

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

HEALTH AND SAFETY AND NUCLEAR (FEES)
REGULATIONS 2022

Monday 30 January 2023

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Friday 3 February 2023

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The Committee consisted of the following Members:

Chair: MR PHILIP HOLLOBONE

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| † Abrahams, Debbie (<i>Oldham East and Saddleworth</i>) (Lab) | † Hussain, Imran (<i>Bradford East</i>) (Lab) |
| † Ansell, Caroline (<i>Eastbourne</i>) (Con) | † Jones, Mr David (<i>Clwyd West</i>) (Con) |
| † Churchill, Jo (<i>Vice-Chamberlain of His Majesty's Household</i>) | Linden, David (<i>Glasgow East</i>) (SNP) |
| † Davies, Mims (<i>Parliamentary Under-Secretary of State for Work and Pensions</i>) | † Logan, Mark (<i>Bolton North East</i>) (Con) |
| † Dixon, Samantha (<i>City of Chester</i>) (Lab) | † Mishra, Navendu (<i>Stockport</i>) (Lab) |
| † Fletcher, Katherine (<i>South Ribble</i>) (Con) | † Mortimer, Jill (<i>Hartlepool</i>) (Con) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>) (Con) | † Randall, Tom (<i>Gedling</i>) (Con) |
| † Howell, John (<i>Henley</i>) (Con) | † Trickett, Jon (<i>Hemsworth</i>) (Lab) |
| | † Western, Andrew (<i>Stretford and Urmston</i>) (Lab) |
| | Huw Yardley, <i>Committee Clerk</i> |
| | † attended the Committee |

First Delegated Legislation Committee

Monday 30 January 2023

[MR PHILIP HOLLOBONE *in the Chair*]

Health and Safety and Nuclear (Fees) Regulations 2022

4.30 pm

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

That the Committee has considered the Health and Safety and Nuclear (Fees) Regulations 2022 (S.I. 2022, No. 1378).

It is a real pleasure to serve under your chairmanship, Mr Hollobone. The regulations were laid before Parliament on 20 December 2022 and came into force on 21 December 2022.

The regulations correct an error in the powers used to make the Health and Safety and Nuclear (Fees) Regulations 2021. The error was an unfortunate oversight, whereby pressures on the Government Legal Department, or GLD, due to the volume of covid, Brexit and trade agreement work resulted in a referencing error not being picked up in the checks. The HSE and the GLD regret the error and are taking suitable steps to reduce the risk of this happening again. The error was identified by the GLD in a recent review.

The urgency to make the regulations arose from the need to use the powers in the European Union (Withdrawal) Act 2018 before they expired on 31 December 2022, thereby avoiding the requirement for primary legislation. This instrument has had to be made by the affirmative procedure and debated in both Houses, because that is what the 2018 Act specifies.

I hope the hon. Member for Bradford East will agree that the instrument is non-contentious—*[Interruption.]* We will find out. It repeats the previous regulations, with some minor technical changes. The preamble to the Health and Safety and Nuclear (Fees) Regulations 2021 did not cite one of the enabling powers, and was not made with the consent of the Treasury, for certain fees for chemical regulation functions transferred from the EU. Vitally, the correction ensures that the HSE can continue to recover its costs for those functions.

The preamble in the 2021 regulations refers to paragraph 7 of schedule 4 to the 2018 Act, but it should have also referenced paragraph 1 of schedule 4, to give the powers for the provisions that allow charging for certain regulatory activity around biocides and classification labelling and packaging, or CLP. In addition, the same error was repeated in later regulations, which contained a series of amendments to the mirrored powers in the 2021 regulations. This instrument simply corrects that error.

Biocides and the CLP provisions—the classification, labelling and packaging provisions—in the fees regulations of 2022 rely on paragraph 1 of schedule 4, so consent from Her Majesty's Treasury is required, as referenced in paragraph 3 of that schedule. I can assure my fellow Members of Parliament that consent for this has indeed

been given and that a rigorous checking process is now in place, which would normally ensure that errors are identified before instruments are laid. I am keen to rectify the error and do not want to detain the Committee.

I re-emphasise that the instrument is a restatement of the fees regulations of 2021—with the correct powers cited in the preamble—for which Her Majesty's Treasury's consent has now been obtained. These changes put beyond doubt the ability for HSE to charge fees for certain biocides and CLP regulatory activity. I stress to the Committee that the instrument makes no changes to policy or duties.

Debbie Abrahams (Oldham East and Saddleworth) (Lab): Apologies for being slightly late, Mr Hollobone. I just want to ask the Minister whether the fundraising that the Health and Safety Executive is undertaking is because of reductions in the budget.

Mims Davies: I do not believe that to be the case. There has always been a cost-recovery scheme, which is the reason that the HSE is so eminent in the field and able to work globally to share its ability to lead. I am happy to write directly to the hon. Lady, because that might be helpful, and I can also put a copy of the letter in the Library to be helpful.

I must say, it is not Her Majesty's Treasury—I apologise to the Committee. The Vice-Chamberlain of His Majesty's Household, my hon. Friend the Member for Bury St Edmunds, who is sitting next to me, pointed that out. I am sure my team will be rewriting any future speeches accordingly, and I will be checking them even more thoroughly.

The instrument makes no changes to policy or duties although, as explained in the explanatory memorandum, it corrects some minor technical errors. I hope that my colleagues in all parties join me in supporting the new regulations, which I commend to the Committee.

4.36 pm

Imran Hussain (Bradford East) (Lab): It is always a pleasure to serve under your chairmanship, Mr Hollobone. I will try to keep my remarks brief, as I am sure hon. Members across the Committee want to get to an important debate in the main Chamber, in particular to stand up for the rights and protections of our hard-working frontline staff.

We of course support the regulations. As set out by the Minister, they amend the errors in the 2021 regulations that were identified by the Department for Work and Pensions. They will ensure that the Health and Safety Executive and the Office for Nuclear Regulation can go about their work of maintaining strong health and safety standards.

Nevertheless, while we will not oppose the regulations, we have concerns about why the Minister has had to make them again. We want to know not only how and why the errors that necessitated the Government revoking and replacing the 2021 regulations were made in the first place, but how and why they were not picked up in the drafting process. I appreciate the Minister's explanation today—it was an unfortunate oversight—but these are important regulations, and the House and the country rely on Ministers scrutinising legislation properly before it is laid, in particular with checks in the drafting

process. We therefore have real concerns that both primary and secondary legislation brought before the House has not been looked at properly by Ministers who seek to put it on the statute book, including in other areas. The regulations prompt that question.

Given that the Government are forcing through the Retained EU Law (Revocation and Reform) Bill—itsself a product of the UK's departure from the EU, as the regulations are—we are naturally worried that they have not done proper due diligence on that legislation either. All retained EU law will be scrubbed from the statute book by the end of 2023, unless the Government move to reinstate or replace it. That includes not only important employment rights and protections, but health and safety protections, too. If the Government are missing important wording in the regulations, what else are they missing in that incredibly complex Bill?

We also know that the regulations, which allow the Health and Safety Executive to continue to charge fees for the costs incurred during its work, will not negate the damage that the Government have inflicted on it. During their time in office, the Government have slashed funding to the HSE by almost half and have presided over the loss of a third of inspectors. It all goes back to the very pertinent question asked by my hon. Friend the Member for Oldham East and Saddleworth. The reality remains that over the past decade, the number of health and safety inspectors has gone down from just under 1,500 to below 1,000. Clearly, therefore, the HSE's ability to do its job to keep people safe has been dramatically reduced.

I will be grateful if the Minister could inform us whether the Government will review all legislation passed in the same period as the 2021 regulations to ensure that similar errors do not exist. What are the Government doing to ensure confidence in the accuracy of their legislation, even if we do not necessarily agree with its intentions? What are they doing to ensure that no health and safety protections are lost during the passage of the retained EU law Bill?

4.40 pm

Jon Trickett (Hemsworth) (Lab): It is a pleasure to serve under your chairmanship, Mr Hollobone.

The Minister would like us to focus purely on the mistake that was made, although I guess she does not want to have made a mistake in the first place, but I think we are entitled to ask whether, in bringing the legislation home to the UK, the HSE is tooled up properly to deal with nuclear industry issues. I will therefore make a couple of points to test whether the HSE is capable of handling the work that has now been brought solely within the UK.

I tried to find the number of accidents that have taken place in the nuclear industry in the past few years. It is difficult to find the information, but there was a major incident at Sellafield in, I think, November of 2019, when a lot of radioactive liquor went into the ground from the Magnox swarf storage silo—to get the correct wording. The terrain remains polluted, but we are told that the remediation works will not take place until after the facility is totally decommissioned.

Four out of five current reactors are due to be decommissioned by 2028. Will the HSE, now that this has been brought under UK legislation, be supervising carefully that decommissioning process—

The Chair: Order. I am listening closely to the hon. Gentleman's interesting speech, and I want him to remain in order. To do so, I think he needs to have more references to the fees that we are debating today.

Jon Trickett: Thank you for that advice, Mr Hollobone. That is precisely the point that I was about to arrive at. The industry is meant to be charged to recover costs incurred by the HSE, but—my hon. Friend the Member for Oldham East and Saddleworth made this point—there have been huge cuts in the budgetary provision to the HSE by the taxpayer in recent years: £100 million less.

Not all that goes to nuclear, and the Chair wants me to keep to the subject of the legislation, but will the Minister tell the Committee whether the fees charged to the industry will cover all the costs of decommissioning—the point I have just made—and of other accidents? Outside the nuclear accidents I have just described, will the Minister also tell us how many other accidents at workplaces happened? Is all that expenditure recovered in fees and charges, as discussed?

Instead of 1,500 inspectors across the whole HSE, there are now fewer than 500 main grade inspectors. With the fees and charges that the HSE collects from industry, will it be able to staff the nuclear industry properly? What does the Minister imagine the fees and charges will amount to? Will that aggregate on top of the £136 million budgeted now?

Finally, as well as the costs of decommissioning—presumably charged to the industry through fees and charges by the HSE—what will be the situation in relation to the construction of all the nuclear facilities being envisaged by the Government? I worked as a manual worker for many years in the construction industry, which is very dangerous. Thousands of days a year are lost because of accidents in the construction industry. While we are constructing the new nuclear facilities, will the HSE be able to charge fees, and levy other charges, to the industry for the construction period? How will that be managed?

Finally, the HSE looks, to me, as though it is drastically understaffed. Nuclear is one of the most dangerous industries in the country, and we are proposing to build more facilities, as well as to decommission some. Can the Minister convince us that, by bringing all this legislation home into the UK, the fees that will be charged to the industry will cover all the aspects of work which I have just described?

4.45 pm

Mims Davies: I thank hon. Members for their comments. I will come on to the points made by the hon. Member for Hemsworth after I cover some of the questions from the hon. Member for Bradford East.

As for why the new statutory instrument is required, the 2022 fees regulations correct an error in the powers used to make the fees regulations in 2021. Indeed, that error needed to be corrected urgently, before the European Union (Withdrawal) Act 2018 power expired on 31 December 2022.

To explain why the error occurred, it simply was an unfortunate oversight due to the pressures and volume of work, and it was not picked up as a result. I reassure the hon. Gentleman that the lessons are being learned, which I am sure that he was asking me about.

[Mims Davies]

On what is being done more widely, to ensure that such errors do not happen again, the HSE and the GLD have completed a full review of the lessons learned. The Committee will perhaps be pleased to know that that has identified some practical actions that can be taken for better ways of working between the GLD and HSE policy officials. I have had the honour of being the HSE Minister twice, and I can say that it is a very complicated area, and I have always looked to my officials and the experts in regard to this, so it is important that we strengthen that relationship.

On the sufficiency of resourcing, we know that that was a particularly acute area of demand and—I have done quite a few Committees myself—it is a rarity that we have to have a Committee for an exceptional case like this. I welcome the new Members, the hon. Member for City of Chester and the hon. Member for Stretford and Urmston to our Committee; this is not an often-undertaken issue.

The GLD will also undertake rigorous prioritisation of its work to mitigate that increased demand. Hopefully, that should reassure the Committee. We are ensuring that we understand the impact of the error.

The hon. Member for Oldham East and Saddleworth asked about the impact on one particular area. About £25,000 was charged across the industry under the powers related to the error. However, HSE judged that there is a low chance of any case being brought, due to the amount of money involved. That is why we are rectifying it extremely quickly. HSE will continue to manage any legal implications on a case-by-case basis.

Debbie Abrahams: I am grateful to the Minister for that response. Members here will be aware of yesterday's report from Western Australia about Rio Tinto losing a radioactive capsule. Does the Minister have confidence, given these drafting errors about something that is quite important and relates to a key industry, that that sort of thing could not happen in the UK?

Mims Davies: I undertake to learn from the lessons that the hon. Lady pointed to. I have a lot of work to scrutinise in this area. The hon. Member for Bradford

East laid down the gauntlet to ensure that we get things right, and that has been squarely held and heard in this Committee.

The charges range from £500 to £5,000 per company involved. It is important for us to reiterate that the HSE as a whole operates a cost-recovery funding model, which we are building on. That financial model is an integral part of keeping the HSE sustainable. Being unable to recoup costs is a challenge for its regulatory work around biocides and other matters, which is why we are fixing this.

It is important that we ensure an effective regime. Members are right to challenge that today. We have an incredibly good and clear strategy for the next 10 years to address any risks related to charging work in a changing world. Just before the Committee, I was discussing this matter and wider matters with HSE leadership.

The hon. Member for Hemsworth made points around the Office for Nuclear Regulation. To be clear to the Committee, that is a totally separate public corporation and it is outside the remit of HSE. It is not HSE's responsibility and it sits with another Minister, but I will ensure that those points that are on the record are responded to, as they have been made in the Committee.

Jon Trickett: In her written response, could the Minister indicate what the costs were in relation to the incident at Sellafield? How much of those costs were recovered, possibly including anticipated costs because it is not yet finished?

Mims Davies: I thank the hon. Gentleman for clarifying his concern. I simply cannot say any more to the Committee at this point, but I will undertake, through officials, to pick up the questions that he has asked.

To conclude, the instrument corrects various drafting errors, for which we are sorry. The HSE will ensure that it can continue to cover its costs for regulatory work around biocides and CLP.

Question put and agreed to.

4.52 pm

Committee rose.

