

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT CONFLICT MINERALS (COMPLIANCE)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS

Tuesday 8 December 2020

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Saturday 12 December 2020

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The Committee consisted of the following Members:

Chair: MR PHILIP HOLLOBONE

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| † Baldwin, Harriett (<i>West Worcestershire</i>) (Con) | † Holmes, Paul (<i>Eastleigh</i>) (Con) |
| Barker, Paula (<i>Liverpool, Wavertree</i>) (Lab) | † Kruger, Danny (<i>Devizes</i>) (Con) |
| † Buchan, Felicity (<i>Kensington</i>) (Con) | † Mohindra, Mr Gagan (<i>South West Hertfordshire</i>) (Con) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Cleverly, James (<i>Minister for the Middle East and North Africa</i>) | † Morrissey, Joy (<i>Beaconsfield</i>) (Con) |
| Fovargue, Yvonne (<i>Makerfield</i>) (Lab) | † Osborne, Kate (<i>Jarrow</i>) (Lab) |
| Gwynne, Andrew (<i>Denton and Reddish</i>) (Lab) | † Randall, Tom (<i>Gedling</i>) (Con) |
| Harman, Ms Harriet (<i>Camberwell and Peckham</i>) (Lab) | † West, Catherine (<i>Hornsey and Wood Green</i>) (Lab) |
| † Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Kevin Maddison, <i>Committee Clerk</i> |
| | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 8 December 2020

[MR PHILIP HOLLOBONE *in the Chair*]

Draft Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020

9.25 am

The Chair: Before we begin, I remind Members about the social distancing requirements. Spaces available to Members are clearly marked. *Hansard* colleagues would be grateful if you could send any speaking notes to hansardnotes@parliament.uk.

The Minister for the Middle East and North Africa (James Cleverly): I beg to move,

That the Committee has considered the draft Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020.

Mr Hollobone, it is a genuine pleasure to serve under your chairmanship this morning. The regulations, laid on 15 October, are necessary for the application “to and in the UK in respect of Northern Ireland” of the EU conflict minerals regulation, which is listed in annex 2 of the Northern Ireland protocol. The EU regulation establishes the due diligence obligations of the largest importers of tin, tantalum, tungsten and gold—collectively and, as far as I am concerned permanently, referred to as 3TG. Supply chain due diligence for these so-called conflict minerals is absolutely crucial, as a large proportion originate from conflict-affected high-risk areas.

The EU regulation requires importers to apply relevant Organisation for Economic Co-operation and Development guidance that would otherwise be voluntary. It aims to break the link between armed conflict and exploitation of 3TG and to put an end to abuses of miners and local communities which, sadly, are often linked to violations of human rights.

Parts of the conflict minerals regulation have applied in the UK since 2017. However, its key operative provisions do not apply until 1 January, after the transition period has ended. These include the relevant obligations on businesses and member states’ competent authorities to ensure its effective implementation throughout the EU. Those key provisions will not, therefore, form a part of retained EU law and will not take effect in Great Britain. The regulations that we have laid before Parliament implement the EU regulations in Northern Ireland, as required under the protocol, and they establish an enforcement framework for non-compliance. This means that from 1 January 2021 the largest importers in Northern Ireland of tin, tungsten, tantalum and gold will need to conduct and demonstrate due diligence to ensure that their imports have been mined and processed responsibly. They will have to demonstrate that they are managing the risk that their supply chains could fuel conflict or be linked to human rights violations.

Harriett Baldwin (West Worcestershire) (Con): My right hon. Friend is making a very interesting speech. Will he elaborate on other minerals such as diamonds,

which are also often mined in conflict zones? Is there separate legislation that covers those in Northern Ireland?

James Cleverly: I thank my hon. Friend for highlighting that point. There are of course other high-value items—diamonds being the most obvious—that are subject to provisions in other legislation, to ensure that they do not originate in conflict-affected states and that their mining is not linked to human rights violations.

To enable enforcement in Northern Ireland, we are proposing powers for the Secretary of State to require businesses to produce information about their due diligence activities. The regulations also make provisions for inspectors to enter business premises to inspect documents, data and records. The regime follows a civil sanctions route and provides for the power to issue civil compliance notices and financial penalties where businesses do not comply. The decision to impose a financial penalty may be appealed to the first tier tribunal. The regime does not impose penalties for substantive breaches of the due diligence obligations, as this is considered outside the scope of the EU conflict minerals regulation. As required by the regulations, we will publish guidance at the earliest opportunity on how the civil sanctions will be used.

We accept the comments of the Joint Committee on Statutory Instruments on regulation 8. In particular, it said that regulation 8 enables the Secretary of State to serve a notice requiring a person to produce information, but is enforceable only against Union importers—importers into Northern Ireland. The regulations do not make provisions for enforcing a requirement under regulation 8 that is imposed on a person who is not a Union importer. We also accept as a point of principle that the imposition of obligations in statutory instruments should be accompanied by enforcement measures with equivalent scope.

It is necessary for these regulations to be made before the end of the transition period, to meet the UK’s obligations under the Northern Ireland protocol. We are proceeding with the regulations as currently drafted, but we will bring forward legislation as soon as possible to amend regulation 8. This amendment will make it explicit that the power to require the production of information can be exercised only in relation to a Union importer—an importer into Northern Ireland. In the meantime, the Secretary of State undertakes not to exercise the power to require production of information under regulation 8 against persons other than Union importers. When the amending regulations are laid, they will also implement some minor administrative and clarifying corrections.

Our intention through these regulations is to allow businesses to operate responsibly in conflict-affected and high-risk areas, because 3TG minerals are key components of much of our technology, and it is our view that, in the right conditions, they can be mined in a way that builds prosperity and security for local communities. Conducting due diligence, in accordance with the OECD guidance, is key to managing the risks and to ensuring that businesses along the supply chain behave responsibly. Our proposed regime for Northern Ireland is in line with the spirit of the OECD guidance, incentivising business to continually improve their due diligence processes. The approach taken in the regulations, including the financial penalties for failure to co-operate

with procedural requirements, corresponds with the European Commission's stance on the scope of the EU regulation.

To conclude, we consider that this approach to implementation of the EU conflict minerals regulation in Northern Ireland will meet our obligations under the protocol. I welcome this opportunity to hear the views of Members on the regulations, and I commend them to the Committee.

9.33 am

Catherine West (Hornsey and Wood Green) (Lab): May I say how lovely it is to be in Committee again, after our rather unusual coronavirus circumstances and to contribute under your chairmanship, Mr Hollobone.

We will not be opposing the legislation this morning because we think it is important to get as much done as possible before 31 December. However, I want to ask a few questions for clarification and make a few comments, and to pick up the comment made by the hon. Member for West Worcestershire. The big question in this statutory instrument is what is used in technology. What brings us together, whether we are Members for Kettering, Hornsey and Wood Green, Braintree, Essex, Wales or the north-east is our mobile phones. Obviously, we are dealing with that. However, as the hon. Member for West Worcestershire mentioned, we never know when other special mined materials may become politically difficult. I am pleased, therefore, on behalf of the Labour party to say that we will not contest the statutory instrument.

I am a little disappointed at the rushed feeling of this morning. The Government have had quite some time to introduce measures on this crucial issue that Members across the House care deeply about—the supply chain of goods and services into the UK. I welcome the chance to debate the SI, but obviously we could have done so earlier than just a few sitting days before the end of the year. That does seem to be the theme in the Brexit area of the Foreign Office portfolio. As my colleague Lord Collins of Highbury remarked in a recent debate in the other place on this instrument, the title belies the importance of what has been discussed in this short debate, because the materials are incredibly important for very high-value items so there is a real incentive to ask some question about the supply chains. It is vital that we scrutinise our supply chains because we know that, whether it is fast fashion, mobile phones or parts for manufacturing, the importation of natural resources from conflict areas can be abused. We also know that people within those supply chains can be abused. That was the point that the hon. Member for West Worcestershire was getting at.

The instrument goes some way to guard against the misuse of those supply chains. Lord Ahmad of Wimbledon, the Minister, addressed some of Labour's concerns in the House of Lords debate, but I will point out one or two here for our benefit. The Minister is aware that the Joint Committee on Statutory Instruments mentioned defects in the instrument. He briefly addressed that, but I seek his reassurance about when we can see amendments to regulation 8 on enforcement measures. Obviously, we can sit here and say all we like, but unless we have enforcement measures to make a difference, we will be toothless. It is important that the Minister gives us a date—not just “as soon as possible”—for when he believes the amending legislation will be introduced. It

is a little embarrassing for the Government to have legislation described in the House of Lords as defective. That suggests rushing and lack of preparation; it suggests, “We didn't think about this beforehand. Oh, yes that is how things goes at the moment.”

A further concern is the wider issue of the geographical scope of the measures. Clearly, they rightly address the unique circumstances of Northern Ireland and do not address the rest of the UK, but what measures is the Minister taking to ensure that the spirit of the regulations covers the rest of the country, so there is no divergence and no gaps in coverage?

My final point is about steps to address the wider issue of exploitation and human rights in conflict zones. The statutory instrument is reasonably tight in its application, but there is a broader issue at play here of the importation into the UK of goods that have been produced and created as a result of the exploitation of civilians in conflict zones. We are all aware of that through our study of Rwanda and those kinds of areas, but it could be anywhere in the world. Sadly, anywhere could become a conflict zone. The UK could have an implicit role in the undermining of human rights in countries, should we get this wrong in our trade remit. We have a duty to ensure that our trade and our supply chains are clear and humane, especially post Brexit, to strengthen our standing on the world stage further. With that in mind, will the Minister give his commitment today to ensuring that that is addressed in future instruments by a robust and wide-ranging set of human rights benchmarks through which Parliament can scrutinise trade deals and arrangements?

9.39 am

James Cleverly: I am grateful to the hon. Lady for the points that she has raised. Unfortunately, I cannot give her a specific date for the revision of regulation 8, but it will be as soon as possible.

The UK remains a vocal and passionate defender of human rights and in our future trading relationships, whether with the EU or in the new trading agreements that we make with international partners, the protection of human rights will always be at the heart of what we do.

The hon. Lady asked specifically why the instrument relates only to Northern Ireland. Without wanting to go into too much detail, the operative provisions of the EU regulation will come into force in January 2021. As the transition period is due to end, those operative provisions will not form part of retained EU UK law. Therefore, there are no available statutory powers to implement the operative provisions of the EU regulation in Great Britain. Enforcement in Great Britain would therefore require an enabling power in primary legislation. Ministers agreed in June that we should focus on what we are required to do by the withdrawal agreement and its protocol so at this stage we are focusing the regulations exclusively on Northern Ireland.

I thank all members of the Committee for their involvement today. The regulations will ensure that we comply with our obligations under the Northern Ireland protocol and I commend them to the Committee.

Question put and agreed to.

9.42 am

Committee rose.

