

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT PESTICIDES (AMENDMENT) (EU EXIT)
REGULATIONS 2020

DRAFT PERSISTENT ORGANIC POLLUTANTS
(AMENDMENT) (EU EXIT) REGULATIONS 2020

Monday 9 November 2020

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The Committee consisted of the following Members:

Chair: STEVE McCABE

Bacon, Gareth (*Orpington*) (Con)
 † Baker, Duncan (*North Norfolk*) (Con)
 † Baldwin, Harriett (*West Worcestershire*) (Con)
 † Bell, Aaron (*Newcastle-under-Lyme*) (Con)
 † Carter, Andy (*Warrington South*) (Con)
 † Clark, Feryal (*Enfield North*) (Lab)
 † Colburn, Elliot (*Carshalton and Wallington*) (Con)
 † Everitt, Ben (*Milton Keynes North*) (Con)
 Grady, Patrick (*Glasgow North*) (SNP)
 Hendrick, Sir Mark (*Preston*) (Lab/Co-op)
 † Jones, Ruth (*Newport West*) (Lab)

McDonnell, John (*Hayes and Harlington*) (Lab)
 Mahmood, Shabana (*Birmingham, Ladywood*) (Lab)
 † Morris, Grahame (*Easington*) (Lab)
 † Morris, James (*Lord Commissioner of Her Majesty's Treasury*)
 † Prentis, Victoria (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
 † Trott, Laura (*Sevenoaks*) (Con)

Kevin Maddison, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Monday 9 November 2020

[STEVE McCABE *in the Chair*]

Draft Pesticides (Amendment) (EU Exit) Regulations 2020

4.30 pm

The Chair: Before we begin, I am asked to remind Members about social distancing arrangements and to email any notes to *Hansard* at hansardnotes@parliament.uk

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

That the Committee has considered the draft Pesticides (Amendment) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to discuss the draft Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020.

Victoria Prentis: It is a pleasure to serve under your chairmanship, Mr McCabe.

Both statutory instruments relate to the effective regulation of chemicals. The first, the draft Pesticides (Amendment) (EU Exit) Regulations 2020, makes further updates to retained European Union legislation for plant protection products—more commonly known as pesticides—and maximum residue levels. Pesticides are regulated in the EU by two main EU regulations. The first is regulation 1107/2009, which concerns the authorisation of active substances and the placing on the market of pesticide products that contain approved active substances; the other is regulation 396/2005, which governs the maximum residue levels of pesticides permitted on food and feed. Another EU directive concerns action to promote the sustainable use of pesticides.

We put in place various pesticides EU exit statutory instruments last year to ensure that a national regulatory regime could operate sensibly in future. These included the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019, which dealt respectively with the two main EU regulations. A further SI, the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019, dealt with consequential amendments to domestic legislation, enabling it to be linked correctly to retained law.

The draft Pesticides (Amendment) (EU Exit) Regulations 2020 makes further, very minor amendments to address developments since the original EU exit SIs were produced. The EU has moved on with its regulation; we therefore have to catch up. These regulations have no significant impact on businesses. The amendments are needed, first, because of new EU legislation that has come into force recently. Some adjustments are therefore needed to ensure that the retained law continues to work correctly

in a national context, including where the new EU legislation interacts with the corrections that we have already made in the earlier SIs.

Secondly, the Northern Ireland protocol means that EU regulations on pesticides continue to apply directly in Northern Ireland. We need to amend the earlier UK-wide exit SI so that redundant references related to Northern Ireland are removed, which will ensure that the cross-references work correctly. Thirdly, we need to update some transitional provisions in the earlier SIs so that they apply from the end of the transition period when the retained law comes into force, rather than from exit day. Finally, we need to make minor technical corrections to SIs regarding the establishment of harmonised risk indicators. In short, without this instrument, various highly technical provisions will not be retained in national law in a way that works smoothly.

The second instrument is the draft Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020. Hon. Members may be familiar with POPs—persistent organic pollutants—not least from David Attenborough programmes. They are also known colloquially as “forever chemicals”. The SI makes technical amendments to retained EU legislation for POPs, which are substances that are recognised as being particularly harmful to the environment and to humans. The EU POPs regulation was put place to fulfil commitments under both the UN Stockholm convention on POPs and the convention on long-range transboundary air pollution. The UK is a party to both conventions.

The instrument is needed for two reasons. First, EU regulation 850/2004 was re-made by the European Parliament in July 2019 and is now 2019/1021. An earlier EU exit instrument put in place for the original exit day in March last year now needs to be replaced to reflect that. It is very similar, but we need to update it. Secondly, the instrument removes references related to Northern Ireland and updates the legislative cross-referencing, as will the first instrument. The following provisions were included in the earlier exit SI and are now included once again. It provides for the repatriation of all decision-making functions and powers from the EU to the Secretary of State, the Welsh Minister and the Scottish Minister to exercise in their respective areas. The Secretary of State may exercise these functions on behalf of a devolved Administration, with its consent. The Secretary of State will also publish reports on the management of POPs, which are currently submitted to the European Commission for publication.

The following provisions relate to the new provisions in the EU recast of the original legislation. The Environment Agency will assume the role given to the European Chemicals Agency to provide technical and scientific support. This role will be fulfilled with the consent of the devolved Administrations. Additionally, the EU regulation places a duty on the UK to take necessary measures to trace and control POPs once they enter the waste stream. Ordinarily these measures would be implemented in the UK under section 2(2) of the European Communities Act 1972. However, as work on delivering these measures will continue beyond the end of the transition period, this instrument creates a new power for Great Britain to make regulations to enable us to do that. The exercise of this new power will be subject to parliamentary approval and is time limited, with a requirement to make any regulations before 31 October

2023. Finally, the requirement to amend this regulation also provides an opportunity to include the Northern Ireland protocol provisions applicable to this regulation.

In conclusion, I can confirm that these instruments will be able to function with or without a deal with the European Union. The Government are committed to ensuring continued levels of protection for human health and the environment, as well as providing stability and continuity for business. I beg to move that these instruments, which were laid before this house on 8 October, be approved.

4.37 pm

Ruth Jones (Newport West) (Lab): It is good to have you in the Chair, Mr McCabe, and it is a pleasure to speak for Her Majesty's official Opposition this afternoon. It is good also to see the Minister in her place; I think that this is the first time I have faced her since my appointment to this role—

Victoria Prentis: Sorry.

Ruth Jones: No, it's okay. And it is a pleasure to do so, of course.

With another week, however, come another two statutory instruments from this Government. Ministers have dithered and delayed, essentially since July 2016. As we now approach the end of the transition period, we are forced to rush through important safeguards and protections, and vital standards and basic legislation, to ensure that any disruption on 1 January 2021 and beyond is mitigated as best as possible.

It is simply not good enough, and I urge the Minister to think about how this looks, not necessarily just to Opposition Members, but to the people of the United Kingdom, who want and expect legislation considered in this House to be given the necessary time to be scrutinised, evaluated and amended where and when necessary. Although we will not seek to divide the Committee, I remind the Minister that we will hold the Government to account.

We are here to discuss two statutory instruments. I will deal with them separately, but in one speech. The draft Pesticides (Amendment) (EU Exit) Regulations 2020 will make a number of amendments to earlier EU exit SIs that convert EU legislation into British law, to reflect EU law ceasing to apply and retained EU law coming into force at the end of the implementation period, thereby ensuring that the national regime will operate effectively. It also makes amendments as a result of the Northern Ireland protocol, under which the EU regimes will continue to apply. We understand that legislative changes are therefore required to remove Northern Ireland from retained EU legislation so that the new regime will apply in Great Britain only, rather than UK-wide. For the studios among us, paragraph 2 of the explanatory memorandum outlines in further detail the reasons for the draft regulations, which the Minister has outlined this afternoon.

Many in the Opposition will find it interesting and not a little puzzling that Ministers have not sought to consolidate all the relevant changes into a single instrument, as with the Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020, which were recently debated in the other place. It would be

helpful if the Minister explained in as much detail as possible why a consistent approach has not been taken. The House is at risk of being swamped with delegated legislation, and the Government have a duty to ensure that appropriate scrutiny is carried out. Colleagues in the Opposition and, I know, in the other place are increasingly concerned at the risk of our having two sorts of environmental regulation—some that are tidied up, accessible and coherent, and others that are tangled like a bowl of spaghetti, unintelligible to normal human beings and capable of being understood only by specialist lawyers. That is simply not good enough. I urge the Minister to take that on board as constructive criticism.

People deserve good government, and good government needs good legislation, not rushed-through SIs that are inaccessible to the overwhelming majority of people out in the real world. Paragraph 7.9 of the explanatory memorandum sets out the United Kingdom's national strategy on control programmes and how sampling will run alongside the 2020-to-2022 period that our friends in the EU use. I would be grateful if the Minister outlined when Her Majesty's Government will begin planning beyond 2022. When will Ministers engage with stakeholders, and in what way? For Opposition Members, the most fascinating point about the draft regulations is whether Conservative Ministers may choose to continue to align on this issue with our friends, neighbours and allies in Europe even after the period up to 2022 concludes.

This is important stuff and we need to get it right. Many stakeholders out in the community are following our business and want to make sure we do. I pay tribute to Greener UK and all the associated groups that are working to ensure that we are prepared for the end of the transition period. Like many of those groups, the Opposition are concerned that there is no longer a requirement for detailed criteria on the uniform application of conditions on by-products to

“ensure a high level of protection of the environment and human health and facilitate the prudent and rational utilisation of natural resources.”

Can the Minister confirm that the pesticides and persistent organic pollutants regimes will not be weaker from an environmental perspective post Brexit? What precise steps are the Government taking to ensure that?

A provision that has already been passed means that Great Britain will allow substances to continue to be approved for three years longer than the EU. I would be grateful for some reassurance that that provision has been fully appraised and explored. This is part of the whole transition process, so can the Minister explain what risks there might be of substances continuing to be approved for three years longer than they normally would? How will the Government assess those risks and what measures will they take to handle them?

The draft Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020 will create a new power to take measures to control and trace waste contaminated by persistent organic pollutants in relation to Great Britain. This is a recent requirement under EU law and, as we have heard, the measures have not yet been developed, either here or in Europe. We have been told that any legislative changes will be subject to the affirmative procedure and will have to be made by 31 October 2023. When the Department for Environment, Food and Rural Affairs was asked about that deadline by the Secondary

[Ruth Jones]

Legislation Scrutiny Committee, it explained that it was thinking about timescales that are not determined by the EU. Rather worryingly for the Opposition, it went on to indicate that the powers to create the control and tracing system would be used “only if needed”. Can the Minister indicate the circumstances in which a control and tracing system would not be needed?

As ClientEarth has already pointed out to the Minister, the draft regulations omit a current requirement under European law that when it is decided whether a specific substance is a by-product rather than waste, detailed criteria on the application of conditions on by-products shall

“ensure a high level of protection of the environment and human health”.

When that was raised with the Department, it indicated to the Secondary Legislation Scrutiny Committee that further regulations would be needed next year, and that would be the appropriate place to set out any such conditions and to consider whether to make the exercise of the power subject to the condition that ClientEarth identified. Once again, we are worried about language, particularly the word “whether”. It implies that an existing provision in the EU safeguards might not continue, so will the Minister assure us that there will be no watering down of that provision in the regulations that come forward next year? It is an important point that deserves clarity.

On regulatory and advisory expertise, Opposition Members are concerned that oversight of standards on pesticides and persistent organic pollutants will be less effective post Brexit. For example, the role of the European Chemicals Agency has been replaced by the Environment Agency and it is not clear whether the Environment Agency has equivalent expertise in the field. Will the Minister confirm that the Environment Agency will provide at least the same level of expertise as the European Chemicals Agency? Will she confirm any plans for additional funding, including in the forthcoming spending review, for the Environment Agency to carry out the role?

As I said, we will not divide the Committee by opposing the regulations, but we will hold Ministers to account for their promises and their answers today and in the coming days and weeks. Our departure from the European Union will see major change for all the people in Wales, Northern Ireland, Scotland and England, and it will be a break-away from how things have been done for almost half a century. Of course, that means things will be challenging. We understand that, but there is no excuse for government by SI, or for the Government to pack the parliamentary calendar in such a way that they hope to shield themselves from scrutiny. I simply say to the Minister: be warned, we are watching.

4.46 pm

Victoria Prentis: There is no rushing of the statutory instruments. It is perfectly normal to use them to make regulations. I am afraid I do not know why the SIs were not consolidated in the way the hon. Lady suggested. I am sure that the timetable was agreed by the usual channels in the normal way.

The SIs are highly technical and involve no policy changes, but I will endeavour to answer the hon. Lady’s questions. The use of pesticides is allowed only when a comprehensive scientific assessment shows that it will have no harmful effect on people. The assessment of risks is rigorous and authorisation is frequently refused. Pesticide users are required by law to take all reasonable precautions to protect human health and the environment and to apply the product only to the area they intend to treat. The Government’s review of the national action plan for the sustainable use of pesticides will take an holistic approach, centred on integrated pest management, which is very much part of our policy making. We will consult on the updated NAP later this year.

The hon. Lady asked about the three-year change and why the statutory instrument delays the introduction of changes to the renewal dossiers until 2026. The answer is to provide a smooth transition between EU law and retained law so that the requirements that apply to active substances under retained law will be the same as those for the same substances when they are considered under the EU regime. The change in date is because some active substance approvals will expire in the first three years after the end of the transition period. We need to extend the date to allow proper time for evaluation of the substances under our new national regime.

Will we continue to report on progress and actions? Yes, of course we will submit reports as we are required to do as a party to the Stockholm convention. Our new waste-regulating power is needed because the revised EU regulation requires measures to be taken to ensure that POPs waste is controlled and traced in the same way as hazardous waste. Work on those measures is ongoing and will not be completed before the end of this year, after which we will lose the European Communities Act powers, so we need to have our own to carry on that important and environmentally critical work.

There is no watering down of protections. We remain strongly committed to the effective and safe management of chemicals to protect the public and the environment. That will not change at the end of the transition period. We remain absolutely committed to the Stockholm convention and we will ensure that regulation of POPs continues to develop in line with scientific evidence as we get it.

On the Environment Agency, advice will be taken from Natural Resources Wales, the Scottish Environment Protection Agency and the Department of Agriculture, Environment and Rural Development in Northern Ireland. They will undertake the new role given to the European Chemicals Agency in the new EU regulations. The Environment Agency’s expertise puts us in a strong position to make our own decisions after the end of the transition period. I feel that that answers the hon. Lady’s questions and I commend the regulations to the Committee.

Question put and agreed to.

DRAFT PERSISTENT ORGANIC POLLUTANTS (AMENDMENT) (EU EXIT) REGULATIONS 2020

Resolved,

That the Committee has considered the draft Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020.—(*Victoria Prentis.*)

4.51 pm

Committee rose.

