoch, Mrs Kemi ( <i>Saffron Walden</i> ) (Con)                | † Rutley, David ( <i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i> ) |
| † Debbonaire, Thangam ( <i>Bristol West</i> ) (Lab)                 | † Seely, Mr Bob ( <i>Isle of Wight</i> ) (Con)  |
| † Eagle, Maria ( <i>Garston and Halewood</i> ) (Lab)                | † Smith, Royston ( <i>Southampton, Itchen</i> ) (Con)   |
| † Elliott, Julie ( <i>Sunderland Central</i> ) (Lab)                | Sobel, Alex ( <i>Leeds North West</i> ) (Lab/Co-op)   |
| Evans, Chris ( <i>Islwyn</i> ) (Lab/Co-op)                          | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)  |
| † Gaffney, Hugh ( <i>Coatbridge, Chryston and Bellshill</i> ) (Lab) | † Sturdy, Julian ( <i>York Outer</i> ) (Con)  |
| † Green, Chris ( <i>Bolton West</i> ) (Con)                         | † Syms, Sir Robert ( <i>Poole</i> ) (Con)   |
| † Heaton-Jones, Peter ( <i>North Devon</i> ) (Con)                  | Yohanna Sallberg, <i>Committee Clerk</i>  |
| † Martin, Sandy ( <i>Ipswich</i> ) (Lab)                            |   |
| Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)              | † <b>attended the Committee</b>   |

# First Delegated Legislation Committee

Monday 13 May 2019

[SIR ROGER GALE *in the Chair*]

## Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

4.30 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 Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I., 2019, No. 811).

**The Chair:** With this it will be convenient to consider the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I., 2019, No. 820).

**David Rutley:** It is, as always, a pleasure to serve with you in the Chair, Sir Roger. The statutory instruments relate to buyer security in Northern Ireland, and have been grouped to facilitate efficient scrutiny and ensure that we have a fully operable statute book on exit day.

The Committee might wonder why the instruments have not already been debated. To clarify, they were initially submitted in December 2018, but we needed to ensure that the policies we have developed for Great Britain worked in Northern Ireland's unique circumstances. On 13 March 2019, the UK Government confirmed their policy to have no new checks or controls on goods at the land border between the Republic of Ireland and Northern Ireland if the UK leaves the EU without an agreement. That enabled the instruments to proceed to ensure that important controls to protect buyer security on the island of Ireland are managed without checks at the land border.

The statutory instruments are among a small number of affirmative measures made under the urgent procedure. The importance of having the regulations in place by exit day—initially 29 March and then 12 April—meant that the timeframe did not permit us to lay them via the normal route. It was of the utmost importance that we could assure the EU, in advance of its consideration of the UK's application for third-country listed status in the event of exit on 12 April, that we had a complete statute book.

The nature of the instruments makes them critical. If they were not operable on exit day, there would be a significant risk that products of animal origin from third countries could not be imported directly into Northern Ireland and that plant products that host harmful organisms could enter Northern Ireland without regulatory controls. That was not acceptable and required urgent action. The priority was to provide as much certainty as possible for business and the public. The Committee now has an opportunity to debate and vote on the instruments.

The regulations largely mirror amendments made to the corresponding legislation for Great Britain, which have been considered by the House. As with those amendments, the regulations before the Committee are technical and are designed to ensure the continued operability of effective legislation. The instruments do not introduce any change of policy, nor do they impose any regulatory controls on imports from the EU. In particular, the trade instrument does not require consignments of animals and animal products from the EU to be inspected at border inspection posts in Northern Ireland. The plant health instrument provides for some operational changes to plant and plant product import arrangements, which I shall address in a few moments.

On animal and plant health products entering Northern Ireland directly from a third country following exit, I confirm that there will be no change to, or an increase in, the checks that are carried out currently. For animals and related products transiting from a third country to Northern Ireland through the EU, the only additional checks that would be applied if we left the EU without an agreement would be for products of animal origin and high-risk food and feed that is not of animal origin.

Such commodities would need to enter via a border inspection post in Northern Ireland, which are currently located at Belfast airport and Belfast port. Intra-EU movements of those commodities is not considered significant. Even if we left the EU without an agreement, live animals, reproductive materials and animal by-products from third countries would be able to enter Northern Ireland through a UK port without further checks if they have had full veterinary checks at a recognised EU border inspection post. A significant increase in the number of checks at Northern Ireland border inspection posts following exit is not therefore anticipated.

Plants and plant products entering Northern Ireland from third countries cleared in the EU would have to comply with the same import requirements as consignments that came directly from the EU. Regulated plants and plant products entering Northern Ireland from third countries via the EU that have not been checked in the EU would require three days' pre-notification, documentary checks, and inspection at an approved place of inspection which, it is important to note, would be away from the border.

While operating within a United Kingdom framework, plant and animal health are matters of shared interest on the island of Ireland. The Belfast agreement provides the structures for north-south collaboration on plant and animal health. That has resulted in a recognition of the importance of the single epidemiological unit, which protects the island's biosecurity. The regulations are specifically about protecting biosecurity across these islands while facilitating trade, and will not change any island plant and animal health partnership practices.

The Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, which is the first of the two instruments, amends Northern Ireland legislation relating to imports of live animals including horses transiting through the EU; animal products; reproductive material used for animal breeding; and bees. It also amends legislation on the movement of pet animals, which is an important social issue in Northern Ireland given its land border with the EU. Most importantly, the instrument makes necessary technical corrections to the Trade in Animals and Related Products Regulations (Northern Ireland) 2011, a key

piece of Northern Ireland legislation that sets out the requirements for trade in live animals and genetic material with the EU, and imports of animals and animal products from outside the EU.

The instrument makes no policy changes to the 2011 regulations. It does, however, provide for the transfer of the power to approve border inspection posts in Northern Ireland from the European Commission to the Department of Agriculture, Environment and Rural Affairs. I am pleased that the very hard-working DAERA officials who have helped ensure these regulations are in the best possible order are present.

This instrument ensures the continuation of veterinary controls and other import conditions in the 2011 regulations that provide the necessary protections for animal and public health. Furthermore, it amends two pieces of legislation that regulate the non-commercial movement of pet animals into Northern Ireland. Those amendments provide the necessary technical corrections to provisions in other Northern Ireland trade-related legislation that are predicated on EU membership and would be inappropriate to retain following exit, such as references to “another member state”, “intra-Community trade”, and the European Commission’s ability to attend inspections. They are very much technical operability changes.

The Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 is the second of the SIs. Although the instrument provides for some operational changes to import arrangements for businesses, those changes are necessary and risk-focused. First, regulated plant material such as ornamental plants in pots intended for commercial planting that currently enters Northern Ireland from the EU with an EU plant passport would require a phytosanitary certificate issued by the official national plant protection organisation, in line with international obligations. Those consignments must be pre-notified to the relevant plant health authority. In order to maintain the flow of goods, regulated plant material from the EU would not be subject to checks at the border in Northern Ireland, just like the rest of the United Kingdom. However, remote documentary checks would be undertaken in alignment with UK plant health authorities.

Secondly, consignments of regulated plants and plant products from non-EU countries that transit through the EU to arrive in Northern Ireland and have not been checked and cleared in the EU would require a statutory three days’ pre-notification to DAERA, as well as documentary checks and inspections at approved places of inspection within Northern Ireland, which would be away from the border. In the unlikely circumstance that plants and plant products from a non-EU country are checked and cleared in the EU, they will be treated as EU goods on arrival in Northern Ireland, and must comply with the import requirements for plants and plant products imported from the EU. The instrument also extends the application of an existing offence to the import requirements that would arise should the UK leave without an agreement.

Biosecurity and trade is significant for the Northern Ireland and wider UK economy. While operating within a UK framework, biosecurity in plant and animal health will remain important to the recognition of the island of Ireland as a single epidemiological unit. That will continue to secure close co-operation between Northern Ireland and Republic of Ireland officials on wide-ranging trade, disease and biosecurity matters. The instruments

will protect biosecurity whilst facilitating trade following exit. For the reasons I have set out, I commend them to the Committee.

4.40 pm

**Sandy Martin** (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Sir Roger, even if it is for yet another set of amendments in the long series of the Department for Environment, Food and Rural Affairs Brexit statutory instruments. Once again, the Minister states that the statutory instruments make technical changes. We can only hope that there are no policy consequences, impacts or costs for individuals or businesses and no risks to biosecurity or environmental or health protections. The fact is that, as with most other Brexit SIs, we are left with no choice but to take those words on trust.

Paragraph 2.4 of the explanatory memorandum to the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 states that the regulation “creates new offences”. Paragraph 12 states that no impact assessment has been done because it has no impacts. What assurance can the Minister give that the criminal offence of failure to comply with an order in respect of a demarcated area can be properly enforced? How will that be done without incurring any additional significant costs? Can he be certain that any additional costs will be below the de minimis threshold for an impact assessment? Regulation 12.10 states that the increase in public sector costs will be largely covered by charging businesses. Will he assure us that there will be sufficient public budget for the new offences to be detected and prosecuted whether or not the costs can be recovered?

In the debate on the draft Plant Health (Amendment) (England) (EU Exit) Regulations 2019 on 19 March, the Under-Secretary of State for Environment, Food and Rural Affairs, the hon. Member for Suffolk Coastal (Dr Coffey), said that the number of Animal and Plant Health Agency plant health inspectors was being doubled to 227 full-time equivalents. Will the Minister provide an update on how many of those staff are now in place, and the equivalent numbers for Northern Ireland?

The legislation being amended includes the Plant Health (Phytophthora Ramorum) Order (Northern Ireland) 2005, which concerns a serious fungal disease affecting native and introduced trees and plants, including oak and rhododendron. Will the Minister tell the Committee how many outbreaks of phytophthora ramorum are currently known in Northern Ireland? Why does the factsheet about that disease on the DEFRA website not seem to have been updated since 2012?

As with all the Northern Ireland EU exit legislation, it is important to have clear arrangements for plant health checks in any scenario. How can checks prevent the spread of disease in plant material and wood if there are no border checks between Northern Ireland and the Republic? Is there not a danger that those wishing to import dubious material might choose to import via the Republic in order to avoid checks? The amended wording states that no person may move any specified material

“into or within England unless it is accompanied by a UK plant passport”.

Again, how will that be monitored and policed in practice without border checks?

The amended legislation includes emergency measures to put in place controls where there are outbreaks of disease. How will control areas be set up and made

[Sandy Martin]

secure across the border with the Republic? What mechanisms are in place to ensure that close collaboration continues? How does the Minister justify the use of the exceptional urgency provisions in the European Union (Withdrawal) Act 2018 now that we have agreed to extend article 50 to 31 October? Will the Minister continue to use the Act's urgency provisions for further SIs that are needed to correct errors and omissions?

It is of huge concern that most SIs are being pushed through with little or no engagement with industry or voluntary groups who are, in any case, suffering from consultation fatigue. Of more than 500 Brexit-related statutory instruments churned out since last June, more than 120 are from DEFRA. Amid all the other chaos generated by the Government's misguided handling of Brexit, surely it is legitimate to ask whether such a huge investment of parliamentary effort has resulted in effective scrutiny.

As the Opposition have said in other Committee debates, this is not a dry parliamentary issue. The regulations have a significant potential impact on the people of Northern Ireland. They are in place to protect commercial interests and livelihoods, prevent the spread of animal and plant pests and diseases, and protect food safety and animal health and welfare. Getting any of this wrong, even in small matters of technical detail, risks serious consequences. As the shadow Minister, my hon. Friend the Member for Stroud (Dr Drew), said in the corresponding debate on the EU exit SIs on UK animal trade on 19 February,

"it would be economic madness if we allowed things like rabies to come in because we did not have enough people to check as a result of having a different process for allowing animals with such diseases to come in."—[*Official Report, Ninth Delegated Legislation Committee*, 19 February 2019; c. 7.]

Ministers have rightly praised the officials, expert advisers and lawyers who have responded with the professionalism and dedication that we expect of them—often entirely unreasonably, considering the manufactured suspicion of experts in some quarters. However, the Government are now effectively asking Parliament to take their work on trust. Hon. Members have zero realistic prospect of following the jumble of lumped-together SIs on disparate subjects, each of which makes changes to a vast array of domestic and EU legislation. It is inevitable that the process will produce a statute book that is all but impossible for lawyers and the courts to track through, let alone real people struggling to run a business.

We have repeatedly warned Ministers that errors and omissions will happen. For the record, I repeat my request to the Minister that, once the process is complete, a comprehensive survey be made of all the DEFRA statutory instruments passed to facilitate Brexit, so that any further errors or omissions can be discovered. I hope he will reiterate his commitment to carrying out that survey.

If we could be certain that Brexit would not involve leaving the EU without a proper deal, much of this SI madness could have been avoided. We still hope that the Government will see the light and agree that there should be a permanent and comprehensive UK-EU customs union, close alignment with the single market, dynamic alignment on rights and protections, and clear commitments on participation in EU agencies. That would ensure that we can continue to share knowledge

and expertise with EU bodies and would avoid extra costs and burdens for business, save jobs and protect our livestock, trees and plants from pests and diseases. Given where we are, however, we understand the Government's rationale for introducing the regulations, so pressing for a vote today would serve no purpose.

4.47 pm

**Maria Eagle** (Garston and Halewood) (Lab): It is a pleasure to serve under your chairmanship, Sir Roger. I will not detain the Committee for long, but I have one or two questions for the Minister. I also have a general grouse, I am afraid, which is that, on the basis of the papers available in the Committee Room, it is virtually impossible to understand the changes made by the regulations—my hon. Friend the Member for Ipswich made a similar point. Without being able to look carefully at the legislation that the regulations refer to, we cannot agree whether the measures in them do what they purport to, so it is very difficult to scrutinise them. That is not the fault of the Minister or of the hard-working civil servants who have produced the regulations, no doubt under extreme pressure. It is a fault of the process that the Government have undertaken to introduce the regulations.

The Minister said that the changes made by the regulations "largely mirror" changes in the existing GB legislation. The word "largely" suggests that in some respects they do not mirror them, but he did not set out how they do not. I would have expected him to set out those differences to provide clarity and reassurance to the Committee. I am sure we would all find it useful if he could do so today.

I note that the animals SI refers to the rabies order from 1977—a very serious piece of legislation aimed at stopping the importation of a horrible disease, which we would not want to see go wrong. As far as one can tell—I am guessing—the statutory instrument makes minor and technical changes, but given how important that order is I would like the Minister to reassure us that the changes are purely technical, and that they are correct and will not suddenly make the provision impossible to implement practically. It would be a disaster if that or something like it were to happen.

The instrument revokes the Destructive Imported Animals Regulations (Northern Ireland) 1933 and one of its more modern counterparts. It seems to me that revoking something entirely is making not a minor or technical change, but a substantive change, so perhaps the Minister will be a bit clearer about why this SI, which is supposed to be making minor and technical changes, is revoking regulations. I am sure that there is a perfectly good explanation, and that it is just that we have not heard it, but I want the Minister to deal with that point.

All these matters, whether on the animal or the plant side of things, are about important issues, such as diseases of plants or animals. If those things go wrong, they can have a huge impact on businesses, food supplies and the natural world. These are very important matters. It is not at all clear to me, despite the best intentions of all concerned, that these instruments do as they say they will. The explanatory memorandums appear not to be as explanatory as one might wish. For example, they say that this instrument revokes the Destructive Imported Animals Regulations (Northern Ireland), but do not

explain why that is necessary. One certainly cannot gather from the wording of the instrument why it is necessary.

I hope the Minister understands the Opposition's frustration at not being able to ascertain why some of these things are being done. These instruments seem extensive—revoking something is not a minor and technical change—but the explanatory memorandum simply asserts that it is being revoked without giving any explanation of why. I hope the Minister will enlighten me on that point.

This illustrates the Opposition's difficulties at being faced with these instruments at a late stage and not having the legislation present in the Committee—I have complained about that in other Committees—so we can make comparisons between the old instrument and what the new instrument is doing. One simply cannot understand, from reading these instruments, what impact they will have. I hope the Minister will enlighten us about those two points and will take back to his Department and the Government the fact that, yet again, we are a bit frustrated that they are making proper scrutiny impossible.

4.54 pm

**David Rutley:** I thank hon. Members for their contributions and questions. The hon. Member for Ipswich (Sandy Martin) has been consistent in his concerns about the sheer number of SIs but, as I have explained previously, DEFRA in particular is significantly affected by a potential no-deal scenario, and as a responsible Government we have needed to look at and plan for every eventuality. I am grateful to hon. Members in this Committee, many of whom—I am thinking in particular of the Opposition Whip, the hon. Member for Bristol West—have sat through many other SIs with great fortitude and interest in these important subjects. I also pay tribute once again to the officials who have taken this work through, not least the DAERA officials who are with us today.

I understand the concerns of the hon. Member for Ipswich. However, in my view, it is clear that the best way forward would be to ensure that we have a deal; if we did, we would not have to worry about these arrangements. Obviously, conversations and negotiations are going on between both our parties at the moment. I wish them success in moving forward, and we will see how they play out, but to my mind a deal would be the optimal outcome.

The hon. Gentleman raised a number of points about enforcement—I will address both his points and those made by the hon. Member for Garston and Halewood in turn. As far as enforcement goes, regulated plants and plant products from third countries that transit through the EU en route to Northern Ireland are currently subjected to plant health checks at the first point of entry into the EU to ensure biosecurity protection. Cleared goods can then circulate within the EU, and are assigned the same status as EU goods.

Under the instrument, regulated plants and plant products from third countries transiting the EU en route to Northern Ireland that have not been cleared in the EU would be subject to regulatory controls. Those controls require all importers of regulated plants and plant products from third countries transiting to Northern Ireland via Dublin, or anywhere in the EU, to provide DAERA with three days' pre-notification of any

consignment arrival in Northern Ireland. Pre-notification provides relevant details of goods and the expected date of arrival at the DAERA-authorized approved place of inspection within Northern Ireland, where documentary checks and physical inspections are completed. Goods will not be subject to plant health checks at the Northern Ireland border. The instrument also requires that the goods must be accompanied by a phytosanitary certificate issued by the appropriate authority in the country of origin.

The instrument gives the same assurance for third-country goods transiting the EU to Northern Ireland as is provided by the corresponding DEFRA instrument in respect of Great Britain. Furthermore, existing protections provided by the common transit convention and international air services transit agreement will continue after EU exit. That will mean that consignments will continue to travel under a seal from their place of origin, and goods arriving at the authorized places of inspection will have their seals removed there only by an authorized officer. DAERA and DEFRA have agreed the operational arrangements for goods transiting via the UK so, in those situations, strong enforcement mechanisms will be in place.

Regarding inspectors, all consignments of regulated plant and plants products currently imported from the EU under the existing EU passport system would require pre-notification accompanied by a phytosanitary certificate, as I explained before. In the event of exit without an agreement, they would also be subject to remote documentary checks. A recent survey on the volume of trade with the EU indicates that up to 40,000 phytosanitary certificates would require remote documentary checks annually. Those certificates will replace EU plant passports, and similarly will take approximately 10 minutes to complete. That equates to 20 or 30 checks daily, which is a manageable workload. Resources will be in place to manage those processes, and it is anticipated that the number of inspectors required to undertake that work would more than double, from five to 11. However, plans have been developed to deploy and redeploy staff to manage that additional workload, so the appropriate number of inspectors and the resources required to carry out those inspections will be in place if required.

The hon. Member for Ipswich raised points about co-operation with Ireland in the area of biosecurity. There is a strong sense of collaboration and a real sense of partnership to this work, which will continue as we go forward. We will work to maintain common protected zones for plant health in both jurisdictions.

The hon. Gentleman also asked questions about new plant health offences. The instrument extends the application of offences to the import requirements that would arise if the UK left the EU without an agreement. The existing offence relates to failure to comply with a notice served by a DAERA inspector identifying non-compliance with regulations relating to a relevant consignment. In the event that the UK leaves the EU without an agreement, goods that require an EU plant passport will need to be pre-notified and accompanied by a phytosanitary certificate. The instrument ensures that the existing offence covers non-compliance with those requirements.

The Committee mentioned the Rabies (Importation of Dogs, Cats and Other Mammals) Order (Northern Ireland) 1977. The definition of "member state" in that

[David Rutley]

order is amended to reflect the fact that the UK will no longer be a member state of the EU. References to “Council Directive 92/65/EEC” are replaced by references to “the Trade in Animals and Related Products Regulations (Northern Ireland) 2011(2)”.

The amendments are very technical in nature.

The hon. Member for Garston and Halewood mentioned the differences between statutory instruments for Great Britain and those for Northern Ireland. The SI makes minor amendments to four additional pieces of Northern Ireland legislation—I apologise for not including them in my speech, which was quite long. I am pleased to have the opportunity to update the Committee now.

Three of those pieces of legislation have been included in the instrument because there was no other vehicle with which to amend them. The amendments made have been made for GB legislation via other instruments. One of those pieces of Northern Ireland legislation has no GB equivalent—the Northern Ireland Poultry Health Assurance Scheme Order (Northern Ireland) 2011—while others relate to bees and to destructive animals. Those are all technical changes.

**Maria Eagle:** Will the Minister tell us how the revocation of an instrument can be defined as a “technical change”? The Destructive Imported Animals Act (Northern Ireland) 1933 is being revoked. How can that be described as technical?

**David Rutley:** This SI makes a minor technical amendment to one piece of Northern Ireland legislation—the 1933 Act. The amendment is designed to ensure that the movement into Northern Ireland from the rest of the UK of certain animal species, such as the muskrat, continues to be prohibited following exit, except when permitted under licence, which mirrors an amendment made affecting England. I will write to the hon. Lady to set that out more clearly.

I have covered most of the questions and, for the reasons that I set out, I commend the regulations to the Committee.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I., 2019, No. 811).

**PLANT HEALTH (AMENDMENT)  
(NORTHERN IRELAND)  
(EU EXIT) REGULATIONS 2019**

*Resolved,*

That the Committee has considered the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I., 2019, No. 820).—(David Rutley.)

5.3 pm

*Committee rose.*