

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT PERSISTENT ORGANIC POLLUTANTS
(AMENDMENT) (EU EXIT) REGULATIONS 2022

Monday 21 November 2022

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The Committee consisted of the following Members:

Chair: STEWART HOSIE

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| † Bonnar, Steven (<i>Coatbridge, Chryston and Bellshill</i>)
(SNP) | † Mahmood, Mr Khalid (<i>Birmingham, Perry Barr</i>)
(Lab) |
| † Carter, Andy (<i>Warrington South</i>) (Con) | † Mayhew, Jerome (<i>Broadland</i>) (Con) |
| † Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Pow, Rebecca (<i>Parliamentary Under-Secretary of
State for Environment, Food and Rural Affairs</i>) |
| † Drax, Richard (<i>South Dorset</i>) (Con) | † Simmonds, David (<i>Ruislip, Northwood and Pinner</i>)
(Con) |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | Spellar, John (<i>Warley</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | Abi Samuels, <i>Committee Clerk</i> |
| † Jenkinson, Mark (<i>Workington</i>) (Con) | |
| † Jones, Fay (<i>Brecon and Radnorshire</i>) (Con) | |
| † Jones, Ruth (<i>Newport West</i>) (Lab) | |
| McDonnell, John (<i>Hayes and Harlington</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Monday 21 November 2022

[STEWART HOSIE *in the Chair*]

Draft Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022

6 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 Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022.

It is a pleasure to see you in the Chair, Mr Hosie. The statutory instrument makes necessary, technical corrections to the retained EU regulation on persistent organic pollutants, which I will hereafter refer to as POPs, to ensure that the regulation continues to fully function in Great Britain following EU exit. The technical amendments in the instrument address deficiencies in annex 1 of the retained POPs regulation, reinstate a set of exemptions—also in annex 1—that were omitted in error, and correct some provisions that have no legal effect. I should make it clear that all the amendments introduced by the instrument are technical operability amendments and do not introduce any policy changes.

These corrections are permitted by use of the powers in section 8 of, and schedule 7 to, the European Union (Withdrawal) Act 2018. We have worked with the devolved Administrations on the draft regulations, which form an essential part of the secondary legislation needed to implement the UK's commitments under both the United Nations Stockholm convention on POPs, to which the UK is a party, and the protocol on POPs to the 1979 convention on long-range transboundary air pollution. POPs are substances recognised as being particularly dangerous to the health of humans, wildlife and the environment. The instrument preserves the current regime for managing, restricting or eliminating POPs in the UK.

I can hear everybody asking, “So what does the statutory instrument do?” When the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020 were drafted in preparation for the end of the implementation period, some errors were made. This resulted in a number of minor issues, which need to be remedied by this new instrument.

First, a set of derogations that allow specific and time-bound permitted uses of a particular POP were accidentally deleted from the retained regulation during the drafting of the 2020 regulations. Those derogations, which relate to the POP decabromodiphenyl ether, or decaBDE, are reinstated by the new instrument. This is a return to the pre-EU exit position. I want to point out that, if we did not make this correction, it would be illegal to use these exemptions for decaBDE, a flame retardant used in things such as spare parts for aircraft and motor vehicles, and electronic equipment.

Secondly, there are deficiencies for two POPs in the retained POPs regulation. Those substances are perfluorooctane sulfonic acid, or PFOS, including its

derivatives, and perfluorooctanoic acid, or PFOA, including its salts and related compounds. These deficiencies, which consist of references to the European Commission, were not corrected by the 2020 regulations. This new instrument corrects the deficiencies by referring to the “appropriate authority”. These two groups of chemicals are used for such things as fabric protections and stain repellents, because they have water, oil, and grease-repellent properties.

Finally, there are provisions in the 2020 regulations that have no legal effect in relation to PFOS. This is due to the EU making changes to its POPs regulation in September 2020 that were not captured or incorporated in time for EU exit implementation day. This instrument just removes those provisions in the retained regulation.

The instrument was not subject to consultation, as it does not alter existing policy. Its purpose is solely to enable the current legislative and policy framework to remain unchanged by correcting deficiencies. In line with published guidance, there was no need to conduct an impact assessment for the instrument because no, or no significant, impact on the private or voluntary sector is foreseen, the instrument relates to maintenance of existing regulatory standards, and the cost of any direct impact is under £5 million.

The Environment Agency is the delivery body for POPs regulations for England, and Natural Resources Wales and the Scottish Environment Protection Agency are the delivery bodies for Wales and Scotland respectively. They have been involved in the development of the instrument, and have no concerns in relation to implementation or resources. The territorial extent of the instrument is the United Kingdom, and its territorial application is Great Britain; the EU POPs regulations apply in Northern Ireland. The devolved Administrations were engaged in the development of the instrument, and have consented to its being UK-wide.

In conclusion—I know that hon. Members will be sorry that I am concluding—let me emphasise that the measures in the instrument will ensure that the UK's retained POPs legislation will be fully operational, with previous inoperabilities corrected. The Government's 25-year environment plan has made clear our commitment to support and protect the natural environment, wildlife and human health, and the draft regulations will allow the UK to continue to meet existing commitments relating to POPs and fully implement the Stockholm convention's requirement to prohibit, eliminate or restrict the production and use of POPs. I commend the draft regulations to the Committee.

6.7 pm

Ruth Jones (Newport West) (Lab): It is a pleasure to serve under your chairmanship, Mr Hosie. It is very good to see the Minister back in her proper place and to join colleagues in debating the draft regulations. The Minister and other hon. Members will be pleased that I can confirm that we will not oppose the regulations, but before we pack up and leave the room, I want to say a few things that it is important to keep in mind.

As the Minister said, the draft regulations correct the errors left by the retained 2019 POP regulation, including deficiencies in relation to the perfluoroalkyl and polyfluoroalkyl substances PFOS and PFOA. Moves to ensure that the levels of harmful chemicals entering our

environment and natural world are taken seriously and, importantly, reduced were a key feature of His Majesty's Government's first 25-year environment plan.

That plan was published back in 2018, before I was elected to this House by the good people of Newport West, but I made a point of reading it in considerable detail upon my appointment to the shadow ministry. It committed to a new chemicals strategy to achieve the goal of reducing the level of said chemicals entering our environment. That is a good and noble aim, and it has my support. However, as the Minister knows, the strategy still has no fixed publication date, despite workshops on it being held in the first half of this year. I would be grateful if she could set out when we will have more information and finally understand the steps that she and her Department will take in the weeks and months ahead.

I note that the regulations come into force on the day after they are made, and I welcome the fact that they extend to England, Wales, Scotland and Northern Ireland. I am a proud supporter of devolution and give thanks for the Welsh Labour Government every day, but it is nice to see something being discussed that applies to one and all, right across the United Kingdom.

The Labour party will not push the regulations to a vote—they are a formal and relatively benign set of measures—but we urge the Government, and particularly the Minister, to keep in mind the need to really deliver on the promises made. The future of our planet and our environment depends on it.

6.9 pm

Steven Bonnar (Coatbridge, Chryston and Bellshill) (SNP): It is a pleasure to see you in the Chair, Mr Hosie, and I thank the Minister for laying out the Government's position on the regulations.

The Scottish Government have given consent to these technical regulations for the purpose of ensuring a consistent and effective pan-UK approach to persistent organic pollutants. As we know, the EU POPs regulations were converted into retained EU law. Because of the errors that the Minister has identified, that law was flawed, so the POPs regulations have been amended through this SI. In their red tape-cutting exercises, the Government must always be mindful that such issues are not missed.

The Scottish Government's work co-operatively with the Department for Environment, Food and Rural Affairs on these matters, both devolved and reserved, highlights that when the UK Government respect the devolved institutions and their interests, we can have a pragmatic, constructive working relationship across the nations of the UK on matters that are important for all of us who share these islands.

6.10 pm

Stella Creasy (Walthamstow) (Lab/Co-op): It is a pleasure to serve under your chairmanship this evening, Mr Hosie. I support everything that my hon. Friend the Member for Newport West has said about this matter, and I hope that the Minister can offer us some reassurance and clarification about this SI and how it fits into the broader remit of management of toxic substances. After all, many of us across the Committee are concerned to

assure our constituents that we are not letting persistent organic pollutants pop into their lives unpleasantly or unnecessarily.

The Minister sets out that this legislation was required because several things were written in error. That matters, because she will be aware that, as the hon. Member for Coatbridge, Chryston and Bellshill mentioned, this is retained EU law. This House will be debating the Retained EU Law (Revocation and Reform) Bill, starting tomorrow in Committee, because of the Government's demand to delete 4,000 pieces of legislation overnight. That will affect thousands of laws, including this one.

My questions for the Minister are about how this SI will interact with those proposals. Before us we have regulations that are affected by the Retained EU Law Bill. Let me set out for the Minister and her officials precisely what I mean. These regulations edit regulation EU 2019/1021, which is retained EU law. As such, can we therefore presume from the fact that the Government have introduced this statutory instrument that they will not be abolishing that regulation at the end of 2023, as the REUL Bill provides?

These regulations allow the use of decaBDE—I hope I am pronouncing it correctly, because I am sure that will make a difference for the officials when they look up what I mean—when making electronic equipment. I think we all recognise that there may be circumstances in which people want to use these toxic substances. Use of decaBDE was covered by regulation EU 2018/858 of the European Parliament, which is also listed on the Government's dashboard, so I am sure the officials in DEFRA are aware that it is up for consideration for deletion. If it is deleted, what happens to this statutory instrument and the use of decaBDE in our communities? For example, if local businesses use these chemicals—they might be involved, as the Minister says, in the production of spare parts for cars, or for electrical goods—will these regulations still apply?

Of course, that is not the only question that this SI raises about the EU dashboard and the deletion of 4,000 pieces of legislation. This SI also allows the use of decaBDE under the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. Those regulations were made under section 2 of the European Communities Act 1972, but they do not appear on the EU dashboard.

I know that Ministers and officials from DEFRA have been looking at that closely. We know from press reports that the number of pieces of legislation expected to be deleted overnight by the REUL Bill is closer to 800 than to the original estimate of 500. Can the Minister at least confirm that the Government have identified that the 2012 regulations should be on the dashboard, because they are affected? Will she set out for us how that may affect this SI, which relies on those regulations? If they are not listed, does that mean that the Government are, in fact, hoping to retain them? After all, you, as a Government, have just put before us this SI, which refers to those regulations. I raise these questions not to give the officials a headache, but simply to flag that we are—

The Chair: Order. All the remarks had better be through the Chair and to the Minister. The officials are, to all intents and purposes, invisible.

Stella Creasy: But like the toxic substances that we are talking about, they are incredibly important—I am sure you would agree, Mr Hosie.

I raise these questions because I think it is important before we pass such a piece of legislation that we are all confident that it rests on stable legislative foundations. Given the destructive nature of the Retained EU Law (Revocation and Reform) Bill, which comes before Parliament tomorrow—there are no amendments to it that I am aware of, as a member of the Bill Committee, that might address these concerns and therefore address the question whether this statutory instrument will remain in standing after 2023—these seem to me to be fair questions. I hope that now the Minister has had some notes from those invisible people who are charged with dealing with the consequences of a piece of legislation that has been described as being as destructive to our legislative process as the previous Chancellor's Budget, she will be able to answer those questions.

The Minister said that the draft regulations simply make technical changes to maintain existing regulatory standards. That is only the case if those other pieces of retained EU law remain on our statute book, and at the moment the Government have made no commitment at all to replace any of this legislation. Like these chemicals, might this SI go up in a pop of smoke if we do not have that other legislation?

I hope that the Minister is able to answer these questions. If she would like the details of the retained EU law that is not yet on the dashboard—law that her colleagues at the Department for Business, Energy and Industrial Strategy perhaps have not yet identified—I am happy to give her those details. All of us want legislation that is sensible, and all of us recognise that a toxic approach to Brexit will create a hazardous substance for us all.

6.16 pm

Rebecca Pow: First, I thank the hon. Member for Newport West for her kind wishes. I must say that it is great to be back and to find her still here so that we can have our debates. I am delighted that the Opposition will not oppose the instrument. These are just technical amendments.

Let me touch on the chemicals strategy, which the hon. Lady rightly referred to. Interestingly, I had a meeting about it just today. It is absolutely correct that we will produce a chemicals strategy. We have committed to doing that and there will be more details about it in due course, to use parliamentary language. Of course, it is complicated, and it is very important to get it right, particularly given that we have left the EU and its registration, evaluation, authorisation and restriction of chemicals, or REACH, system and rolled over those regulations to UK REACH. We are now working on our bespoke system for UK chemicals, and we are working very closely with the industry.

Ruth Jones: I understand parliamentary terminology, but the chemicals strategy has no fixed publication date, despite the workshops being held earlier this year. Can I press the Minister on when it will be published? We desperately need it.

Rebecca Pow: The hon. Lady is absolutely right. That is why we are working hard on it but also really engaging with industry. This matter is so critical to a whole lot of businesses, not to mention all the products we use, and of course it is very serious stuff in terms of the hazards, risks and dangers that chemicals represent to us as a society. It is incredibly important. It is interesting that more than 95% of all manufactured products in the UK contain inputs from the chemical industry, so this is a huge thing that we are working on. But trust me—the strategy will be out in due course.

On that point, the hon. Member for Walthamstow talked about safety. I think it is wrong to scaremonger to people. We are taking this matter extremely seriously. Yes, we have left the EU and its system, but we will have our own very safe system. We are working with the Health and Safety Executive as well on our future chemicals regime. We are not deleting thousands of laws. Of course we have the Retained EU Law Bill. I will be going through all the laws that relate to my portfolio in DEFRA, which includes chemicals. We are taking that very seriously indeed.

Stella Creasy: The Minister does not quite recognise the seriousness of the questions that I ask if she thinks that it is scaremongering to ask them. She said that she is going through the Bill, so can she confirm that the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 and Regulation (EU) 2018/858 should both be on the dashboard? One is and one is not, but both are affected by this SI. Ministers should not confuse being scared of answering these questions with being asked to be accountable for the detail of the consequences of their actions.

Rebecca Pow: I will write to the hon. Member with the detail so that we get it correct. She needs the exact details, so I will get back to her about the 2012 regulations and their treatment under the ongoing regime of the Retained EU Law Bill. I think that is the best way to leave that, so that she gets a satisfactory answer.

Of course, under the Retained EU Law Bill, we will be going through all the laws and retaining everything that needs to be retained. We will also look at whether some laws need tweaking, altering or changing, and make sure that we have a whole regime that is bespoke to us.

I thank the hon. Member for Coatbridge, Chryston and Bellshill. As he recognised, we have worked very effectively on the draft regulations across all the devolved Administrations.

I think I am going to leave it there. I thank all hon. Members who have taken part in the debate—

Mr Khalid Mahmood (Birmingham, Perry Barr) (Lab): Before the Minister sits down, will she take into account all the questions asked by my hon. Friend the Member for Walthamstow and get back to Committee about them? Obviously, there has not been time to answer them all, but I hope that the Minister will address them all. She may want to refer to *Hansard* later to get all the details.

Rebecca Pow: I have already said that I will get back in writing to the hon. Member for Walthamstow.

Stella Creasy: Can the Minister confirm that it is the Government's intention to replace the relevant regulations—which I cited—that this SI depends on? Yes or no? It would be incredibly helpful if she could clarify that, as it would mean that this SI was rooted in a firm piece of legislation.

Rebecca Pow: I thank the hon. Member for that. I will put it in writing; I just think that is altogether safer. At the moment, we are dealing with the details of this particular SI; I think she is moving into other territory and not sticking to what we are supposed to be talking about, which is very particular.

I have outlined—I am part of this, as the Minister in DEFRA—that we have already conducted a detailed scoping exercise on the Retained EU Law Bill. We are in the process of analysing all those laws, as I have already

pointed out to the hon. Member, and we will of course be looking at all the laws that are critical to keeping not just us, but wildlife and the whole environment safe.

Let me get back to the regulations we are debating today. We have made no changes to existing policy to tackle the restriction and management of POPs. This instrument will ensure that we have the operable regulations that we need to continue to protect the current and future health of the population, wildlife and environment of the United Kingdom and the rest of the world. As I have outlined, all the changes introduced by the instrument are technical operability amendments that are required to ensure that the UK is able to continue to implement the Stockholm convention to prohibit, eliminate or restrict the production and use of POPs. That is the critical thing that I point out to the hon. Member for Walthamstow. I commend the draft regulations to the Committee.

Question put and agreed to.

6.23 pm

Committee rose.

