PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT FLOODS AND WATER (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Monday 28 January 2019

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not later than

Friday 1 February 2019

The Committee consisted of the following Members:

Chair: Sir Christopher Chope

† Braverman, Suella *(Fareham)* (Con)
† Coffey, Dr Thérèse *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Crabb, Stephen *(Preseli Pembrokeshire)* (Con)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Elmore, Chris *(Ogmore)* (Lab)
† Evennett, Sir David *(Bexleyheath and Crayford)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Mann, John *(Bassetlaw)* (Lab)
† Mercer, Johnny *(Plymouth, Moor View)* (Con)
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Moore, Damien *(Southport)* (Con)
† Pollard, Luke *(Plymouth, Sutton and Devonport)* (Lab/Co-op)
† Seely, Mr Bob *(Isle of Wight)* (Con)
† Smith, Royston *(Southampton, Itchen)* (Con)
† Stewart, Iain *(Milton Keynes South)* (Con)
† Streeting, Wes *(Ilford North)* (Lab)
† Twist, Liz *(Blaydon)* (Lab)

Ian Bradshaw, *Committee Clerk*

† attended the Committee

Third Delegated Legislation Committee

Monday 28 January 2019

[Sir Christopher Chope *in the Chair*]

Draft Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

6 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey): I beg to move,

That the Committee has considered the draft Floods and Water (Amendment etc.) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Sir Christopher. This is the second of the affirmative statutory instruments on the environment to be considered as the UK leaves the European Union, as provided for by the result of the 2016 referendum and as subsequently agreed by Parliament. In line with the European Union (Withdrawal) Act 2018, the regulations simply make technical, legal amendments to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable, so that following our exit from the EU, the law will continue to function as it does today. As the Committee will see, this statutory instrument and others are quite lengthy and make many adjustments. However, I can assure the Committee that those adjustments represent no changes of policy; nor will they have any impact on businesses or the public. We have also worked with the devolved Administrations on this instrument, and where it relates to devolved matters, they have given consent.

Part 2 of the SI makes operability amendments to four Acts. Those amendments mainly replace the words "EU obligations" with "retained EU obligations" to reflect the fact that such obligations will be retained in domestic law after EU exit. Regulation 4 also addresses the use of the term "environmental objectives", which is defined in the water framework directive. The amendments define that term by reference to our domestic legislation that implemented the water framework directive, rather than the EU directive itself.

Regulation 2, regarding the Water Act 1989, applies to England and Wales only. It changes "an EU obligation" to "a retained EU obligation"; similar changes to the Water Industry Act 1991 and the Water Act 2014 are set out in regulations 3 and 5 respectively. In regulation 4, similar changes are made to the Water Resources Act 1991, and under the definition of "environmental objectives", to which I referred, we specifically mention the two river basin districts that cross the border between England and Scotland. That issue is tackled in further detail in part 3 of the SI, in regulations 10 and 11.

Part 3 amends technical deficiencies in several pieces of secondary legislation, and I will highlight the key types of amendments. Regulation 6 amends the Sludge (Use in Agriculture) Regulations 1989, which apply to England and Wales only. It places an obligation on the Secretary of State and Welsh Ministers to report every three years on the implementation of regulations, which reflects current reporting to the European Commission.

Regulation 7 amends the Urban Waste Water Treatment (England and Wales) Regulations 1994, which apply to England and Wales only. It changes references to EU law to references to "retained EU law", and includes a requirement for relevant environmental reports to be published by the Secretary of State and the Welsh Ministers.

Regulation 8 deals with water fittings regulations, which extend and apply to England and Wales. That amendment removes automatic approval for plumbing systems and water fittings with EU or European economic area markings, but ensures that those products can still be approved if they meet the equivalent UK standard.

Regulation 9 amends the Drinking Water (Undertakings) (England and Wales) Regulations 2000, which extend to England and Wales. It changes the word "implement" to "implemented", to reflect the fact that there will be no future requirements to transpose EU directives after exit.

I have already referred to regulations 10 and 11 regarding the cross-border river basin districts. Given that article 10 of the water framework directive refers to other directives that are already transposed into domestic law, there is no need to use article 10, as it has no impact on ongoing regulation. Our lawyers have devised this way of making sure that we do not have even longer, and even more, SIs than are necessary for regulation. If we did not omit article 10, the ongoing chain of cross-references in regulations would mean we had to make considerably more changes, and make other SIs even longer.

The Water Industry (Special Administration) Rules 2009 are amended by regulation 12. Rule 123(2) is omitted, as it refers to the EU regulation on the service of judicial documents between member states, which will no longer apply. The special administration regime is an insolvency regime specifically created for water and sewerage companies. It is a reserved matter, but the regime only applies to England and Wales, as Scotland and Northern Ireland have different water industry structures.

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 apply to England only. They are amended by regulation 13 to allow products such as silos and slurry tanks that are of equivalent standards to the British standards to be installed, wherever they are manufactured.

Regulation 14 amends the Incidental Flooding and Coastal Erosion (England) Order 2011, which applies to England only. It changes the definition of "environmental objectives", so that it relates to the domestic UK legislation that implemented the water framework directive, rather than to the directive itself.

Regulation 15 amends the Bathing Water Regulations 2013, which extend to England and Wales. The amendments correct cross-references to the bathing water directive that would be deficient on exit. A requirement is also included for the Secretary of State and Welsh Ministers to publish a report each year containing information about the bathing water season.

Similar amendments to deal with cross-references to EU legislation are made to the Nitrate Pollution Prevention Regulations 2015 by regulation 16. These regulations apply to England only. An obligation is also placed on the Secretary of State to publish reports on the implementation of these regulations.

Regulation 17 amends the Flood Reinsurance (Scheme Funding and Administration) Regulations 2015. This is a reserved area, so the regulations cover all the United Kingdom. A minor technical amendment is made to the reference to the scheme administrator's obligation arising from directly applicable EU legislation. This will instead read as the obligations arising from retained direct EU legislation.

Regulations 18 and 19 refer to water supply and private water supplies regulations, which apply to England only. The amendments fix cross-references that are deficient. An obligation is also placed on the Secretary of State to produce and publish reports on drinking water quality.

Regulation 20 amends the England and Wales regulations that implement the EU water framework directive for operability. It replaces the term "EU instrument" with the term "retained EU law". These amendments cover England and Wales, reflecting the fact that the two countries share a single set of regulations implementing the directive. The Welsh Government agreed to this approach. The Committee will recognise that the instrument makes operability corrections to regulations on the water framework directive, such as those governing the cross-border river basin districts between England and Scotland.

Just as with regulations 10 and 11, proposed new schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 instrument makes a series of modifications to the water framework directive and two other connected directives, so that references to those directives continue to work properly after EU exit. This process includes modifying references to member states and to EU legislation, and omitting redundant articles, such as one referring to the European Commission resolving issues between member states.

The two sets of water abstraction regulations mentioned in regulations 21 and 22 extend and apply to England and Wales. The changes in regulation 21 reflect the changes made by the EU exit SI amending the Conservation of Habitats and Species Regulations 2017. Changes in regulation 22 fix cross-references to terminology used in the water framework directive to make it operable.

In part 4, there are technical amendments to several EU decisions. The amendments to and revocations of these decisions and other EU decisions extend and apply to all the UK; they have been drafted in liaison with the devolved Administrations, and with their consent.

Regulation 23 removes a provision about the entry into force date of the EU decision on symbols on bathing water signage. Regulation 24 removes a similar boilerplate provision in an EU decision on equivalence of microbiological standards. The substantive content of these decisions will be part of retained EU law on exit.

Regulation 25 amends the EU decision on the values of monitoring system classifications for water quality. This decision is amended so that references to obligations on member states in that decision are read as a reference to the appropriate Minister or regulator in the United Kingdom.

Regulation 26 concerns the EU decision on establishing a watch list of substances for monitoring in water. The watch list contains new substances that are of concern for water quality. Once several years' data is collected on these substances, they may be placed on the priority substances list, and their presence in water would have to be tackled to meet water framework directive objectives. A United Kingdom watch list will be preserved; the instrument simply removes references to "Union-wide" monitoring.

Regulation 27 revokes three decisions. An EU decision establishing the list of priority substances to be monitored in water is revoked. These are substances considered most harmful to the water environment. The decision only inserted into the water framework directive a revised list of priority substances that has already been incorporated into domestic law through the implementing water framework directive regulations.

The EU decision to establish a list of monitoring sites to form a network for monitoring water quality will also be revoked. Most member states, including the United Kingdom, set up those sites some years ago, and the United Kingdom will no longer need to provide that list to the European Commission. The EU decision on formats for reporting to the European Commission under the urban waste water treatment directive will be revoked too, as the UK will no longer report to the Commission. All those proposed revocations were drafted in agreement with the four nations of the United Kingdom.

I emphasise to the Committee that the instrument addresses technical deficiencies in floods and water legislation to ensure that it continues to operate effectively when we leave the European Union. It does not introduce new policy, and preserves the current regime for protecting and improving the water environment.

6.11 pm

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Sir Christopher. I am only disappointed that there are no cameras in the Committee Room; the people who normally watch proceedings on parliamentlive.tv can only listen, and will miss out on the lovely little dogs that the hon. Member for Milton Keynes South has on his tie, and the lack of jacket of the hon. Member for Isle of Wight. Hopefully my carefully chosen water-themed jokes will get belly laughs from Members, rather than just smiles. *[Interruption.]* Thanks for the laughs.

In all seriousness, the purpose of the statutory instrument, as the Minister says, is to preserve and protect the existing EU policy regime, rather than introduce new policies. The Minister told us that all she is doing is transposing EU law into UK law, deleting "Europe" and inserting "UK", and deleting "EU Commission" and inserting "Secretary of State", and that we have nothing to worry about. The Opposition fear that that is simply not the case. We have seen with the Fisheries Bill that sometimes one thing is said, and another is done in practice, such as removing the date for achieving maximum sustainable yield while adding new objectives.

With today's SI, we believe that the Government are again trying to pull the wool over our eyes. I am concerned, as are many environmental groups, that Ministers are picking and choosing, as we feared, which protections to keep and which to bin. We intend to vote against the motion, because the SI does not prevent a roll-back of environmental protections. It also lacks detail on transparency, impact assessments, reporting, governance and consultation.

[Luke Pollard]

I am concerned that we are being asked to wave through SIs at break-neck speed as we approach Brexit. They are starting to look a bit like a bad Brexit mash-up; pieces of EU legislation are left in or out at the Minister's choosing, and many SIs are put together along vague themes, as we see today. The Opposition have serious concerns about the scale and pace at which the Government are ramming Brexit legislation through to minimise scrutiny. Since June 2018, 343 statutory instruments have been laid before Parliament. How many does the Minister expect to be completed by exit day on 29 March, and how many does she expect will relate to the Department for Environment, Food and Rural Affairs?

The SI deals with both flooding and water legislation. The typical length of an SI is 19 pages, yet this one is 27 pages. This single SI seeks to amend four pieces of primary legislation and 17 pieces of secondary legislation, and to amend or revoke five EU decisions. The Water Industry Act 1991 alone is 279 pages. We have only up to 90 minutes to scrutinise the changes made by the SI. I fear that the Minister is trying to cram too much in for consideration.

For the record, Labour believes that there is insufficient time for proper scrutiny of the SIs that the Government are introducing. We do not have time to review the SI line by line, and we cannot table any amendments, as many environmental stakeholders have asked us to. The Government expect us to wave through hundreds of such hurried SIs. We are expected not to make a fuss. If we asked for more time for scrutiny, we would somehow be accused of trying to block Brexit. Far from it. There is a deep irony: Brexit was sold to the country as a way of taking back control, but at every stage the Government have tried to thwart parliamentary scrutiny, and have loaded Committees such as this with a majority, even though they do not enjoy one in the House.

I worry whether the Minister has enough time in her schedule to review carefully all the SIs that her Department is seeking to introduce. I know that her colleague the Minister for Agriculture, Fisheries and Food has two Bills as well as all his SIs. The Department has a considerable work load that risks SIs being accepted by the House without proper scrutiny. The hon. Lady should be prepared for me to ask a series of questions, and I am glad to see that she has her pen out already. I fear that she might not be able to answer some of them, and if that is the case I would be grateful if she and her officials prepared the answers and wrote to me.

It is the inconsistencies in the SI that worry me most. Greener UK has raised technical concerns about the wording, and I am sure the Minister is familiar with those. It is concerned about the compliance rules, which have been removed inconsistently. For example, measures required under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 will no longer be in compliance with article 10 of the water framework directive, which covers issues such as the implementation of emission controls, emission limits and best environmental practices. At the same time, references to directives, such as those on integrated pollution prevention, urban waste water treatment, and protection against water pollution caused by nitrates from agricultural run-off have all been removed, seemingly without explanation.

Are arrangements for consulting non-governmental organisations in advance of the publication of SIs in place, and have they been used for these regulations? That process is meant to prevent such inconsistencies and omissions from creeping in. Does the Minister feel that those pre-scrutiny arrangements are working well for SIs? If so, how come so many inconsistencies need to be raised at this point? Will she publish the consultation feedback from the relevant bodies and the devolved Administrations that she mentioned earlier?

The key question Members must consider is whether the regulations enable a roll-back in environmental protections and set us up to fall behind current, and any future, EU standards. Lord Gardiner of Kimble, the DEFRA Minister in the Lords, said last week, as that House considered the SI:

"We will retain our rigorous parliamentary scrutiny and strong domestic legal framework for environmental protection, but we want to go further."—[*Official Report, House of Lords,* 22 January 2019; Vol. 795, c. 687.]

However, there is no requirement on the Government to transpose future European directives after exit day.

On water regulation, we have benefited over the years from robust EU regulation, which has helped drive up the quality of our drinking water, bathing waters and groundwater, something I know, as a Plymouth MP, from the improvements in quality we have seen in the far south-west. It is vital to hold on to those benefits for the future and not allow standards to fall back.

My noble colleague in the other place, Baroness Jones of Whitchurch, rightly said that the EU had saved the UK from

"our reputation as the 'dirty man of Europe'".—[*Official Report, House of Lords,* 22 January 2019; Vol. 795, c. 686.]

If we do not keep pace with Europe's environmental legislation we risk reclaiming that title, and the dirty man of Europe runs the risk of becoming the sick man of Europe.

I have a number of concerns about the SI that represent roll-back in environmental protections, and I would be grateful if the Minister could address them. The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 are amended to allow products that are of an equivalent standard to the British standards to be installed. The amendments align our legislation with World Trade Organisation principles. Does she agree that moving from EU regulation to WTO principles would potentially be a downgrade for keeping pace with our EU standards in the future?

The SI applies to England, Wales, Scotland and Northern Ireland. Can the Minister confirm that it preserves the current devolution settlement and that all those devolved Assemblies have consented to all parts of the regulations? Some powers are extended to the UK and some to Great Britain. Can she set out what happens where there has been application to other parts but not to Northern Ireland, to ensure that we have complete coverage of the topics after the SI comes into effect?

I am concerned that insufficient care has been taken in the drafting of the document, which is, I believe, in part due to the sheer volume of work that DEFRA officials are confronted with. Proposed new schedule 5, part 1, paragraph 13 says to omit "Community, local

and national" from paragraph 2, annex 4 of the water framework directive. However, that paragraph of the water framework directive says, "Community, national or local". Does the Minister believe that the order of the words is important, and can she say what legal effect the different order and co-ordinating conjunctions may have?

In part 4 of the same schedule, paragraph 27 revokes a number of decisions, including EU decision 2455/2001, which establishes a list of priority substances in the field of water policy, Commission decision 2005/646 on the establishment of a register of sites to form the intercalibration network in accordance with directive 2000/60, and Commission implementing decision 2014/431 concerning formats for reporting on the national programmes to be implemented. Why has that legislation been retained only to be revoked, and what will replace those elements if nothing is offered in return? I understand revoking intercalibration and Commission reporting, but revocation of decision 2455/2001/EC on establishing a list of priority substances in the field of water policies appears to hack away at important rulings on water substances. Some stakeholders have raised concerns particularly about that element. Will the Minister confirm what consultation has taken place to ensure there is no roll-back of protections that will undermine environmental quality in that respect?

On the impact assessment—or lack of—the SI's explanatory note states:

"There is no, or no significant, impact",

but two points down it states,

"we expect it to have no impact".

Is it no impact or no significant impact? If there is no impact, what assessment has taken place to establish whether it is no impact or no significant impact?

The note states that no impact assessment has been prepared to establish whether there is an impact or not. If there has been no impact assessment to establish where there has been no impact, can the Minister establish whether there is no impact or no significant impact, because the two things are different? It would be interesting to understand whether a pre-impact assessment has taken place to establish whether an impact assessment were necessary, because no impact and no significant impact are indeed two separate bits. This is the moment when Members are not supposed to smile—they are supposed to guffaw. *[Laughter.]* Thank you very much. However, a serious point is raised in terms of what level of pre-scrutiny has taken place to establish the measures in this SI.

The note also states that

"no review clause is required."

Perhaps the Minister will think again about that, given the pace and scale at which these SIs are flying through our Parliament. This single SI seeks to amend four pieces of primary legislation and 17 pieces of secondary legislation, and there is no review clause and no sunset clause for review.

I also want to press the Minister on an odd choice of wording. Why does part 1 of proposed new schedule 5 state:

"Article 10 is to be ignored",

and not omitted? That choice of language is used throughout the SI. It is the same for articles 12, 15, 24 and annex 1. Will she set out, especially for those listening at home, the difference between "omitted" and "ignored"? What does it mean for the courts, regulators and future Ministers? It is the same for paragraph 30 in part 3. Why are the articles to be ignored and not omitted? What is the Minister trying to bring about with that different use of language?

Paragraph 15 in part 1 states:

"Annex 6 is to be read as if Part A were omitted."

What is the difference between something being omitted and something being read as if something were omitted? Why not simply omit them? Paragraph 14(e)(ii) states that annex 5, section 1.4.1, is to be read as if

"points (iv) to (ix) were omitted".

Why does it not say they should be ignored?

In part 3, regulation 30 states:

"Article 6(1)(c) and (2)"

of the environmental quality standards directive "are to be ignored". Why are those to be ignored and not omitted or read as if they were omitted? The detail really matters. I am tired of Brexit soundbites. I am talking about the detail of getting Brexit right. It is on those aspects of the difference in language that complications with the implementation and reporting of this SI could be caused in future legal cases.

Environmental stakeholders and colleagues in the other place have raised legitimate concerns about the lacklustre proposals that this SI sets out for reporting on transposed regulations. Part 3, paragraph 11(3)(d), states that

"the report is published in such manner as the Ministers consider appropriate."

Can the Minister provide an example of what format she would consider appropriate in relation to that paragraph, and what criteria she would deem appropriate?

In part 3, on the Private Water Supplies (England) Regulations 2016 and "Reporting 21A", what guidance has the Minister received to keep reporting on the quality of water for human consumption at a maximum of three years? Why not two or four?

In part 4, what additional funding will be given to the Environment Agency, the National Resources Body for Wales, the Scottish Environment Protection Agency, and Northern Ireland's Department of Agriculture, Environment and Rural Affairs to cope with the new demands? The Opposition welcome the fact that the draft SI introduces specific reporting requirements into domestic legislation and provides for reports to include the results of quality assessments and description of any measures taken or proposed to be taken. Frankly, we have concerns that the measure makes no provision for the reports to be reviewed or for any failures to be identified and addressed, as is currently required by the European Commission. That is important.

Environmental stakeholders have highlighted that the UK can grant several derogations under the directive. The draft statutory instrument provides for derogations to be decided and granted by the Secretary of State alone. At the moment, the Commission reviews such decisions and determines whether the application is valid, but there is no equivalent review process in the instrument—only a requirement to publish the grounds for the notification. Unless the Minister can suggest otherwise, that is a lowering of environmental oversight. The Opposition doubt that the mere act of publishing the reports will be sufficient to match the current level

[Luke Pollard]

of scrutiny. We suggest that the statutory instrument, or a future one, should include a requirement for reports to be reviewed and assessed.

The statutory instrument also revokes the agreed format of reports for the European Commission on the urban waste water treatment directive. Will that be just an administrative change, as the Minister suggested, or will it change how data is transferred between devolved Administrations in the United Kingdom, or between us and our EU friends in relation to pollution controls across boundaries, or the system that UK regulatory bodies and commercial entities have invested in? In our view, the lack of reporting is too open to interpretation by the Secretary of State and by those preparing the reports, and it could contribute to reduced quality and less effective monitoring and scrutiny of important environmental commitments.

The statutory instrument contains examples of specific reporting requirements, such as regulation 7(3), which introduces regulation 12A into the Urban Waste Water Treatment (England and Wales) Regulations 1994 for situation reports every two years; regulation 15, which introduces regulation 15A into the Bathing Water Regulations 2013 for annual reports; and regulation 16, which introduces a new requirement to the Nitrate Pollution Prevention Regulations 2015 under regulation 40A for an implementation report every four years.

When we considered the Fisheries Bill in Committee, the then Minister quizzed me at length about why we were proposing an amendment of six years. That was a good question and I would like to turn it back to this Minister. Why are there different lengths of time for reporting? Have any changes been made in transposing them into the statutory instrument?

Environmental stakeholders have expressed concerns about the future reporting of the provisions. Is the Minister aware of those concerns? The statutory instrument has been through some form of consultation, but how far into the process was that—pre or post drafting? What changes did she make to address the valid concerns of stakeholders that have been expressed to me and, I am sure, to her?

When the statutory instrument was considered in the other place, Baroness McIntosh of Pickering expressed concerns about who will review the reports. Due to the lack of time, her question was not answered by the Minister there, so I would be grateful if this Minister set out her answer to that question. The baroness rightly said:

"although these reports are being made public, the draft statutory instrument makes no provision for these reports to be reviewed if any failures emerge from them. Such failures would currently be addressed by the European Commission…what body will deal with any future…failures?…What mechanism will there be to make sure that these are reviewed?"—[*Official Report, House of Lords,* 22 January 2019; Vol. 795, c. 681.]

It is up to the Secretary of State to indicate only what he or she deems an appropriate form of report and there is no requirement for any flaws to be dealt with subsequently. In the other place, Baroness Young said:

"The Government are not just filling in their own report card—they are designing their own report card".—[*Official Report, House of Lords,* 22 January 2019; Vol. 795, c. 683.]

I could not have put it better myself. The lack of proper scrutiny of the reports is deeply worrying.

There is a real danger of a governance gap in this statutory instrument and many of the others that the Government are introducing. We are hurtling towards exit day on 29 March without the appropriate mechanisms in place for 30 March, as the statutory instrument may come into UK law before we have the new environmental regulator that the Secretary of State has announced. Does the Minister have a contingency plan for the gap between those two events? How does she plan to bridge the gap between us being released from the EU Commission's oversight and the setting up of the new Office for Environmental Protection, especially in relation to the reports that I mentioned?

The instrument mentions the cross-border Solway Tweed river basin district and the Northumbria river basin district, with which I am sure we are all deeply familiar. Lord Gardiner of Kimble said,

"we have consulted with the devolved Administrations on the instrument, and they have given consent where appropriate."—[*Official Report, House of Lords,* 22 January 2019; Vol. 795, c. 678.]

As well as the devolved Administrations, what was the feedback from local councils on the draft instrument?

I also read in the debate in the other place that various environmental NGOs and others were given sight of the draft instrument before it was laid before Parliament. Peers asked if there was any opportunity to bring parliamentarians into this process, to which Lord Gardiner said that pre-laying scrutiny of statutory instruments by interested MPs was an "interesting and legitimate point". Will the Minister consider adopting this sensible proposal, given the scale and pace at which the Government are pushing out these SIs? Every little helps, and given the mess that the draft SI is in, every little bit would certainly help it.

A common thread in the tidal wave of rushed SIs is the loss of the independent scientific expertise currently provided at the EU level. We are all aware that the Secretary of State is tired of experts, but important issues, such as the setting of water quality standards and acceptable nitrate levels, as well as advice on what is technically feasible and not disproportionately costly, depend on the advice of experts. It is crucial that this expertise remains robust and independent in the future, to avoid our risking not only an incorrect application of the law but the adequate protection of environmental standards.

For example, the water framework directive requires that any changes to standards, values, substance lists and best environmental practices should be made only in the light of expert advice. To what extent will UK law be meaningfully interpreted if we do not have those supporting mechanisms? What additional funding will be provided for scientific expertise following the loss of our access to EU scientific expertise, and does the Minister have any plans to increase science funding in that respect?

At the moment, we have access to Europe-wide research and analysis to shape our decisions on such things, but that will not necessarily be available to us in future. That point was made very well by my noble Friend Baroness Jones, who stated:

"While I do not doubt the expertise within our own scientific community, there are issues about the considerable extra workload, in terms of depth and quantity, that we will be placing on our own scientific advisers."—[*Official Report, House of Lords*, 22 January 2019; Vol. 795, c. 687.]

I echo those concerns. What steps are being taken to ensure that scientific advice will be of the same technical and authoritative standard after we leave the European Union?

Opposition Members share concerns about unexplained changes to the UK's legal framework. The draft SI sets out which aspects of key EU directives will continue to apply in future. Some key provisions have been retained, such as regulation 3 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. However, some parts of the directives that the UK must comply with are not considered in the draft instrument. While some of these removals are understandable, the reasons for other omissions are less obvious and even appear arbitrary, according to stakeholder feedback.

For example, measures required under the 2017 regulations, as well as specific regulations on Northumbria and the Solway Tweed river basin districts, will no longer need to comply with article 10 of the water framework directive, which requires our taking a combined approach in establishing and implementing emissions controls, relevant emission limit values and, in the case of diffuse impacts, controls including, as appropriate, best environmental practices. The reason for that is unclear. We are concerned that specific references to several highly relevant directives have been removed without explanation, including on integrated pollution prevention and control, urban wastewater treatment and the protection of water against pollution caused by nitrates from agricultural sources. Will the Minister explain on what basis elements of EU law have been retained or removed?

Unfortunately, time does not allow me to go into details of the eel management element of the draft instrument. However, I know that Members of all parties will be concerned about recent media reports of coked-up eels that have absorbed the cocaine that goes into the River Thames. That was not included in the draft instrument, but we forgive the Minister for that inadvertent oversight.

The Opposition have serious reservations about approving the draft instrument. I expect Government Members to vote for whatever they are told to, so I appeal not to their better judgment, but to that of the Government Whip, from whom they take their instructions. Because the Government have a compliant majority on the Committee, the draft instrument will probably be voted through; from the looks on the faces of Government Members, many just want the Committee to end. However, it should not be, as it is messy, open to serious concerns and does not adequately answer the concerns of stakeholders that I have set out.

We are worried about the Government's cavalier approach to transposing current EU legislation. The SI attempts to do too much without careful consideration of the detail. It is only to be expected, given the Government's sometimes cavalier approach to exiting the European Union, that we have such a messy SI in front of us. The Opposition find that this process of picking and choosing parts of EU law to keep and bin has been arbitrary. We have ended up with a pick-and-mix bag of laws that does not match the current standards of EU laws. That concern is shared by stakeholders. The draft SI falls short of preventing a roll-back on environmental protections. It falls short on transparency, in its impact assessments and on reporting, governance and consultation, and it lacks clarity on what is being changed or transposed. On behalf of those environmental stakeholders who have got in touch with the Opposition, I say that the SI is not good enough, so the Opposition will not support it.

6.35 pm

John Mann (Bassetlaw) (Lab): It would be remiss of me not to remind the Committee of the significant announcement that the Prime Minister made on environmental standards last Monday. She made clear in detail that she and her Government had agreed to accept the amendment in my name and that of several of my colleagues. Environmental standards were a significant part of that amendment. It required the Government to ensure that we have environmental standards at least as high as the European Union's, and to bring back to Parliament any change that could be considered a future enhancement of European Union standards. Under the amendment, it is for Parliament to determine whether this country should adopt those changes into our law.

It is a little bit chicken and egg, not in relation to Brexit, but in relation to the EU (Withdrawal) Act 2018. The Prime Minister's acceding to our request was not merely good words from a Prime Minister. Whichever Prime Minister it is, my experience is always that good words and good intentions are not sufficient; let us see the ink on the Bill to demonstrate what those words mean. The Prime Minister made it crystal clear that that amendment would be incorporated into the withdrawal Act when it reaches the House. That will guarantee that we will compete, having left the European Union as an independent country, on the basis of the highest standards.

The three areas we identified—I anticipate a fourth on equality—will be incorporated as well. They were workers' rights in terms of employment law, health and safety and environmental standards. I therefore look forward to hearing from the Minister how that very appropriate move by the Prime Minister will affect her consideration, not least of engagement with the trade unions once we have left the European Union to ensure that third parties can be assured and that the Government are robust and quick in ensuring that at all times and in all matters, we compete as a free and independent country and as the best in Europe, rather than the cheapest and worst in Europe.

6.38 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey): It is a pleasure to respond to the points made by the hon. Member for Plymouth, Sutton and Devonport. I recognise that the hon. Gentleman wants to get into politics, and I am sure that the Labour Government in Cardiff will be disappointed to hear that the Westminster Labour Opposition have decided to vote against the SI to which the Welsh Government had consented and participated in drafting. I hope he will consider that carefully when he has the conversation with Lesley Griffiths to discuss their approach and why they do not believe the assurances given by the Welsh Labour Government.

I am conscious that a number of different words and terminology are used in the SI. I do not pretend to be a lawyer; I rely on my lawyers for that. I am pleased that we have got them here today to help answer many of the

[Dr Thérèse Coffey]

questions that the hon. Gentleman asked, but there are some procedural points for Parliament. First, the explanatory note states that

"no, or no significant, impact…is foreseen."

I challenged my lawyers about it, but that is the wording that the Joint Committee on Statutory Instruments stipulates for such instruments. I wanted to remove the words "or no significant", so that the wording would read "no impact", but the procedures of both Houses did not allow me to take that approach. Further examples of wording decreed by the JCSI will continue to arise in every statutory instrument that we lay before Parliament.

The hon. Gentleman asked for clarity on some other legal elements, particularly with respect to the words "omitted" and "ignored". The Government have adopted the drafting approach of using the word "omit" in reference to UK regulations that we are amending, but "ignore" in reference to EU directives that we are modifying. It would not surprise me if hon. Members wanted even more clarity, so I am happy to send a note to Committee members to set out the matter in more detail. The draft regulations use legislative wording in a technical format to ensure consistency; I will not pretend that every piece of legislative phrasing will necessarily be what we would use in general speech.

The hon. Gentleman spoke about stakeholders. I have to say that the document from Greener UK and Wildlife and Countryside Link was brought to my attention only today. Our reading room system, which is also available online, is open to a number of stakeholders, including stakeholders from Scotland, Wales and Northern Ireland, so that they can see our statutory instruments and comment on them. No stakeholder made any comment about the draft regulations, so the concerns raised today by the Opposition come as news to me, but I hope to address them.

The hon. Gentleman spoke in detail about how there will be no requirement to transpose future EU directives. He described that as a problem with the draft regulations, but the point is that we are leaving the European Union, so we will not be subject to future European directives as we have been before. It will be for this Parliament to decide what changes and enhancements to make to our environmental standards.

I assure the hon. Member for Bassetlaw that the draft regulations are not about trying to roll back or do different things; they are about ensuring that the law that we have today will still work on the day after we leave.

With respect to scientific expertise, updates and so on, it is fair to say that the United Kingdom has a strong record of contributing to EU-wide research. It is my understanding that the research used by the Commission is publicly available, so it will be open to us to use research shared across the European Union about any changes made, as well as research available domestically. I do not think that there will be an extra onus on advisers beyond what there is today. We work with other member states of the European Union when we are considering making changes to regulations, and I expect that that will still be the case.

The Greener UK briefing—which, as I say, was not presented to the Government with any questions in advance of this Committee—refers to article 20 of the water framework directive, which permits certain technical annexes and articles to be adapted by the European Commission based on scientific and technical progress. The concern has been raised that such powers will somehow no longer be in place. The power will be transferred to the Secretary of State and to Ministers in the devolved Administrations in a future DEFRA cross-cutting statutory instrument that will be entitled Transfer of Functions (Environment Directives) (EU Exit) (Miscellaneous Amendments). That instrument will be made under the affirmative procedure, but we deem that the functions that it transfers—including the function in question—are not time-critical for day one. We would be aware today of any changes that the European Commission proposed to make through the European Parliament and the European Council. No such change has been proposed at this stage; therefore, that function does not need to be ready for day one. We believe that laying the SI before Parliament in April will give us the powers and functions necessary for the future.

The hon. Member for Plymouth, Sutton and Devonport referred to WTO rules. I assure the Committee that this is about WTO rules that say, "You cannot treat one country differently from another." The SI is about making that change. As it stands, standards in the United Kingdom are the same as in the rest of the European Union. We are bringing over those standards, and it will be for the United Kingdom to decide what standards are appropriate in the future. I remind the Committee that there are a number of differences, albeit not in this case, between us and most of the European Union, such as the way we treat electricity and our plug system. That does not mean that we will make big changes going forward, or would make them for the WTO.

I am not sure that the hon. Gentleman is right about insufficient care in drafting. I believe that we have covered the points that he made on the intercalibration network. The reality is that that work has already been done. It will not be done again; we do not see the need. As I said, the Scottish Government, the Welsh Government and directors on behalf of the Northern Ireland Administration agreed to revoke that decision, as well as to make some other changes.

On different levels of reporting—on whether reporting should be every three years, five years or two years—the point is that we are not changing what we have to do today. If we decide in the future that we want to change the reporting cycles, we can, but we will not do it through this legislation. We will bring over what we have to today, and that will become the requirement from day one.

I do not think that there is a need to introduce a review clause, or a sunset clause for review of any of the regulations. That would add unnecessary uncertainty—and, by the way, I would then be in contravention of what statutory instruments are allowed to do under the European Union (Withdrawal) Act, which allows me to make regulations only so that the system is operable, not to introduce new conditions. We are not trying to change stuff for the future; we are actually trying to keep it the same.

On the governance gap, the hon. Gentleman will be conscious of the draft clauses that the Government have tabled. So far, only in England is a proposal in place for a similar body to the European Commission in terms of scrutiny and powers. Other Governments will

have to make their own decisions. Although Northern Ireland is interested in consulting on having an office for environmental protection, alongside that for England, we have not been advised by either the Welsh or the Scottish Government that they would like to do the same as us.

The hon. Gentleman asked why the amendment to annex IV of the water framework directive omits the words "Community, local and national" from the annex. The annex states:

> "The summary of the register required as part of the river basin management plan shall include maps indicating the location of each protected area and a description of the Community, national or local legislation under which they have been designated."

Such a description is required because that information would be pertinent to the European Union; it is not necessary in our domestic legislation.

I understand what the hon. Gentleman said about derogations. It is important to state that the Commission does not decide about a derogation; my understanding is that it will give advice. The Secretary of State will take over any function that the Commission has in relation to derogations; as now, they will continue to make decisions on derogations by considering the evidence against specific criteria. Those criteria are being brought into domestic law through the SI, both for drinking water and for nitrates. The basis for decisions will remain the same.

On drinking water, the United Kingdom has used derogations in the past. In England, the last one to be granted was in 2006 for a period of one year. I believe that it is fair to say that the UK has extremely high-quality drinking water, and we can meet all the standards in the drinking water directive. For that reason, we do not intend to use, or envisage using, the derogative provision in the future. With regard to nitrates derogations, the Secretary of State is required to publish on a regular cycle an explanation of why they have been allowed. For drinking water, the water supplier must publish the information; that will continue.

In my opening comments I went into some detail about why we have made changes to article 10. I explained to the Committee that the directives linked to article 10 have already been brought into UK law. I also explained to the Committee that if we do not do it this way, we will have even longer SIs, and more of them, to deal with those cross-cutting references. We believe that it is straightforward—I appreciate that not everybody is an environment lawyer—to make these changes. Greener UK did not raise this point with the Government before it published its concerns just a couple of days ago. I am very happy to take those away and explain to it why what we have done absolutely keeps our current obligations in our transposed law.

Luke Pollard: The example the Minister has just given sums up perfectly the concern that environmental stakeholders have about the volume of SIs coming out. Perhaps the Minister could reassure stakeholders that there will be additional scrutiny of future SIs, in order to give them, the Opposition and parliamentarians the chance to review properly what is being proposed.

Dr Coffey: As I say, the reading room—the pre-legislative procedure—is deliberately open to stakeholders. I shall take away the hon. Gentleman's request for pre-access for Members of Parliament; I am not aware of that being the normal procedure, but I am very happy to check that. In essence, stakeholders did not share any of these concerns with the Government, even though they saw the regulations a week before they were laid before Parliament, which is why those concerns came as a surprise.

It is important to state that the reports that we will publish will be exactly what is provided for in current legislation. On formatting, we must recognise that the Commission puts forward proposals for 28 EU member states; we will be reporting on something that is fit for the United Kingdom. As for other nations in the UK, my expectation is that when we try to agree common frameworks, which we are starting to do, we will have regard to each other in how we go about reporting on different elements. At the moment, no change is required; the regulations just stop us from having to change our reporting in future if the European Commission decides to do something for the EU27, should we not think it necessary to change our reporting format. This will kind of ensure that we are not locked into certain aspects of the EU's operational activities when we are no longer part of it.

I hope that I have answered a number of questions from the hon. Member for Plymouth, Sutton and Devonport. I am conscious that the legal wording can get rather technical, but I believe that the regulations do exactly what they say on the tin: they bring over the regulations that are required to ensure that the day after exit, things operate just as they did the day before—no more and no less. Otherwise I would have been breaking the Ministerial Code when I signed the transparency statement. There is no change in policy; the regulations are simply technical. I therefore encourage the hon. Gentleman to reconsider voting against the regulations. I point out that the Labour-run Welsh Government and the Scottish Government, run by the Scottish National party, have both endorsed this SI.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Braverman, Suella	Moore, Damien
Coffey, Dr Thérèse	Seely, Mr Bob
Crabb, rh Stephen	Smith, Royston
Evennett, rh Sir David	Stewart, Iain
Mercer, Johnny	

NOES

Creasy, Stella	Pollard, Luke
Elmore, Chris	Streeting, Wes
Huq, Dr Rupa	Twist, Liz
Mann, John	

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Floods and Water (Amendment etc.) (EU Exit) Regulations 2019.

6.56 pm

Committee rose.