

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT REACH ETC. (AMENDMENT ETC.) (EU
EXIT) REGULATIONS 2020

DRAFT CONTROL OF MERCURY (AMENDMENT)
(EU EXIT) REGULATIONS 2020

DRAFT DETERGENTS (AMENDMENT) (EU EXIT)
REGULATIONS 2020

DRAFT WASTE AND ENVIRONMENTAL
PERMITTING ETC. (LEGISLATIVE FUNCTIONS
AND AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020

Tuesday 8 December 2020

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The Committee consisted of the following Members:

Chair: †SIR CHARLES WALKER

† Baynes, Simon (<i>Clwyd South</i>) (Con)	† Mann, Scott (<i>North Cornwall</i>) (Con)
Betts, Mr Clive (<i>Sheffield South East</i>) (Lab)	† Morden, Jessica (<i>Newport East</i>) (Lab)
† Bhatti, Saqib (<i>Meriden</i>) (Con)	† Morris, James (<i>Lord Commissioner of Her Majesty's Treasury</i>)
Brennan, Kevin (<i>Cardiff West</i>) (Lab)	† Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>)
† Buchan, Felicity (<i>Kensington</i>) (Con)	Smith, Nick (<i>Blaenau Gwent</i>) (Lab)
Fletcher, Mark (<i>Bolsover</i>) (Con)	Thompson, Owen (<i>Midlothian</i>) (SNP)
† Jones, Fay (<i>Brecon and Radnorshire</i>) (Con)	Jack Dent, <i>Committee Clerk</i>
† Jones, Ruth (<i>Newport West</i>) (Lab)	† attended the Committee
† Largan, Robert (<i>High Peak</i>) (Con)	
McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab)	
† Mak, Alan (<i>Havant</i>) (Con)	

Ninth Delegated Legislation Committee

Tuesday 8 December 2020

[SIR CHARLES WALKER *in the Chair*]

2.30 pm

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

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

The Chair: With this it will be convenient to consider the draft Control of Mercury (Amendment) (EU Exit) Regulations, the draft Detergents (Amendment) (EU Exit) Regulations 2020 and the draft Waste and Environmental Permitting Etc. (Legislative Functions and Amendment Etc.) (EU Exit) Regulations 2020.

Rebecca Pow: It is a delight to see you in the Chair, Sir Charles, as we debate this bevy of statutory instruments.

Of the four instruments before us, three are concerned with the regulation of chemicals and chemical products, and the fourth concerns the regulation of waste and environmental permitting. The common thread is that each one contains provisions necessary to implement the protocol on Ireland and Northern Ireland.

I should like to inform the Committee that we have worked with the devolved Administrations on all four SIs, and consent has been received for all of them except the instrument on the regulation of waste and environmental permitting. That instrument has received consent from Scottish and Welsh Ministers but has not yet received consent from Northern Ireland Ministers. However, given that time to make the SI is now short, and the overriding need to provide certainty for businesses at the end of the transition period and to discharge our protocol obligations, we are proceeding with debating the SI without consent. We will continue to work closely with the Northern Executive in the coming days to resolve outstanding concerns in advance of making the SI.

I can confirm the all four instruments will be able to function with or without a deal with the European Union. I can also confirm that all four instruments have been considered by the Joint Committee on Statutory Instruments and that no issues have been drawn to the attention of the Committee.

The REACH Etc. (Amendment Etc.) (EU Exit) Regulations 2020 have three main purposes. The first two relate to the Northern Ireland protocol. They fulfil the United Kingdom's obligation effectively to implement the protocol with regard to REACH—the registration, evaluation, authorisation and restriction of chemicals—and they provide for access by Northern Irish goods to the Great Britain market. After the transition period, UK REACH will regulate the GB market while EU REACH will apply to Northern Ireland. Additionally, the SI amends the existing transitional deadlines for GB businesses to submit information about their chemicals and their safe use to the domestic REACH system. The SI also makes some technical amendments that will ensure that cross-references in the UK REACH regulations are up to date at the end of the transition period.

The provisions that implement the protocol first of all redefine the scope of the domestic REACH regime from the UK to Great Britain. They provide for the Northern Ireland competent authority function to continue to be exercised jointly by the Department of Agriculture, Environment and Rural Affairs and the Department for the Economy. They also ensure that there will be effective enforcement arrangements for REACH in Northern Ireland.

The provisions on chemicals moving from Northern Ireland to Great Britain reflect our commitment to unfettered access for Northern Ireland businesses. They will also ensure that UK authorities have the appropriate information and regulatory safeguards in respect of chemicals placed on the GB market.

The SI permanently removes the requirement for a full REACH registration for chemicals that are, or are in, 'qualifying' Northern Ireland goods being placed on the GB market. Instead, there will be a light-touch notification process to ensure the Health and Safety Executive knows what chemicals are being placed on the GB market. Information necessary to ensure safe use must also still be passed down the supply chain.

Substances of very high concern entering Great Britain from Northern Ireland will still need a UK REACH authorisation. That is needed to manage the risk from those hazardous chemicals to GB consumers, workers and the environment. That simply replicates the current approach to placing those substances on the EU market, where the authorisation process makes sure that account is taken of local environmental and other factors. We will ensure that that happens where those chemicals are being placed on the market and used within Great Britain.

When the first REACH exit SI was debated in the House last year, the Government committed to keep the deadlines for submitting transitional notification and registration information to the HSE under review. We have followed up on that with very detailed discussions with a range of industry and non-governmental organisation stakeholders. The conclusions of the review have been carried forward in the SI before the Committee by the amendments to the transitional deadlines. The initial notification period for existing downstream users and distributors is being increased from 180 days to 300 days. We are replacing the deadline for submitting full registration information, which is currently two years in all cases, with a phased approach that spreads the duty over two, four and six years from the end of that initial 300-day period.

The phased policy takes a risk-based approach by requiring the submission of data on the highest tonnages and most hazardous chemicals first. In that way, companies will have more time and capability to comply with the legislation. It will enable them to reduce and spread costs, and give them more time to negotiate mutually beneficial data-sharing arrangements with other companies in the UK and the EU. That will lead to better compliance and the provision of higher quality data, leading to GB authorities having access to better data that will facilitate better decision-making. In the meantime, GB authorities will have access to significant other sources of data, so we will still be able to make robust regulatory decisions before full data is submitted to the HSE under UK REACH.

The Control of Mercury (Amendment) (EU Exit) Regulations 2020 make amendments to the retained EU law to ensure that legislation that manages the control

of mercury is operable at the end of the transition period. In addition, it reflects the requirements of the Northern Ireland protocol. The SI revokes and replaces the Control of Mercury (Amendment) (EU Exit) Regulations 2019, revokes regulation 8 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 and also amends the Control of Mercury (Enforcement) Regulations 2017. Provisions that were included in the environment and wildlife regulations 2019 and the control of mercury regulations 2019 are now included in the new SI. The amending regulations were laid in 2019 to prepare the UK for leaving the EU without a withdrawal agreement. Revoking the two SIs made back in 2019 and remaking the provisions contained in those SIs in this instrument ensures that we do not have more than one set of amending regulations. Basically, that means that the legislation is clearer for regulators and businesses.

The SI provides for the exercise by the appropriate GB authority of a number of legislative functions currently carried out by the European Commission. Those functions were previously included in regulation 8 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019.

The SI was debated in the House of Lords and the House of Commons on 12 February 2019 and 14 February 2019 respectively, and agreed by both Committees of those Houses.

Following the UK's withdrawal from the European Union, the retained EU legislation, as amended by the instrument before the Committee, will continue to implement the UK's obligations as a party to the Minamata convention, and provide a regulatory framework for management of mercury. Northern Ireland will continue to apply the EU regulation 2017/852 to manage mercury in the environment.

It has to be said that there is a minuscule, if any, trade in mercury between Northern Ireland and Great Britain, as I am sure the shadow Minister the hon. Member for Newport West is aware. However, we will be introducing new procedural requirements for the transport of elemental mercury between GB and Northern Ireland and introducing a prohibition on the transport of specified products containing mercury between GB and Northern Ireland. Currently, there are no controls on the movement of those specified products containing mercury or elemental mercury between member states. The new requirements should prevent the uncontrolled flow of elemental mercury and the specified products containing mercury from the EU into GB via Northern Ireland.

The SI meets the Government's commitment to the Northern Ireland protocol. It also ensures continued levels of protection for human health and the environment, as well as again providing stability and continuity for businesses.

You will be excited to hear, Sir Charles, that the third SI relates to detergents. The primary aim of the Detergents (Amendment) (EU Exit) Regulations 2020 is to ensure that the UK meets its obligations under the Northern Ireland protocol in respect of Regulation (EC) No 648/2004 on detergents—the EU Detergents Regulation. That has been done by amending the existing EU exit regulations on detergents—the Detergents (Amendment) (EU Exit) Regulations 2019 and the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019.

In terms of the key amendments that the SI before us makes to existing EU exit regulations, Committee members will not be surprised to learn that they are merely technical in nature. The technical changes made by the instrument will give effect to the Northern Ireland protocol by ensuring that the EU Detergents Regulation, as it has effect in EU law, continues to apply in Northern Ireland and that the amendments to the retained version of the EU Detergents Regulation extend to Great Britain only. The SI makes special provision for detergents in Northern Ireland in respect of 'qualifying' Northern Ireland goods, creating a category of protected imports from Northern Ireland and enabling them unfettered access into the GB market while maintaining standards of protection for the environment and human health. That is, of course, absolutely paramount.

Trade from Northern Ireland to the rest of the UK should continue to take place as it does now—there will be unfettered access, as provided for by the protocol. Therefore, at the end of the transition period, businesses in Northern Ireland may continue to place their goods in any part of the UK internal market without new restrictions.

In addition to the changes to the existing EU exit regulations on detergents, the SI amends the Detergents Regulations 2010—the domestic enforcement regulations on detergents—which will ensure that the Northern Ireland enforcement authorities can continue to enforce the EU Detergents Regulation, as they have effect in EU law, while the retained version of the EU Detergents Regulation can continue to be enforced in GB.

The changes made to the 2010 regulations will also have the effect of ensuring that the competent authority functions, currently exercised by the Secretary of State under the EU Detergents Regulation, will be exercised by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. I wish to assure Members that the overarching aim of the instrument is to provide continuity for detergent businesses, to ensure that following the end of the transition period the high standards of human health and environmental safety will continue across the UK, and to reflect the obligations under the Northern Ireland protocol.

Finally, we come to the Waste and Environmental Permitting Etc. (Legislative Functions and Amendments Etc.) (EU Exit) Regulations 2020, which includes a mixture of devolved and reserved content. It is a technical instrument that makes small but important changes to existing legislation so that it refers to the latest versions of the EU directives and domestic regulations, as amended by the EU circular economy package. These are small changes, but they will ensure that legislation relating to waste and environmental permitting can be properly enforced by the Environment Agency and its devolved counterparts. This instrument also makes some small technical amendments to

provisions of earlier EU exit SIs that amend domestic legislation relating to batteries, and changes the extent of amendments in an earlier EU exit SI to the Restriction of the Use of Certain Hazardous Substances regulations, known as the RoHS regulations, and the Packaging (Essential Requirements) Regulations, so that they do not extend to Northern Ireland. These changes are needed to reflect the fact that the directives that those regulations implement will continue to apply in Northern Ireland, but not in Great Britain, as a virtue of the Northern Ireland protocol. In practice we have kept the

[Rebecca Pow]

GB and Northern Ireland requirements exactly the same for batteries. On the ground there will be no changes on how batteries are collected, treated and recycled. The requirements for batteries reaching market in the first place will also remain exactly the same. This instrument simply ensures that the correct references are in place depending on whether the legislation applies in GB or Northern Ireland.

The SI also transfers the European Commission's powers related to article 7(1) of the waste framework directive. This power is being transferred to the Secretary of State and the devolved Administrations. The power will allow the Secretary of State and the devolved Administrations to establish their own lists of waste or amend the existing list of waste as it becomes part of retained EU law after the end of the transition period. The list of waste gives identifying codes to different categories of waste, which are used by waste management businesses, and it specifies which categories of waste are to be treated as hazardous waste. The Secretary of State will need the consent of the devolved Administrations to make amendments to the list of waste on their behalf.

The schedule to this instrument revokes some recent EU decisions or regulations. These revocations are either to tidy up our statute book or because we should no longer be bound to those decisions after the transition period ends, such as where they specify formats for reporting data to the European Commission, which the United Kingdom will cease to do at the end of the transition period.

Each of these instruments is necessary to make sure that the Northern Ireland protocol is implemented properly. They respond to the Government's commitment to unfettered access for Northern Ireland goods and they help to make sure that we are fully prepared for the end of the transition period on 31 December.

2.48 pm

Ruth Jones (Newport West) (Lab): It is very good indeed to see you in the Chair, Sir Charles. May I convey to you and yours, and all the Members here, my best wishes for the festive season?

It is a pleasure to speak for Her Majesty's Opposition this afternoon. As the Order Paper suggests, I think we are here for the long haul. Today we have four statutory instruments before us. I will speak to each in turn, and I will seek to give them the time and attention that legislation before this House deserves. We are discussing the following: the draft REACH Etc. (Amendment Etc.) (EU Exit) Regulations 2020, the draft Control of Mercury (Amendment) (EU Exit) Regulations, the draft Detergents (Amendment) (EU Exit) Regulations 2020 and the draft Waste and Environmental Permitting Etc. (Legislative Functions and Amendment Etc.) (EU Exit) Regulations 2020.

You don't need me to say it, Sir Charles, but I will do so anyway: these are important pieces of legislation that are required to ensure that we are prepared not just for the end of the transition period, but for what happens after that. The Minister and other colleagues will have heard me say that I am increasingly concerned, notwithstanding the timetable, that the United Kingdom

is governing by statutory instrument. Although I have been a Member of the House for just shy of two years, I know this is not how things should be done. The fact that we are approaching the end of the transition period in a little over three weeks dictates that we need to make sure that we are as prepared as possible, but that this is not how things should be done. I want the Minister to know that Her Majesty's Opposition is willing to be a constructive and engaging partner in these days ahead, but we cannot be taken for granted. We will hold Ministers to account every step of the way; importantly, we will—like you, Sir Charles—defend the rights of this House every step of the way.

I will take the statutory instruments in turn, starting with the draft REACH Etc. (Amendment Etc.) (EU Exit) Regulations 2020. This is an important subject. We all know that our departure from the European Union will change how we do business, how our country functions, and how we ensure that chemicals regulation in the UK is fit for purpose in the years ahead. This might seem like a niche issue, but many people are far more concerned about it than might be thought. The Royal Society of Chemistry has been clear that

“the impact on the future of chemicals regulation in the UK must be considered, alongside the possibility of divergence from EU regulations.”

We Opposition Members echo those concerns, and ask the Government, on this and many other issues, to be wise and careful when it comes to diverging from the standards and regulations that consumers, industry and our global partners have come to expect in the United Kingdom.

The chemical manufacturing supply chains are well established, and for many products, materials cross the channel several times. If even the most minimal tariffs come our way in a few short days, and that is combined with a requirement to respond to separate regulatory regimes and produce documents to proceed through borders, it could all have a negative impact on future manufacturing supply chains and strategies in the United Kingdom.

So far, under the Government's approach to charting our nation's way through these difficult times—I appreciate that the negotiations are continuing—there will be no dynamic alignment with EU regulations in any new UK-EU trade deal. Ministers have indicated that divergence will feature heavily. I regret that, and so do many Opposition Members. I am particularly concerned that the Government have not indicated an intention to seek close co-operation with the European Chemicals Agency; I urge the Minister to make a case for doing so to the Secretary of State, the Chancellor of the Duchy of Lancaster, and the Prime Minister.

Regulatory divergence could have a severe impact on the quality and strength of public health and environmental protections. We should be levelling up, not cutting ties, and Ministers will not be forgiven for engaging our nation in a race to the bottom. It is important, as the Royal Society of Chemistry and others have said, that the Government be conscious of divergent sources of data. Harmful divergence could occur if the evidence base is not harmonised, so a new, binding legal agreement is needed that will allow authorities in the UK and the European Chemicals Agency to continue to share commercially sensitive data.

Ministers need to be careful about what their approach means for business and industry in our country. They could end up doubling the burden on them through masses of extra regulation. The EU regulation on chemicals, REACH, is a single-market measure that applies in the European economic area, which includes the EU, Norway, Iceland and Liechtenstein. The Chemical Industries Association estimates that duplicating EU REACH in the UK after the transition period will cost UK businesses £1 billion, will be without any environmental benefit, and will potentially force duplicate animal testing. We call on the Government to do all they can to avoid this sort of duplication, and to work to deliver the essential solutions required to grow the environmental, social and economic performance of our country.

I pay tribute to the Chemical Industries Association for its work on this issue. It has been very clear that securing a deal with the European Union that guarantees tariff-free trade, regulatory alignment and access to skilled people continues to be of critical importance for the chemical industry, which relies on our future relationship being as frictionless as possible.

Earlier this year, the Government confirmed that they were not seeking to participate in REACH as part of the UK's future relationship with the EU, and would instead establish an independent chemicals regulatory regime from 1 January 2021. This regime will cover Great Britain; Northern Ireland will remain in REACH as a result of the withdrawal agreement, as the Minister has identified. Simply put, the Government and their Ministers have dropped the position of the Government led by the right hon. Member for Maidenhead (Mrs May), which was to remain in, and aligned to, EU rules on chemicals. The Minister mentioned a light touch; I would be grateful if she could elaborate in her wind-up speech.

In advance of this debate, my team and I had very important and helpful discussions with experts and players in the chemicals field, and I am especially grateful to the CHEM Trust for its work on these issues. The CHEM Trust has set out concerns about a number of features of the future GB REACH regime—or BREACH, as it may now be called—that will be weaker than the current protective framework of EU-REACH. These include the risk of Great Britain becoming a dumping ground for chemicals and products that do not meet EU regulations. The Government have recently acknowledged that chemical dumping is a possibility and said that they are working hard to ensure that this does not happen. I say to the Minister that the only way to guarantee that is by a mechanism or commitment to ensure that the UK remains aligned with EU chemical controls. I would urge the Minister to consider that very seriously indeed.

There is a risk that the regulator will be incapacitated in its ability to regulate harmful chemicals without access to the European Chemical Agency or ECHA chemical safety database. The BREACH system, otherwise known as the Government's plan for post 31 December, will start with an empty database that will not even contain the most basic registration data on chemicals for the first seven years; and even then, it will have much less information on chemical properties and uses than is in the REACH database. The UK has been seeking to gain access to REACH safety data in the EU-UK trade negotiations, though without making any commitment to remain aligned with EU REACH. The CHEM Trust's

analysis is that the EU will not give such access without a commitment to align with REACH controls, which seems to make perfect sense. BREACH could also all too easily become inactive, without pushes in the system for the regulator to proactively propose controls. For example, a proactive aspect of the EU system is the ability of individual member states to propose restrictions. That has been used already to propose restrictions on per- and polyfluoroalkyl substances, or PFAS, as a group of more than 4,500 highly persistent chemicals, and on intentional use of microplastics.

The lack of mechanisms in the future regulator to ensure stakeholder representation, public participation and transparent decision making is another area of concern. It will result in a more closed and less transparent system than that of the ECHA, which would be more susceptible to industry lobbying. By comparison, the committee structure within the ECHA helps to ensure that its work can be challenged and that the best information is available for these discussions, helping to avoid mistakes and to ensure that decisions are made more independently and transparently.

The fifth area of concern is regulatory capacity, including the experience and expertise of personnel in the Health and Safety Executive and their ability to replicate the functions of the European Chemicals Agency in such a complex field. The Minister is well aware—we have discussed it already, in considering the Environment Bill—that the European Chemicals Agency has an annual budget of approximately €100 million for REACH and 400 staff. There are over 22,900 substances that might be used here in the United Kingdom after the end of the transition period, and all of them have to be registered and assessed. The HSE will be expected to regulate a similar number of chemicals with a fraction of the budget—at the moment, a promised £13 million a year—and without the expertise of its workforce, whereas the ECHA additionally draws on the resources of member states for complex work such as substance evaluation.

There are a number of areas in which the future system is likely to be further weakened if the UK does not remain aligned to REACH as part of the UK's future relationship with the EU. For instance, deregulation of the system has already begun. The Government announced an extension to the deadline by which the industry must supply safety data on registered substances from two years at the end of transition to being staggered over a period of six years from October 2021. The Government are already deregulating the system they devised only last year. Without this data, it will be difficult if not impossible for the Health and Safety Executive to regulate these chemicals. Like the CHEM Trust, the Opposition are increasingly concerned that we are likely to see further deregulation of the system to minimise burdens that could make it little more than a paper regulator. The UK already has low enforcement of the law in this area, and a weak system could result in many more products on sale containing chemicals that are banned or above legal limits in the UK.

The lack of resources for local standards teams to test goods is about to get much worse, as they lose access to the EU's rapid alert system or RAPEX at the end of this month. Another concern is the effect on trade deals with non-EU countries. If we do not remain aligned to EU REACH, trade deals with other countries with weaker systems for regulating chemicals—which

[Ruth Jones]

includes almost all non-European countries, including the US—could result in a weakening of our chemical protection standards, and in the import of products containing problem chemicals that are banned in the EU. That must surely be unacceptable to the Minister, and I hope that she will address that when she replies to the debate. Those are important concerns, and I hope that the Minister will address each in turn. I am also grateful to Greener UK for its work on the issues and for highlighting many of the points I have raised.

Our role as an Opposition is to scrutinise Government and make sure that the decisions they take are fit for purpose and, most importantly, that they will stand the test of time; that is why I wanted to spend so much time on this incredibly important topic. The former Prime Minister, the right hon. Member for Maidenhead, understood the importance of the issues and it worries me greatly that her successor appears to not have a clue.

The value of the UK chemicals industry cannot be overstated; the sector directly employs 88,000 people and is worth billions of pounds to the UK economy every year. It is vital in the supply chain to many other sectors, including pharmaceuticals and aerospace, as well as to the production of everyday items such as cleaning products and electronics. Therefore, we cannot get this wrong; it is incumbent on the Minister and this Government to get this right.

The Minister will know that the former shadow Secretary of State, my noble Friend, Lady Hayman of Ullock, is today speaking on this issue in the other place. Because of that, and the fact that the Opposition will return to these issues as the Environment Bill continues its passage through the House, we will not push for a vote this afternoon. However, I say to the Minister very, very seriously that we have grave concerns with the Government's approach to this issue, and Her Majesty's Opposition will continue to hold them to account for the system they devise and their decisions they take.

The draft Control of Mercury (Amendment) (EU Exit) Regulations 2020 is, as Members will note from their Order Paper, a short and specific piece of legislation. The purpose of the instrument is to make the necessary corrections to EU regulations on mercury to enable its continued use as governed by EU retained law after the end of the transition period. It also makes amendments for purposes relating to the implementation of the protocol on Ireland and Northern Ireland.

For the benefit of the Committee, mercury is a naturally occurring element that is found in air, water and soil. The release of mercury into the environment mainly stems from human activities, such as the use of mercury-added products, coal-fired power generation, and the mining and processing of mercury, gold and other metals. Airborne mercury emissions can travel long distances across the globe.

Once mercury enters the environment, it can be naturally transformed into methylmercury, which accumulates in organisms and can biomagnify through food chains, often leading to human exposure through consumption of fish and shellfish. Exposure to even small amounts of mercury or methylmercury may cause serious health problems, and is a particular threat to child development in utero and in early life. As a result, mercury is considered by the World Health Organisation to be one of the top

ten chemicals—or groups of chemicals—of major public health concern. It is vital that we ensure that whatever rules and regulations that are required to keep people safe and the handling of mercury safe and secure are speedily and thoroughly taken through this House.

I welcome the fact that the devolved Administrations in our country were closely consulted on the approach taken during the drafting of this instrument—as the Minister outlined earlier—and I further note that they were provided with the opportunity to propose amendments; that is helpful.

I also note that informal engagement was undertaken with stakeholders from across the United Kingdom, representing industry and trade associations, who could potentially supply, purchase, or manufacture products that contain mercury between July and September 2020. Those who have responded so far have indicated that they do not supply, purchase, use or manufacture products that contain mercury.

Analysis and engagement undertaken in 2020 demonstrates that there is very little movement of any elemental mercury or mercury-added products between Northern Ireland and Great Britain, or between the UK and EU; this is important to note as we discuss this SI, and the Minister has already mentioned that.

Her Majesty's Opposition will not oppose this regulation because of the specific and focused nature of it, but it was important to take a moment to speak to it.

Sir Charles, I would now like speak to the draft Detergents (Amendment) (EU Exit) Regulations 2020. This SI, like the previous two, refers to the Northern Ireland protocol and to our obligation to honour it. The instrument provides for the continued access of detergents, or surfactants for detergents, from Northern Ireland into Great Britain market. It will ensure that the necessary amendments are made to the EU exit SIs to ensure that the EU Detergents Regulation applies in Northern Ireland, as provided for by the Northern Ireland protocol, while the retained EU law version of the EU Detergents Regulation, as amended by the detergent EU exit SIs, applies in Great Britain only.

The Minister will know that under the terms of the withdrawal agreement between the United Kingdom and the European Union, the Northern Ireland protocol was agreed to as a solution intended to preserve the unique relationship between the United Kingdom and Ireland, and to prevent a hard border or splitting the UK customs territory. That protocol means that we have an obligation to ensure that we are ready for the end of the transition period and the changes that will come with it. As such, Her Majesty's Opposition will not oppose the statutory instrument, but we urge strong and sensible action every step of the way.

I am grateful to hon. Members for listening to me speak at length, although I should say that I am speaking at length only because the Government have timetabled four SIs; it is not my fault. Do not blame me. Our last statutory instrument this afternoon is the draft Waste and Environmental Permitting Etc. (Legislative Functions and Amendment Etc.) (EU Exit) Regulations 2020. The instrument amends a number of existing EU exit statutory instruments to ensure that the legislation amended by those instruments will continue to operate effectively at the end of the transition period, and makes EU exit-related

amendments to, or revokes, some recent EU legislation that will become retained direct EU law. It also makes amendments to primary and subordinate domestic legislation for similar purposes.

The changes made by the instrument will ensure that waste regulation and environmental permitting can be managed after the end of the EU exit transition period. I have touched on waste previously, not least in the Committee stages of the Environment Bill. I refer those interested to my remarks in *Hansard*. I am sure that a number of people will rush to *Hansard* after this.

We will not oppose the instruments, but I hope that the Minister has taken on board the concerns that I have raised throughout this speech and in Committee. Government by statutory instrument cannot be an attempt to secure government without scrutiny. I say to the Minister that it is vital that we start respecting this House properly, and our constituents. It is simply not acceptable to rush legislation through a Committee in groups when it will affect the lives of all the people across Wales, Scotland, Northern Ireland and England for many years to come.

3.7 pm

Rebecca Pow: I thank the shadow Minister. It is never a hardship to listen to her speaking at length. She referred to people thinking that this might be a niche issue; chemicals are far from a niche issue, and the Government have never treated them as such. We are taking this extremely seriously, which is why so much liaison and discussion has gone on with industry, businesses and, indeed, with the devolved areas over the SIs. That remains crucial. As I have pointed out, there is still much ongoing discussion with them about these issues. She criticises the SIs, but today is her opportunity to scrutinise the legislation, and we have given her ample opportunity to do so, and indeed anyone else on the Committee.

As I said at the end of my earlier speech, the instruments are necessary to ensure that the Northern Ireland protocol is implemented properly. They correct operability deficiencies, which is necessary for the implementation of the protocol, respond to the Government's commitment to unfettered access for Northern Ireland goods, and help to ensure that we are fully prepared for the end of the transition period on 31 December. The REACH SI does not set up the UK REACH regime, about which we heard a great deal. That was done by the REACH Etc. (Amendment Etc.) (EU Exit) Regulations 2019, which the House considered last year.

All that the present SI does is make amendments to provision for the Northern Ireland protocol to change some of the transitional provisions to extend deadlines for data submission. These instruments will also ensure that the UK continues to meet its international obligations for mercury, as a party to the Minamata convention. They will also ensure that we continue to maintain the high standards of biodegradability for detergents and surfactants. The waste instrument makes small but important changes to existing legislation, and takes powers back from the European Commission. It amends legislation relating to the restriction of hazardous substances, packaging and batteries, so that the UK complies with the Northern Ireland protocol.

I will skim through some of the queries raised. A lot of them were quite general; they were about the overall REACH regime, which is not exactly what these statutory

instruments are all about, but I will touch on some of them. In particular, the hon. Member for Newport West raised the subject of associate membership of ECHA. We have gone past that now; I am sure she knows that. That would be unacceptable, because it would tie the UK to the EU's regulatory agenda and leave us subject to the European Court of Justice.

The hon. Lady touched on animal testing. As a former chair of the all-party parliamentary group for animal welfare, this is a subject dear to my heart, on which I engaged as a Back Bencher. Under EU REACH, tests on vertebrate animals must only be used as a last resort, and companies must demonstrate this. We are retaining this principle in the UK REACH. Extending the deadline would give industry more time to make sensible arrangements for access to existing data about chemicals. That is why the extension that we have talked about today for two years, four years, and six years is so helpful. The data includes information for animal studies, and it will reduce the risk of repeat animal tests.

Ruth Jones: I understand the point the Minister is making, but is she confident that when we leave the EU, animal testing will not be duplicated in the UK? The animal testing agencies are very concerned that there will be duplication, and that means duplication of animal testing.

Rebecca Pow: Potentially, I think the hon. Lady is unnecessarily scaremongering. She has heard what I have just said: we are retaining the principle in UK REACH that animal testing would be a last resort. If testing has already been done and we have got the data, no one wants to repeat that. The UK, as she knows, has always been at the forefront of opposing animal testing where alternative approaches could be used, and we will retain the last-resort principle. I hope that offers assurance.

I have touched on why we need a separate UK REACH. It would not be appropriate for us to automatically implement future EU decisions under UK REACH, because the EU will no longer consider the impact of their decisions on Great Britain. In setting up our own system, we can take the EU's decisions into account, but we will need to consider, in every case, whether the decisions we are making are right for Great Britain.

Ruth Jones: Is the Minister confident that, as we divert from the EU, we will be able to maintain standards, and that this is not a race to the bottom, as some in the industry worry?

Rebecca Pow: Again, I would suggest that the hon. Lady is scaremongering. Does she honestly think we want to be in a race to the bottom over something as important to human health and the environment as chemicals? She sat through the Environment Bill with me, where we talked about protecting the environment. Does she really think that I as the Minister, and all the people working in the Department for Environment, Food and Rural Affairs, would open up the floodgates for a race to the bottom over dangerous chemicals? One of these SIs relates to hazardous chemicals. I reiterate that we will stick to the principles that we maintain—and indeed will probably strengthen them. We have the opportunity to do that in a bespoke way now. I hope that is of some assurance.

[Rebecca Pow]

The hon. Lady touched on costs. We are very conscious of the need to reduce costs, which is why the UK has been looking to agree an approach to data-sharing with the EU as part of the free trade agreement. She was obviously edging towards that in her conversations about remaining part of ECHA, which we will not. Our negotiations are ongoing, and the aim I have just outlined would assist us greatly in meeting the need for the data to underpin UK REACH, while also avoiding extra costs to industry. We could then significantly reduce the requirements and costs on companies, which would submit their data directly to HSE. Again, however, the extension of the time period for companies to do this will also help with all that.

Ruth Jones: The Minister is being very generous with her time. She is talking about data-sharing. The Prime Minister and his team have gone to Brussels for negotiations with the EU. Will they come back with a deal that will include the data-sharing clause?

Rebecca Pow: I am ever supportive of the Prime Minister and optimistic. [HON. MEMBERS: “Hear, hear!”] As we all are—that was a great response, and I thank the Committee for it. The hon. Lady is pushing me, but obviously we cannot have only one plan; we cannot have only a negotiated plan A. That is why we are creating an independent chemicals regime, and we must plan for a scenario in which the EU does not agree to our preferred route of data-sharing. However, I am sure we would all want our independent regime to be robust and effective, so we should all accept the importance of industry and authorities having the information that they need to protect human health and the environment properly through the supply chain, as I have touched on before. Obviously it is not cost-free, but if we do not maintain that, we are moving away from the core principles of industry being responsible for understanding the risks of the substances it uses. Regulators must have the information that they need to provide oversight and assurance. We are sticking to our principles, but obviously we have to get the right data and keep everybody safe in our new regime.

That leads me neatly on to my next point. The hon. Lady referred to a race to the bottom and the lowering of standards, but I can assure her that we are definitely taking a risk-based approach to phasing the submission of registration data by requiring, as I touched on earlier, that companies producing the highest tonnage of chemicals and the most hazardous chemicals have to provide their data first, two years after the 300 days. Companies producing lower tonnages and lower-risk chemicals will follow after that. Taking such an approach should facilitate the submission of better-quality data for the risky products first, and then companies can have bit longer to submit their data on less concerning risky products. HSE will be able to look at a variety of sources to inform its decisions, which will also include using its years of experience on chemical regulation within EU REACH and the new substance regime that ran prior to it.

Ruth Jones: The Minister mentioned HSE, its powers of enforcement and its legislative ability to regulate. Is she confident that there will be enough members of staff and funding, given that HSE’s budget has been stripped out of all proportion over the last 10 years?

Rebecca Pow: The hon. Lady touched on that in her earlier contribution. I would say that HSE is very well placed to be a great success in this role—it has been stressed many times. Working in conjunction with the Environment Agency, HSE has already played a really active role in EU REACH for many years, and it has had to take on some really complex issues and dossiers. On the issue of staffing, that is all under way. DEFRA has put significant resources into building up not only UK REACH, but the regulation side of it. HSE is recruiting heavily for people to work in this area, although it is not absolutely necessary to have it fully staffed for day one, because companies will not rush out on 1 January, suddenly get their hands on all the data and fire it into HSE. HSE has plenty of time to train and build up the staff that it needs. Obviously it has made a really good start, but it also needs to make sure that it is absolutely tailored to the new system that we are developing.

I give the hon. Lady assurances that the IT system has already been developed. We are apparently ready to press the button at midnight on 31 December. The system has been trialled, and I am told it is working well. That is all part and parcel of the new regime.

Scott Mann (North Cornwall) (Con): I did not intend to speak but I have listened closely to the shadow Minister’s interrogation of the Minister on REACH regulations. Would my hon. Friend agree with me that as a founder member of REACH, and having paid and made substantial contributions to REACH, it would look miserly of the European Union not to share information with the UK Government, specifically on chemicals regulations and animal testing? We could work closely on such a good project. Does she agree that the EU would look miserly were it not to share that particular information?

Rebecca Pow: I thank my hon. Friend the Member for North Cornwall—a wonderful part of the world—for making that point. I would not want to describe the EU as miserly, as they will continue to be our friends and we will need to work closely with them, but he makes the good point that the UK itself was incredibly influential in the development of the EU REACH system. The EU regard us as having played that important role. Negotiations are still underway and, as I outlined earlier, we are hoping for some joint and mutual recognition that may potentially result in what my hon. Friend recommends.

The shadow Minister touched upon the fact that Northern Ireland, in terms of protocol, will remain subject to the EU REACH, which means that the UK REACH regulations will not apply to the Northern Ireland market. There will be a streamlined process for Northern Ireland chemicals, however, that are part of what we call ‘qualifying’ Northern Ireland goods to access the GB market, and there is a list of those qualifying goods. The full registration requirements will be replaced with a light-touch notification process. The hon. Lady pressed me on the light touch, and it will be just that. We already know what chemicals they are using in Northern Ireland, so we are starting on a level playing field. It is important and key to remember that Northern Ireland will have a direct link and access to HSE. That is a good position for Northern Ireland in terms of accessing the right place for discussions and advice, because it will be able to access HSE. Northern Ireland businesses will be able to fulfil the notification

requirement, should they wish to do so, instead of their GB customer. That has been fully thought through, and much debated and discussed. I hope that puts the shadow Minister's mind at rest.

That brings me to end of the hon. Lady's questions and queries. I can write to her should she believe that she would like further information. We have had no come back in terms of concerns about the mercury and the detergents. I think she agrees with that, so I thank her for that.

To sum up, the contents of all four instruments are technical and they are all essential to fulfil our obligations under the Northern Ireland protocol. They all contribute in their own way to the effective functioning of the internal UK market and to the Government's continued commitment to environmental protection.

I thank the Committee members for being here today and for the comments made by my hon. Friend the Member for North Cornwall. I hope that the debate has been useful. I thank the shadow Minister for her scrutiny, as ever. I am confident that these regulations are fit for purpose and represent another marker in the Government's commitment to ensuring continued levels of protection for human health and the environment, which is so important, and to providing the stability and continuity that our businesses need.

I wish everyone all the best for the festive season, including you, Sir Charles, and I thank you for chairing the Committee today. I commend the SIs to the Committee.

Question put and agreed to.

Resolved,

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

**DRAFT CONTROL OF MERCURY
(AMENDMENT) (EU EXIT)
REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Control of Mercury (Amendment) (EU Exit) Regulations 2020.—(*Rebecca Pow.*)

**DRAFT DETERGENTS (AMENDMENT)
(EU EXIT) REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Detergents (Amendment) (EU Exit) Regulations 2020.—(*Rebecca Pow.*)

**DRAFT WASTE AND ENVIRONMENTAL
PERMITTING ETC. (LEGISLATIVE
FUNCTIONS AND AMENDMENT ETC.)
(EU EXIT) REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Waste and Environmental Permitting Etc. (Legislative Functions and Amendment Etc.) (EU Exit) Regulations 2020.—(*Rebecca Pow.*)

3.25 pm

Committee rose.

