PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT ENVIRONMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

Monday 28 January 2019

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Friday 1 February 2019

The Committee consisted of the following Members:

Chair: Stewart Hosie

Campbell, Mr Ronnie *(Blyth Valley)* (Lab)
† Caulfield, Maria *(Lewes)* (Con)
† Coffey, Dr Thérèse *(Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs)*
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Grogan, John *(Keighley)* (Lab)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
† Hayman, Sue *(Workington)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
† Killen, Ged *(Rutherglen and Hamilton West)* (Lab/Co-op)
† Martin, Sandy *(Ipswich)* (Lab)
† Monaghan, Carol *(Glasgow North West)* (SNP)
† Paterson, Mr Owen *(North Shropshire)* (Con)
† Pursglove, Tom *(Corby)* (Con)
† Seely, Mr Bob *(Isle of Wight)* (Con)
† Shapps, Grant *(Welwyn Hatfield)* (Con)
† Stewart, Iain *(Milton Keynes South)* (Con)
† West, Catherine *(Hornsey and Wood Green)* (Lab)

Yohanna Sallberg, *Committee Clerk*

† attended the Committee

First Delegated Legislation Committee

Monday 28 January 2019

[Stewart Hosie *in the Chair*]

Draft Environment (Amendment etc.) (EU Exit) Regulations 2019

4.30 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 Environment (Amendment etc.) (EU Exit) Regulations 2019.

Mr Hosie, it is a pleasure to serve under your chairmanship. This is the first of the affirmative statutory instruments concerning the environment to be considered before the UK leaves the European Union, following the result of the 2016 referendum and Parliament's subsequent agreement.

In line with the European Union (Withdrawal) Act 2018, the draft regulations simply make technical, legal amendments to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable, so that the law continues to function as it does today following our exit from the EU. The draft regulations will also prevent the automatic incorporation of EU legislation into our national law where that would be inappropriate. This SI, like others, is quite lengthy and makes many adjustments, but I assure the Committee that it represents no changes to policy and will have no impact on businesses or the public, although I draw Members' attention to two voluntary EU schemes on eco-labelling and environmental management.

The draft regulations do four main things. Part 2 amends three cross-cutting environmental Acts. Part 3 amends three cross-cutting environmental statutory instruments. Part 4 refers to appropriate savings. That is a legal term, which is nothing to do with finances or budgets but in essence allows us to retain existing directions and regulations made under the Environment Act 1995. Part 5 prevents some EU environmental regulations and decisions that are either out of date or will have no further function once we have left the EU from being brought into UK law automatically by the operation of the withdrawal Act.

The Acts dealt with in part 2 make reference to our obligations as an EU member state and to EU legislation. We need to change or remove those references because they will either no longer work legally or be inappropriate after our exit. Where we change such references, we often refer instead to "retained EU law" or "retained EU obligations". Those terms are defined in the withdrawal Act.

Regulation 2 includes amendments to references in the Environmental Protection Act 1990 to obligations under EU law, replacing them with references to retained EU law and retained EU obligations. Regulation 3 adjusts powers in the Environment Act 1995 to make directions and regulations for the purpose of implementing EU law so that they refer instead to retained EU obligations, with appropriate savings detailed in part 4. There are also amendments to the power for appropriate agencies to impose charges in relation to retained EU law.

Part 4 saves existing directions made under the Environment Act 1995 so that they continue to apply notwithstanding the changes to the relevant powers set out in part 2. Those directions can, if necessary, be varied or revoked in the future. That will ensure, for example, that ministerial directions made for the purpose of implementing obligations of the UK under EU treaties, such as the recent air quality directions to local authorities in England, remain valid following our exit.

Returning to part 2, regulation 4 adjusts the power in the Pollution Prevention and Control Act 1999 to make regulations under section 2 of that Act by substituting references to retained EU obligations for existing references to the UK's obligations under EU treaties, and by replacing the provisions that allow relevant directives to be designated from time to time with provisions specifying in the Act a closed list of directives in connection with which regulations may be made. Part 2 of the schedule to the draft regulations revokes domestic designation orders for England that are redundant in the light of those amendments to the 1999 Act.

The amendments in part 2 of the draft regulations have the same extent as the provisions they amend. For example, only some provisions of the Environmental Protection Act 1990 apply to Northern Ireland, and some apply to Northern Ireland only for specified purposes, whereas section 113(5) of that Act, which is amended by regulation 2(4), specifically concerns Scottish Ministers and extends to Scotland only. I do not pretend that this is straightforward, but I assure the Committee that our lawyers have been through this with a fine-toothed comb.

Part 3 of the draft regulations amends three cross-cutting environmental statutory instruments: the Contaminated Land (England) Regulations 2000, the Environmental Noise (England) Regulations 2006 and the Environmental Damage (Prevention and Remediation) (England) Regulations 2015. These instruments make similar references to EU law as are contained in those Acts and need amending for the same reason. They apply in England only. Devolved Administrations will address similar issues separately in devolved legislation. The draft regulations make no changes to either the policy or its impact on businesses and the public. The statutory instruments will continue to operate substantively as they do at present.

Directly applicable EU legislation is a type of EU legislation currently in force in the UK that applies without further legislation by our Parliaments, and includes EU regulations and decisions. These will automatically be brought into our national law by the withdrawal Act as part of retained EU law. However, in some cases that will not be appropriate. When we are no longer a member state, the UK will no longer be allowed to authorise participation in the EU's eco-management and audit scheme—EMAS—and the eco-labelling scheme, with existing EMAS registrations and eco-labels granted by UK bodies no longer being valid. Business participation in both schemes is voluntary. Businesses holding existing EMAS registrations and eco-labels will still be legally

able to sell their products to EU member states and can apply to join these schemes through other member states offering the service.

The EMAS regulation establishes an eco-management and audit scheme. As I said, business participation in the schemes is voluntary, and only 17 UK-registered organisations are involved in it, while a similar International Organisation for Standardisation scheme has more than 16,000 UK-registered participants. The eco-label regulation establishes another voluntary scheme under which producers, importers and retailers can choose to apply for an EU eco-label for their products.

To avoid any confusion for businesses wanting to join such schemes in the future, we deem it appropriate to stop these regulations and decisions being brought into UK law, as set out in part 1 of the schedule to the draft regulations. As I said, it will be open to companies to re-register through other member states that offer the service. However, we have also committed, through our resources and waste strategy, to consider a domestic eco-label scheme. Information notes on EMAS and eco-labels have been published and circulated, to inform businesses both of the decision not to immediately set up a new eco-label scheme in the UK and of the fact that organisations currently registered with the scheme can continue to be registered through EMAS Global or another EU27-competent body.

Further EU decisions referred to in the schedule include EU environmental action programmes, which are the overarching policy statements that set the EU's objectives for the next several years. These EU decisions are either already out of date or will serve no ongoing purpose after we leave the EU. These changes apply to the whole of the UK and have been agreed between the Governments of the four nations. A series of other decisions mentioned in the schedule are on implementing decisions for the EMAS and eco-label schemes, which will be redundant after we leave the EU.

While the House continues to decide the next steps on the way the country leaves the EU, the amendments in the draft regulations are an essential element of ensuring that UK law continues to operate smoothly when we actually leave. They do not represent a change in policy, and the regulatory impact experienced by businesses and the public will not change as a result of their adoption.

4.39 pm

Sue Hayman (Workington) (Lab): It is a pleasure to serve under your chairmanship, Mr Hosie. The Minister and I are here to discuss the statutory instrument that will make provision for the regulatory framework in this area after Brexit in the event that we crash out of the EU without a deal.

As several of my Back-Bench colleagues have done, I want to point out our challenge in ensuring proper scrutiny of the sheer volume of legislation passing through Committees. Secondary legislation ought to be used for technical, non-partisan, non-controversial changes, because of the limited accountability that it allows for. However, the Government continue to push through contentious legislation with high policy content via this vehicle. The frustration that we must spend time and resources creating a framework that might never be used is a point that has already been made in Committees. Public money has been spent on planning for what should not be viewed as a potential eventuality.

As a result of the reckless approach by the Prime Minister and her Government, statutory instruments that are being passed in Committees may well disappear on 29 March 2019. Alternatively, they could represent real and substantive changes to the statute book. As such, they need proper and in-depth scrutiny. Equally, in the event that the Government allow a no-deal scenario to materialise, we must bear in mind the stress that financial markets will be under. Statutory instruments must also be considered against that backdrop.

I understand that the devolved Administrations have been consulted on this particular SI and are content that there is no divergence in policy. In future, how will the UK and devolved Governments work together to ensure high standards across the four countries so that every citizen has full access to environmental justice that is not prohibitively expensive, as the UK is committed to via the 1998 Aarhus convention? Unlike a great many SIs that the Government are hurrying through this place, the measures contained within this particular SI are not contentious, as colleagues in the devolved Administrations have said. What we have here is an SI that, in fact, does much of what the Minister said: it does not make great changes.

Although we have great concerns about the SI process and using that legislative mechanism for many of the SIs that are being introduced—the Minister knows, because we have discussed it, that one of my particular concerns relates to the REACH regulations—we do not intend to oppose this particular SI, because it does not make great changes. However, we urge the Minister to take back to her colleagues in the Government our deep concerns about the way this legislation is being used.

4.42 pm

Dr Thérèse Coffey: I thank the hon. Lady for setting out those points and also for acknowledging that we are doing what it says on the tin—not quite Ronseal-style, but she gets my drift.

I recognise the concerns that many hon. Members have about secondary legislation potentially being a back door for significant changes. I assure the hon. Lady that, through the transparency statements we sign, I have to make sure that I am in line with the ministerial code. The statement that I make to Parliament must be absolutely accurate. I give her the assurance that that is the case, and I hope that all my fellow Ministers in Government will do so. We have somebody here from the Whips Office, my hon. Friend the Member for Milton Keynes North—

Iain Stewart (Milton Keynes South) (Con): South.

Dr Coffey: Sorry.

Iain Stewart: It is important.

Dr Coffey: My apology. It is important; my hon. Friend is right—and he can take back the message that the hon. Lady has shared with us today.

In terms of access to environmental justice, we absolutely honour the Aarhus convention and will continue to do so. We see that already in existing procedures with our own UK courts today. I hope that the hon. Lady will be assured by what we have laid out in our draft clauses, which are out for pre-legislative scrutiny, with regard to environmental governance in the future.

[Dr Thérèse Coffey]

As for how the UK and devolved Governments will work together to ensure that we have a coherent approach to environmental standards, it is the case that we have worked together as a group of four nations. At times it has been challenging to get agreement to every part of an SI, and it is perhaps one reason why it takes a bit longer than people would like. We have also respected the parliamentary processes in the other nations, making sure that appropriate scrutiny can be undertaken, but it is our intention to work towards a common framework for a number of different regulations. Nevertheless, I make the point that we absolutely respect the devolved approach, and where other nations' Governments want to do something different, then we will respect that. Having said that, my understanding and experience of Ministers from the other Governments is that there is a lot of common ground and that we wish that to continue in order to have an improved environment.

Question put and agreed to.

4.44 pm

Committee rose.