

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT NUCLEAR SAFEGUARDS (FISSIONABLE
MATERIAL AND RELEVANT INTERNATIONAL
AGREEMENTS) (EU EXIT) (AMENDMENT)
REGULATIONS 2021

Tuesday 13 April 2021

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The Committee consisted of the following Members:

Chair: GRAHAM STRINGER

Caulfield, Maria (*Lewes*) (Con)
 Creasy, Stella (*Walthamstow*) (Lab/Co-op)
 † Docherty, Leo (*Aldershot*) (Con)
 Eagle, Dame Angela (*Wallasey*) (Lab)
 † Elmore, Chris (*Ogmore*) (Lab)
 Fletcher, Mark (*Bolsover*) (Con)
 Harris, Rebecca (*Castle Point*) (Con)
 Mann, Scott (*North Cornwall*) (Con)
 Morris, James (*Halesowen and Rowley Regis*) (Con)
 Osborne, Kate (*Jarrow*) (Lab)
 † Pursglove, Tom (*Corby*) (Con)

Rutley, David (*Macclesfield*) (Con)
 Stone, Jamie (*Caithness, Sutherland and Easter Ross*)
 (LD)
 Thomson, Richard (*Gordon*) (SNP)
 Throup, Maggie (*Erewash*) (Con)
 † Trevelyan, Anne-Marie (*Minister for Business,
 Energy and Clean Growth*)
 † Whitehead, Dr Alan (*Southampton, Test*) (Lab)
 Yohanna Sallberg, *Committee Clerk*
 † **attended the Committee**

Second Delegated Legislation Committee

Tuesday 13 April 2021

[GRAHAM STRINGER *in the Chair*]

Draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021

6 pm

The Chair: Before we begin, I remind Members to observe social distancing and to sit only in places that are clearly marked. I also remind Members that Mr Speaker has stated that masks should be worn in Committee, though obviously not when people are speaking. Our colleagues from *Hansard* would be most grateful if Members sent their speaking notes to hansardnotes@parliament.uk.

The Minister for Business, Energy and Clean Growth (Anne-Marie Trevelyan): I beg to move,

That the Committee has considered the draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Amendment) Regulations 2021.

The draft regulations were laid before the House on 25 February 2021. This is an uncontroversial statutory instrument that is required to implement a protocol signed by the Governments of the United Kingdom and Japan on 16 December 2020 to amend the 1998 nuclear co-operation agreement between the UK and Japan. The draft statutory instrument will amend regulations to ensure that the United Kingdom may comply with the provisions of that protocol.

To understand the importance of the draft statutory instrument, one needs first to understand the purpose of the protocol. Nuclear co-operation agreements are commonly used international agreements that give legal underpinnings to civil nuclear co-operation. They provide key non-proliferation assurances, including respective nuclear safeguards and a framework for nuclear trade. Japan is an important partner of the United Kingdom in nuclear co-operation and non-proliferation. Both countries collaborate in the areas of nuclear regulation, research and development, decommissioning and advanced nuclear technology development.

The primary aim of the protocol is to maintain that mutually beneficial relationship between the UK and Japan on civil nuclear trade and co-operation. It achieves that by ensuring that the United Kingdom-Japan nuclear co-operation agreement, which it amends, is fully operable now that the United Kingdom operates its own domestic safeguards regimes and is no longer part of Euratom.

The protocol goes further, by including provisions that strengthen the mutually beneficial relationship between the UK and Japan. The additional provisions cover issues such as co-operation on R&D, intellectual property, safety and the expansion of the scope of the nuclear co-operation agreement to include technology.

I will now seek to explain what changes the draft statutory instrument will effect. First, it will amend the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019, so that the protocol is included under the definition of “relevant international agreement” for the purposes of the Energy Act 2013.

That primarily concerns the role and responsibility of the UK’s nuclear regulator, the Office for Nuclear Regulation. One of the office’s statutory purposes is to ensure that the UK complies with relevant international agreements. The draft regulations will ensure that the protocol is captured as such an agreement. Failure to pass the statutory instrument would therefore mean that the Office for Nuclear Regulation’s role would not include any reference to what has been agreed in the protocol, leaving the UK at risk of breaching the agreement. That, clearly, would not be an acceptable outcome.

The second change effected by this draft secondary legislation is the inclusion of the protocol under the definition of “specified international agreement” for the purposes of the Nuclear Safeguards (EU Exit) Regulations 2019. The change will extend the requirement in those regulations for operators to provide information to the Secretary of State relating to qualifying nuclear material or other relevant items in respect of the protocol. I commend the draft regulations to the Committee.

6.4 pm

Dr Alan Whitehead (Southampton, Test) (Lab): The Committee will be pleased to hear that we do not intend to oppose the draft statutory instrument. As the Minister has said, it relates to an international protocol that amends our relationship with the Government of Japan as far as co-operation on and the peaceful uses of nuclear energy are concerned. It has been properly arrived at with the Government of Japan, and it appears before us today for ratification. As the Minister can observe, if we did decide to oppose it, I think we would lose 3-2, so it is perhaps not worth going down that route.

Chris Elmore (Ogmore) (Lab): That is tighter than usual.

Dr Whitehead: Tighter than sometimes.

I will ask the Minister a couple of questions, which will take a moment to unfold. I hope that she will be able to respond to me this afternoon. If not, perhaps she would be willing to write to me. When looking at this particular protocol, we need to nest it in what happened before it came about, its purpose and what it either adds to or replaces. In this particular instance, and in the instance of a number of other protocols that have been agreed bilaterally between the UK Government and foreign countries, it stems from the Nuclear Safeguards Act 2018, which clarified that the Government should sign a “relevant safeguards agreement”, in this instance “relating to nuclear safeguards to which the United Kingdom and the International Atomic Energy Agency are parties.”

At that time, the relationship between the International Atomic Energy Agency and the UK was effectively through the medium of Euratom. The UK was a member of Euratom, which had international protocols with various other states. It was therefore necessary, on the UK leaving Euratom, for us to not only replace a

voluntary agreement with the IAEA but, as is set out further in the Act, ensure that principal international agreements had been signed prior to the UK leaving Euratom. The Act states that, if

“one or more of the principal international agreements have not been signed”,

a “relevant request” has to be made for a continuation of effective membership of Euratom until such signatories had been achieved.

That was given effect by the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019, from which this protocol effectively derives. Among other things, that secondary legislation required a Minister to specify the relevant international agreements. In other words, they had to carry out the part of the legislation that required those agreements to have been signed or, if they had not been signed, make a relevant request to Euratom for continuation. The UK formally left Euratom on 31 January 2020, which was not the same day as exit day from the EU. Euratom is a treaty organisation that precedes the EU, so the process of leaving was different.

The statutory instrument setting out those agreements was passed in 2019. During the course of the Nuclear Safeguards Bill Committee, the then Minister indicated that all the international agreements that should have been signed were well under way and there was not going to be much of a problem. Indeed, he was confident that they would all be signed and

“presented to Parliament before ratification, ahead of the UK’s withdrawal from Euratom”.—[*Official Report, Nuclear Safeguards Public Bill Committee*, 2 November 2017; c. 57.]

What then appeared in the secondary legislation of 2019 was a little curious. On 7 June 2018, a protocol was agreed to distinguish the UK’s relationship with the IAEA from its relationship with Euratom. On 4 May 2018, a similar agreement was made with the USA, which is one of the countries with which it is necessary to sign. Similar agreements were made with Canada on 2 November 2018, and with Australia on 21 August 2018. Curiously, the 2019 regulations mentioned an agreement with Japan, but dated it February 1998. That agreement did actually exist but it was essentially superfluous because of the UK’s relationship with Euratom. That agreement with Japan specifically stated that the UK was a member of Euratom and that the agreement should therefore be in addition to those arrangements.

The 2019 regulations state:

“The Secretary of State specifies each of the following agreements as a ‘relevant international agreement’ for the purposes of section 112(1A) of the Energy Act 2013,”

which was, of course, amended by the Nuclear Safeguards Act 2018 and relates to the agreements that needed to be signed. My first question is: why did the 2019 regulations state that the agreement with Japan, which was signed on 25 February 1998 and which specifically said that we were a member of Euratom, was a relevant international agreement for the purpose of stating that we were not a member of Euratom?

The protocol that was signed in December 2020 is fairly hard to find, but happily I have a copy in front of me. It states specifically that the protocol deletes the words:

“and Recognising that the United Kingdom of Great Britain and Northern Ireland is a member of the European Atomic Energy Community (hereinafter referred to as ‘EURATOM’).”

I agree that the protocol does a few other things in terms of nuclear co-operation, but its main purpose is to state that we are not a member of Euratom anymore. Indeed, that is why this draft SI is before us today—to amend our relationship with Japan on the basis that we are not a member of Euratom and are, therefore, acting independently of it with the IAEA.

My second question is: does the Minister recognise that what was passed in the secondary legislation of 2019 was simply a mistake and that it has been rectified by the protocol under discussion, on which I hope we all agree? Alternatively, does she think that that secondary legislation was all right, in which case what we are discussing this evening is superfluous? If that is the case, she should reflect on the possibility that what we have been doing since we left Euratom is not legal according to the legislation passed in 2018.

If we have been operating in a non-legal or semi-legal way for the past year or so, I hope it will not have any real consequences, but I would be grateful if the Minister would write to me about this matter. I do not expect her to give me all the answers today, but I hope that she can at least give me an assurance that everything has been done properly. If that is not the case, were steps taken to ensure that we did not cause any problems, given that we appear to have not done the relevant international agreements properly until the appearance of this agreement today?

Those are my couple of easy questions for the Minister. I hope she will consider them carefully and either tell me that I am completely wrong or reassure me on what has happened between 2018 and today.

6.15 pm

Anne-Marie Trevelyan: I thank the hon. Gentleman for his support, his forensic analysis and his challenge to the Government on process. Once I and officials have looked at his points in detail, I will absolutely write to him.

As the hon. Gentleman has highlighted, the UK and Japan have previously had relevant nuclear co-operation agreements in force—the 1998 UK-Japan bilateral nuclear co-operation agreement and the 2007 Euratom-Japan nuclear co-operation agreement—which was not the case with the US, Canada and Australia. Of course, the 2007 agreement ceased to apply when we stepped away from the EU, but the 1998 nuclear co-operation agreement remains in force.

Given that the policy changes made to the 1998 UK-Japan nuclear co-operation agreement were minor, it was not deemed necessary to agree a whole new nuclear co-operation agreement. Instead, a protocol to the agreement was deemed to be the most appropriate measure. There was an exchange of notes, which was considered a temporary solution that would come into force in any scenario where Euratom arrangements ceased to apply, which indeed they did, and the protocol had not then come into force. This protocol obviously represents a robust solution for our UK-Japan civil nuclear trade and co-operation, following our departure from Euratom, and it ensures continuity with an important partner.

Dr Whitehead: I thank the Minister for that partial elucidation. However, does she appreciate that, in terms of our leaving Euratom, at the very least this did not appear to have been made in time for the arrangements

[Dr Whitehead]

set out under the 2018 Act? I think she has partly confirmed that in her consideration of the status of the original protocol and what needed to be added to it in order to get us to a proper position—which is, indeed, the position we are now in today.

Anne-Marie Trevelyan: I hope that I have provided the necessary assurances for now and I absolutely commit to writing to him with the finer points of detail that I hope will give him the reassurance he needs that the UK-Japanese relationship is absolutely watertight and continues to be of great importance to both countries.

As I said at the start, these draft regulations will ensure that the United Kingdom can comply with the provisions of the protocol agreed between the Governments of the United Kingdom and Japan, and by extension will help to maintain mutually beneficial civil nuclear trade and co-operation between ourselves and Japan. Therefore, I commend these regulations to the Committee.

Question put and agreed to.

6.19 pm

Committee rose.

