# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

# DRAFT CHEMICALS (HEALTH AND SAFETY) AND GENETICALLY MODIFIED ORGANISMS (CONTAINED USE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

*Wednesday 9 December 2020*

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**not later than**

**Sunday 13 December 2020**

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

*Chair:* Stewart Hosie

† Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Afriyie, Adam *(Windsor)* (Con)
† Ansell, Caroline *(Eastbourne)* (Con)
† Antoniazzi, Tonia *(Gower)* (Lab)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† Davies, Mims *(Parliamentary Under-Secretary of State for Work and Pensions)*
† Docherty, Leo *(Aldershot)* (Con)
† Eshalomi, Florence *(Vauxhall)* (Lab/Co-op)
† Everitt, Ben *(Milton Keynes North)* (Con)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Mangnall, Anthony *(Totnes)* (Con)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
Seely, Bob *(Isle of Wight)* (Con)
Sheerman, Mr Barry *(Huddersfield)* (Lab/Co-op)
Sultana, Zarah *(Coventry South)* (Lab)
Thompson, Owen *(Midlothian)* (SNP)

Seb Newman, *Committee Clerk*

**† attended the Committee**

# Eleventh Delegated Legislation Committee

*Wednesday 9 December 2020*

[Stewart Hosie *in the Chair*]

## Draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020

9.25 am

**The Chair:** Before we begin, I remind Members to observe social distancing and sit only in the places that are clearly marked. Our *Hansard* colleagues would be grateful if Members could send their speaking notes to hansardnotes@parliament.uk.

**The Parliamentary Under-Secretary of State for Work and Pensions (Mims Davies):** I beg to move,

That the Committee has considered the draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Hosie.

This draft statutory instrument was laid before Parliament on 15 October. Through this instrument, we are making the necessary arrangements to implement the terms of the withdrawal agreement and the Northern Ireland protocol in law for chemicals regulations. It will ensure that those regulations function effectively from the end of the transition period, and that the existing high standard of protection for human health and the environment will be maintained.

In preparation for our exit from the European Union, a statutory instrument was made last year to ensure that the regulatory framework for chemicals remains functional after exit and to provide certainty for businesses and the public. It achieved that by making technical amendments to the retained EU law, such as changing EU-specific references and transferring functions and powers currently held by the European Commission to the appropriate authorities in each of the UK's constituent nations. Since the 2019 regulations were made, the withdrawal agreement, including the Northern Ireland protocol, has been agreed. The protocol requires that EU legislation will continue to apply in Northern Ireland after the end of the transition period. The existing EU exit legislation therefore needs to be amended to reflect the fact that retained EU law will be substantively applicable in Great Britain only. If approved, the draft regulations will make the necessary arrangements to three retained EU regulations, as well as EU-derived domestic legislation.

I appreciate that the technical and composite nature of the regulations makes this particularly complex, and therefore the decision to present the proposals as a single instrument was for the benefit of the House, to reduce pressure on parliamentary time and to ensure we are able to deliver an orderly transition. As this is such a technical instrument, I shall provide a concise summary of the regulations and the changes we are making for the members of the Committee.

On the three retained EU regulations to be amended, the first is the biocidal products regulation that governs the placing on the market and use of products that contain chemicals which protect humans, animals and materials or articles from harmful organisms such as pests or bacteria. This market covers a wide range of products such as wood preservatives, insecticides such as wasp spray or anti-fouling paints to remove barnacles from boats. Secondly, the classification, labelling and packaging of substances and mixtures regulation ensures that hazardous intrinsic properties of chemicals are properly identified and effectively communicated to those throughout the supply chain, including to the point of use. The current classification laws are sophisticated and incorporate a detailed technical system of classification criteria. The classification is partly done through standardised hazard pictograms and symbols and warning phrases associated with specific hazards such as explosivity, acute toxicity or carcinogenicity. Lastly, the export and import of hazardous chemicals regulations require the export of listed chemicals to be notified to the importing country. For some chemicals, the consent of the importing country must be obtained before export can proceed.

The instrument is making three main changes, which I shall summarise. First, we are updating some transitional provisions in the 2019 regulations so that they apply from the end of the transition period, when the retained law comes into force, rather than from exit day. It should be noted that although the instrument's title references genetically modified organisms, the only amendments to the relevant legislation are to update two references to "exit day".

Secondly, the instrument removes Northern Ireland from the scope of the 2019 regulations by omitting references to Northern Ireland and changing UK-specific references to "Great Britain". The instrument also revokes changes made to domestic legislation in Northern Ireland in the 2019 regulations, which are no longer required due to the protocol.

Finally, the instrument legislates for the Government's commitment on unfettered access for these chemical regulations as well as the need to ensure that the UK authorities have the appropriate information and regulatory safeguards in respect of chemicals placed on the market in Great Britain.

The Health and Safety Executive currently acts as a UK competent authority within the EU regimes for chemicals regulations. Under this instrument, it will become the GB regulatory authority. The Health and Safety Executive for Northern Ireland will be the regulatory authority with responsibility for Northern Ireland. We are working closely with Northern Irish colleagues to prepare for the end of the transition period and support them afterwards. Both organisations have demonstrated their resilience throughout the pandemic, and I am confident that they have the capacity to undertake any new responsibilities brought by EU exit.

This instrument was not subject to consultation as it does not alter existing policy. Published guidance has been followed, and in line with it a full impact assessment has not been concluded for the instrument as it does not meet the de minimis threshold. However, I assure Committee members that the changes brought by the instrument have been communicated through a series of stakeholder events throughout the autumn and guidance published on the HSE website in October.

Devolved Administrations have also been fully engaged in the development of the instrument and have provided consent for the elements that relate to them. We are also in the process of agreeing a provisional common framework for chemicals that aims to maintain existing standards and promote common approaches to chemicals policy in the future.

In conclusion, this instrument will provide important continuity and clarity to the chemical industry, ensuring that the legal requirements that apply in relation to chemicals regulations are clear, following the end of the transition period. I hope that colleagues of all parties will join me in supporting the draft regulations, and I commend them to the Committee.

9.34 am

**Seema Malhotra** (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Hosie.

I thank the Minister for her opening remarks. The regulations are needed to address deficiencies in retained EU law on chemicals and GMOs legislation arising from the UK's withdrawal from the EU. The Minister has outlined the regulations, but I will cover them briefly in my remarks.

EU law has played a vital role in ensuring that the framework that regulates chemicals and GMOs operates coherently and effectively. That framework includes regulations such as the biocidal products regulation that the Minister mentioned; the classification, including of hazards, labelling and packaging, or CLP, regulations; the regulations concerning the export and import of hazardous chemicals; and the GMO regulations, which lay down measures for the contained use of genetically modified micro-organisms with a view to protecting human health and the environment. We support this instrument, which ensures that retained EU law relating to chemicals and GMOs continues to operate coherently at the end of transition.

The Minister also outlined, as does the explanatory memorandum, why, if the changes were not made, several chemicals regimes in the scope of the instrument would not be consistent with the withdrawal agreement and the Northern Ireland protocol when the transition period ends. The reasons for the instrument are clear, but I want to focus on several concerns about its effective implementation and the transfer of functions to the HSE.

The first concern relates to HSE duties as it becomes the GB regulatory authority. Leaving the EU and the European Chemicals Agency means that the HSE will take on new responsibilities. From 1 January, businesses that wish to apply for an active substance to be approved, or for a biocidal product to be authorised in Great Britain, will need to apply to the HSE instead of the European Chemicals Agency. As the Minister said, the territorial extent of this instrument is Great Britain except for certain provisions. The HSE will take on the functions that the ECHA performs where these are still relevant in Great Britain. For example, it will co-ordinate the active substance evaluation process for Great Britain. It will also introduce its own processes and systems for receiving and processing applications.

The Minister said that she has confidence in the HSE's capacity, but she will appreciate why I am asking questions about it. The new demands pose concerning questions about whether the HSE is adequately funded, staffed and resourced to deliver its new responsibilities, particularly on top of the additional work it has undertaken due to covid. Since 2009-10, funding for the HSE has been cut by £144 million in real terms: by more than half since Labour was last in Government. Although in May the Government announced £14 million more funding for it, that still leaves a substantial cut.

We know from a response to a parliamentary question that the Government have recruited only 37 full-time equivalent inspectors since March. What review has the Department for Work and Pensions undertaken with the HSE about its resources, systems and processes, and how it will effectively carry out its extra duties, such as confirming the hazard classification and labelling of chemical substances after the end of the transition period?

Is the Minister confident that the HSE will be able to cope with that increase in responsibilities? What assessment has she made of any new specialist skills that may be required? Could there be an economic impact on the chemicals, pharmaceuticals or plastics industries if there are any delays in required work being carried out by the HSE? Has that risk assessment been done as part of any review that the Department has undertaken? There may be a need for further recruitment, and difficulties have been experienced in the past year in finding necessary specialists. Can the Minister therefore guarantee that any extra staff will be in place by the first week of January, ready for EU exit?

With the HSE potentially having to navigate and regulate stand-alone GB schemes and parts of the EU chemicals schemes simultaneously, there will be additional pressure on it. At the same time, staff will be making new regulatory decisions for UK's entire food and chemicals markets, with limited access to EU data. Not having adequate resources and systems will also put the incredibly hard-working HSE staff under enormous pressure, which is why we and the Government must not ignore this.

None of us wants questions about the HSE's capacity to deliver an effective chemicals regulation regime into 2021 and beyond. Indeed, this issue has been raised before, and in February this year the Government said that they

"are making sure that the HSE…have the resources and evidence they need to ensure the safe management of chemicals and to protect public health and the environment."—[*Official Report,* 26 February 2020; Vol. 672, c. 159WH.]

**Lloyd Russell-Moyle** (Brighton, Kemptown) (Lab/Co-op): My hon. Friend is making a good point about the HSE. In the European context, both the HSE and the Environment Agency fed into chemicals regulations. Is there a danger that not also increasing funding for the Environment Agency to be able to be feed into the new HSE regulator will leave an area of regulation or expertise lacking?

**Seema Malhotra:** I thank my hon. Friend for his contribution, which I am sure the Minister noted. It relates very much to the next point that I was about to make.

In February 2019, Mary Creagh, the then Chair of the Environmental Audit Committee, also raised concerns about how the new functions would be taken on within the UK and the budget in relation European Chemicals Agency funding. That is not to say there should be direct comparison of EU-wide budgets and what the UK needs, but the HSE and other agencies involved need to be sufficiently equipped in order for our scientists to deliver safe and effective products on to the UK market. For the new work now required of the HSE,

*[Seema Malhotra]*

other agencies within Northern Ireland and others across industry that will be involved in a proportion of the new work that will be now taken on, what assessment has been made of the level and type of additional resources required?

My second question before I conclude relates to the Northern Ireland protocol. I thank my colleagues in the other shadow departmental teams for their input on this. The Northern Ireland protocol will mean that a number of areas of law in Northern Ireland will remain aligned with the EU after the end of the transition period, as the Minister commented. Changes to the standard policy approach for unfettered access are needed for highly regulated goods, such as chemicals. This will require a strong focus on transparency requirements to ensure that UK regulators are provided with the requisite information, in parallel to that provided to the EU. With regards to unfettered access and the forms required for highly regulated goods, what estimate has the Minister made of costs to business of the additional transparency requirements, and how many exports does she expect will be covered by them?

In conclusion, the amendments to the 2019 regulations relating to the withdrawal agreement, including the Northern Ireland protocol, are necessary to ensure that retained EU law relating to chemicals and GMOs continues effectively from January. However, I would welcome reassurance about the planning and resourcing for the new functions that the HSE, particularly, and other agencies will take on.

This is one of around 20 statutory instruments that will need to be tabled before the House rises for recess. Will the Minister update us on the timetabling for the remaining SIs relating to the Northern Ireland protocol? With only two weeks until Christmas, she will understand concerns that there may not be enough time for all these to pass through the House before the end of the year with the necessary scrutiny. If she is unable to update us today, perhaps she will be able to forward that information to me after.

9.44 am

**Mims Davies:** I thank the hon. Member for Feltham and Heston for her comments and the questions she raised. On the final point, I believe that we are at the end of the road of what we need to do in regard to the HSE, but I am happy to take away her query. I thank all Members who have been part of this debate, and I am happy to address some of the hon. Lady's comments.

The HSE works very closely with the Environment Agency, under the remit of the Department for Environment, Food and Rural Affairs. I am happy to take away the point of the hon. Member for Brighton, Kemptown and ask the HSE to respond to him.

As to whether the HSE has the administrative capacity and resource to deal with the additional burdens, it currently acts, as I said in my opening remarks, as the competent authority for the EU chemicals regulations and therefore already has capability and capacity, which can be built on, to take on full GB regulatory authority responsibility.

Since the announcement of the referendum and our leaving the EU, the HSE has been preparing for all different scenarios for future UK-EU relationships and has always had a focus on readiness for a stand-alone regulatory system. It will be ready on day one: roles, processes, skills and recruitment and training have all been scoped out and mapped, as part of the wider HSE transition programme, which covers chemicals regulation as a whole. We have looked at what workload there might be on day one, in terms of the operating model and how we develop the scope of chemicals regulation as a whole, carrying out discovery work with stakeholders on the work that will be needed with regard to future operating capacity.

As for HSE finances for the 2020-21 financial year, an additional £6.1 million was made available by the DWP, and £4.5 million was made available from DEFRA, to prepare for the new chemicals framework.[1] That represented a 60% increase on the 2019-20 financial year, and appropriate bids have also been made under the spending review for 2021-22. We wait to understand the details on that.

**Seema Malhotra:** I thank the Minister for her responses, but I would be grateful if she will clarify one point. She talked about how the HSE's existing capabilities could be built on, and said there had been some scoping and mapping. As we are so close to the end of transition, can she say whether any risks and concerns have been raised either by DWP or the HSE to her directly about readiness for 1 January, and whether any resources might still be required?

**Mims Davies:** I am happy to respond to the hon. Lady. In fact, I must point out that owing to more demand in relation to covid the HSE budget in 2019-20 was £129 million, and there will be an extra £1.6 million for the functions in question.

On recruitment and readiness, the HSE has identified a total of 147 posts to be filled by the end of the financial year. It reports good progress on filling those posts, with 108, or 73%, filled. It is confident that that means it will be ready in relation to the transition period. Of the 73% of posts filled to date, the vast majority will start in January, with the remainder commencing in post before April.

Several campaigns are ongoing and due for completion in 2021. We are concluding the recruitment of the outstanding posts and recruiting 117 brand new posts in the chemicals regulation division, relating specifically to EU exit. That represents a 45% increase from the baseline staffing, since January 2020, and I hope that the hon. Lady will see that it demonstrates a significant commitment to taking on the new functions that are required. I believe, in fact, that we had about 900 applications when the recruitment opened.

I want to take this opportunity to pay tribute to those at the HSE who have done a remarkable job through the pandemic and covid this year. The HSE has called in or visited 78,000 businesses as part of its work on spot checks. It has a significant compliance rate and staged spot checks in more than 41,000 businesses in relation to covid issues.

As to taking on the new functions and being ready to work with industry, there has been significant engagement with industry on the next stage, including 22 comms events just this month with the chemicals industry. Since January we have engaged with more than 6,000 attendees from across the chemicals section. There is significant information on the HSE website, the chemicals section of which gets over 50,000 views a month, and

1. *[Official Report, 11 January 2021, Vol. 687, c. 2MC.]*

over 226,000 e-bulletins go out to subscribers. There have been extensive conversations and communications with the sector, and I have joined with Ministers from the Department for Business, Energy and Industrial Strategy and from DEFRA to engage with that sector and with stakeholders.

**Lloyd Russell-Moyle:** I am really pleased to hear that the Government and HSE have been engaging with businesses. However, I am still hearing concerns from businesses that are worried about re-registering pre-existing chemicals that have already been registered, and any potential need to prove that new levels of testing have been met, particularly animal testing. Can the Minister give an assurance that no new tests will be required for pre-existing chemicals by the HSE, and particularly no new animal tests?

**Mims Davies:** On animal testing, the relevant legislation affected by the instrument is the biocidal products regulation. That regulation contains mandatory data sharing provisions that are maintained in retained EU law and will apply in Great Britain, with amendments to make clear that the HSE will operate this process, rather than the European Chemicals Agency. The UK has been at the forefront of opposing animal tests where alternative approaches could be used, and we will retain the last resort principle. I hope that satisfies the hon. Gentleman.

Turning to divergence, GB will be free to make decisions on key issues. However, that does not mean we will disregard evidence, discussions and decisions made at EU level, nor any impacts on Northern Ireland. Horizon scanning and monitoring will be part of the UK chemicals framework as a whole.

**Lloyd Russell-Moyle:** I appreciate what the Minister just said. What would be useful, maybe in writing, is an absolute confirmation for the industry and for animal rights organisations that any pre-existing chemical that is currently registered under the registration, evaluation, authorisation and restriction of chemicals regulation, and will need to be re-registered with the HSE, will not require any new levels of testing due to moving their registration over. Of course, it will be difficult for new chemicals that come on board later, but just so that we can be absolutely sure, will the Minister say that no existing registered chemical will require any new levels of testing? That would give me and the industry reassurance.

**Mims Davies:** I am happy to reassure the hon. Gentleman that the REACH regulation is not included in this SI. DEFRA has the policy responsibility for REACH regulation and is bringing separate legislation forward on this. I hope that satisfies the hon. Gentleman.

**Seema Malhotra:** I thank the Minister for her responses to my hon. Friend the Member for Brighton, Kemptown, and I understand that some of the REACH regulations are covered by other SIs. However, these are very important points, so could I just probe her on one thing, which relates to the reduction in animal testing that the BPR has promoted? She has given some assurance that this will remain part of UK policy, but could she also give an assurance that if there is any change to that policy at any time, that change will come before the House? I do think people across the country will want to see us keep that commitment into the future.

**Mims Davies:** On divergence, I reiterate that GB will be free to make decisions on key issues. However, that does not mean that we will disregard evidence, discussions and decisions made at an EU level or elsewhere, and we will absolutely be engaging with stakeholders.

Regarding scrutiny—I think that was where the hon. Lady was going—decisions taken by the Secretary of State on chemicals regulations will be subject to the same processes of informal and formal consultation, enabling Ministers to be held to account as they are for any of their other decisions. In addition, for several decisions, the consent of devolved Administrations will be required as well. I maintain that the HSE has an excellent reputation for engaging with stakeholders and ensuring that we develop the appropriate health and safety regulations. I hope that I am reassuring hon. Members this morning.

In regard to unfettered access, the Government's approach to the Northern Ireland protocol was set out in the May Command Paper and subsequent business guidance. This outlines that there will be some specific requirements for movements between NI and GB in respect of items categorised as highly regulated goods, and chemicals are highly regulated goods because they can pose a significant risk to human health and the environment. Northern Irish businesses will have the right to place a product on the market in Great Britain where they already have an authorisation to place that product on the market in Northern Ireland, provided that they notify the HSE with the information that they would submit previously to the EU. If the HSE has any serious concerns that any product poses a risk to public health or the environment, it has the ability to take safeguarding measures. The HSE has the ability to act and it will continue to. Costs, of course, are recoverable from industry. The return of costs is agreed, and they come back to the HSE—I must point that out to Members.

As many Members will attest, our chemicals sector is world leading, and, as we have heard today, it is vital for other key industries, such as the pharmaceuticals, automotive and aerospace industries. We want to ensure that that continues and that those sectors continue to succeed. We also need to provide certainty, as we have heard, for businesses in Northern Ireland and across GB that the statute book will be fully functioning for the end of the year and that NI businesses will have unfettered access to the market in Great Britain. This statutory instrument seeks to ensure that and to meet our obligations under the protocol.

I am sure that Members are all with me on the need to provide continuity and clarity to our chemicals industry following the end of the transition period. I want to ensure that the legal requirements that apply in relation to chemical regulations are clear and provide certainty to all. We must maintain our high standard of protection in the workplace and otherwise, and this instrument will uphold that. I commend the regulations to the Committee.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the draft Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020.

9.57 am

*Committee rose.*