# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

# DRAFT ECODESIGN FOR ENERGY-RELATED PRODUCTS AND ENERGY INFORMATION (AMENDMENT) (EU EXIT) REGULATIONS 2019

*Monday 11 February 2019*

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**not later than**

**Friday 15 February 2019**

**The Committee consisted of the following Members:**

*Chair:* IAN PAISLEY

† Beresford, Sir Paul *(Mole Valley)* (Con)
† Blunt, Crispin *(Reigate)* (Con)
† Cowan, Ronnie *(Inverclyde)* (SNP)
† Glindon, Mary *(North Tyneside)* (Lab)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
† Jones, Mr David *(Clwyd West)* (Con)
Jones, Graham P. *(Hyndburn)* (Lab)
† Latham, Mrs Pauline *(Mid Derbyshire)* (Con)
Mahmood, Shabana *(Birmingham, Ladywood)* (Lab)
† O'Brien, Neil *(Harborough)* (Con)
† Perry, Claire *(Minister for Energy and Clean Growth)*
† Shapps, Grant *(Welwyn Hatfield)* (Con)
† Smith, Nick *(Blaenau Gwent)* (Lab)
† Stevens, Jo *(Cardiff Central)* (Lab)
† Swayne, Sir Desmond *(New Forest West)* (Con)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Yasin, Mohammad *(Bedford)* (Lab)

Kenneth Fox, *Committee Clerk*

**† attended the Committee**

# Sixth Delegated Legislation Committee

*Monday 11 February 2019*

[Ian Paisley *in the Chair*]

## Draft Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019

6 pm

**The Minister for Energy and Clean Growth (Claire Perry):** I beg to move,

That the Committee has considered the draft Ecodesign for Energy-Related Products and Energy Information (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Paisley. The draft regulations were laid before the House on 19 December last year. I will set out the framework for why we are here, and then plunge into the detail of what we want to introduce.

Obviously, there is a strong belief across the House that a deal with the EU is in our mutual interest, but it has always been the case that a responsible Government must plan for all eventualities, including a very unwelcome no-deal outcome. The draft regulations will ensure that in such a scenario our eco-design and energy labelling legislation will continue to function effectively.

Committee members will be aware that in recent years the EU has introduced, through the eco-design directive and energy labelling regulation frameworks, a suite of product-specific regulations that have been of enormous benefit to consumers and businesses alike. They have worked to minimise the costs and environmental impacts of products used both in the home and in businesses by setting minimum performance requirements. They also help consumers, as anyone who has gone to buy a new appliance will know, to make informed purchasing decisions through universal energy labelling.

The suite of regulations is one of the reasons that bills have gone down since 2012, and will save household consumers about £100 on their annual energy bills by 2020. It will also lead us to save about 8 million tonnes of carbon dioxide in 2020. The policy has therefore been one of the most cost-effective ways of meeting our carbon budgets.

The policy has also served a very strong purpose for industry. It has allowed companies to set minimum performance requirements that have helped them to drive innovation and increase competitiveness, and to export to the world's largest and most successful single market. It is therefore imperative that we can continue to deliver those benefits in the unwelcome event of a no-deal Brexit.

Using the power in the European Union (Withdrawal) Act 2018, the draft regulations will amend EU-retained law and ensure that eco-design and energy labelling requirements will be the same as they are now in any outcome. That will give businesses and consumers the certainty that they need.

There is a suite of amendments. The first is on a technical labelling term, and replaces "Union market" with "UK market". Without that tiny amendment, less efficient and more polluting products could be put on the UK market, meaning that consumers who thought they were buying something energy efficient were not. That would be an unwelcome outcome.

The second amendment transfers powers held by the Commission to the Secretary of State—repatriating sovereignty—to introduce eco-design and energy labelling product-specific regulations for the UK market after exit. The Secretary of State would use that power in the event of no deal to lay before Parliament new energy labelling and eco-design product-specific regulations that the UK voted for and helped to shape as a member state. Because they will enter into force and apply after exit day, those regulations have not been saved in the UK statute book by the withdrawal Act. That is part of the reason for introducing today's legislation.

One of the questions I have received is whether Brexit—whether orderly or disorderly—will mean the UK rowing back in any way on its climate change commitments, including commitments to transparent labelling and design. The answer is absolutely not. Not only will our existing eco-design and labelling requirements stay the same in the eventuality of our having to use the provisions in the draft regulations, but we have been very clear that we wish to be more ambitious than the EU in our climate change commitments, as we have been, and as we will continue to be regardless of the shape of our relationship after exit day.

The third aspect of the draft regulations is the EU product database. Suppliers placing products on the UK market have to enter product information into the EU product database—an online portal, which went live in January of this year, where all the market surveillance authorities can view product information uploaded by suppliers. If we have a no-deal Brexit, it will be replaced by a UK market surveillance authority that will request technical product information directly from the suppliers, as the authorities have historically done.

The next three amendments relate to changes that the Government are making to the trading of goods subject to EU-wide product-specific rules. They are not specific to this SI. The fourth amendment is the UK regime for third-party assessment. One of the changes pertains to the conformity assessment of goods to ensure they meet relevant requirements. After a no-deal exit we would have a UK-only system for conformity assessment. Products needing to be assessed by a third party in order to show compliance with UK legal requirements would be assessed by UK testing bodies called "approved bodies". However, to minimise disruption and any burdensome red tape, businesses would be able to continue to use EU testing bodies when selling their goods to the EU after exit. That is intended to apply only for a time-limited period.

The fifth amendment is a new UK conformity-marking procedure. After exit, if we had no deal, a new UK marking would need to be affixed to products to indicate conformity with UK requirements. This would replace the CE marking that members of the Committee might be familiar with, which indicates conformity with EU requirements. Again, to ensure continuity and that manufacturers do not face a huge and unwelcome burden of regulation should we have no deal, in opposition to what they were promised, most manufacturers will be able to use the CE marking for the UK market, again for a time-limited period. The sixth amendment is a new UK regime of

product testing standards. This SI carries across the current list of EU harmonised standards used for the verification of compliance of products with EU legal requirements, but renames them UK designated standards.

Finally—I am sure this will come as a welcome relief to the Committee—the regulations make tiny, minor changes to update our domestic energy labelling regulations to ensure market surveillance can carry out its enforcement activities on the labelling of household lamps and electric ovens. They are routine changes not related to Brexit. We felt it was a good use of the Committee's time to debate that change along with the others.

These regulations are an appropriate and necessary use of the powers in the withdrawal Act and will maximise continuity in eco-design and energy labelling regulations should we have the unwelcome outcome of a no-deal Brexit. I commend them to the House.

6.8 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Paisley. I note that you can get from one end of the Committee corridor to the other far more quickly than I can. That is something to bear in mind for future meetings.

I find this evening's discussion quite complex, and not only because of the complexity of what is before us. By the way, I think I will be saying this fairly regularly in Delegated Legislation Committees: this matter should not be before us in the shape of an SI. We are increasingly getting to the position where we cannot properly scrutinise these matters. This is one example of that. I find the subject quite complex not because of the complexity of the stuff before us, important though that is—I thank the Minister for providing a rapid guide to it in its complexity—but because of what might happen in terms of eco-design, energy labelling, and, as the Minister mentioned, the CE label mark in the event of a no-deal Brexit. What will happen in terms of the operation of those different marks and their acceptability? The Minister mentioned that the CE labelling would be acceptable in the UK for a limited period, but we have had no clarification of what the regime for energy labelling, for example, is likely to be.

The legal position immediately after a no-deal Brexit is that, even though the standards will be the same, those EU labels will not be acceptable in the UK, and vice versa. Third parties, certainly after a short period, will have to undertake two separate regimes of labelling, even though the standards may be identical. As far as I understand it, there has been no discussion of how those labelling arrangements might be acceptable on an interchangeable basis, provided that the regime is the same.

I welcome the fact that the Minister assured the Committee that, as we adopt these new requirements in the event of a no-deal Brexit, the various regulations that comprise the eco-design and eco-labelling specifications will not be in any way amended as a result of the draft regulations—that is to say, the arrangements will be identical in substance, as far as having the same regime is concerned. If we are to have anything that is usable immediately post a no-deal Brexit, it will be very important that it is absolutely clear that EU and UK arrangements are identical. If the Minister can shed a little light on that, I would be very grateful.

Let us assume that the arrangements will be identical. In that case, we have the following position: there is a body of regulations and arrangements that makes the design of energy-related products fit for sale and use within the EU. Obviously, under such circumstances as we are discussing, the eco-design arrangements regarding items fit for sale and use would hopefully be grafted wholly on to the UK position.

Then we have the eco-labelling information, which arises from the eco-design. It is the sticker that we see on fridges, freezers and other items that gives us the energy rating and other things. As the Minister said, that will be subject to a redesign by the EU shortly after we will have left in the event of a no-deal Brexit. When that happens, that will presumably also have to be incorporated into UK regulations in order to keep that UK-EU equivalence going.

The third pillar of this, although it is not exactly what the draft regulations are about, is the CE labelling, which sits over all the other things. The eco-design is what makes the product saleable. The eco-labelling is the information that should be provided to the public as a result of the design. The CE label is what makes anything, including energy-related products, saleable and useable throughout the EU. Anything that will be sold in the EU has to have that CE label on it.

In the explanatory memorandum there is a passing reference to the fact that all that will be subject to the CE marking framework. It indicates that the UK marking that will replace the CE marking will be introduced by the draft Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019. My understanding is that until that statutory instrument is introduced and replaces the CE marking with a UK marking, the rest of this falls down because they are all subject to that arrangement. Although that SI has been published, I understand that it has not been laid or discussed in Committee.

It is rather important that we receive some kind of assurance that that statutory instrument will go through before the possible occurrence of a disorderly Brexit. If it does not, the set will be incomplete. What we are discussing will have no substance because there will not be a regime to enable the CE marking that oversees the whole process to be replaced with a UK marking. The Minister says the UK has indicated that there will be a time-limited period—I do not know whether that is unilateral or negotiated and whether it will be months, years or weeks. It would be helpful for the Minister to give an indication of how that might work.

There is likely to be a pretty chaotic arrangement to determine who will have what standards affixed to their products for sale in the UK from Europe. A European piece of electrical goods sold in the UK will have to have a European energy standard attached to it and, presumably, on the other side, an identical UK thing stuck on. I hope the eco-design will be the same, although there are indications in this SI that the Secretary of State will have powers to alter those arrangements if necessary. I would have thought that the Secretary of State would do such a thing at his or her peril, inasmuch as that would throw out the possibility of any alignment of standards for future reference out the window.

That emphasises the need to keep the arrangements aligned, because I anticipate that there will have to be discussions and arrangements for how those things work in the long term. These regulations provide no solution to that. All they do is provide a regime that allows standards to be maintained in the UK; they give

*[Dr Alan Whitehead]*

no indication of how the trading arrangements will work from the EU to the UK, the UK to the EU and third parties to both the UK and the EU in future. That is a particularly dangerous area for us to go into.

Although I understand that these regulations are necessary to align with what exists in the EU, they lack clarity about how the regime will work in the longer term. Does the Minister have any intention to make further clarifications, or will further statutory instruments come our way to give us further definitions? One has to be in the pipeline very shortly in order to sort out the CE regulations, but there may be others to sort out those trading regulations. I am interested to hear from the Minister whether it is the Government's intention to clarify any of those positions about what is acceptable for trading purposes in different parts of the UK.

My reading is that it is not about whether arrangements themselves are parallel and equal in their effect but about whether, if a label is placed on a sale item in the UK or the EU and that label is not valid, even if the background is, the product can be sold. Unless there are good arrangements at least for the time-limited period the Minister mentions, or better oversight arrangements for that trading, even with the regulations in place we are potentially in for a period of complete chaos. Potentially, goods will be prevented from going into a country or an area as a result of people not having the right bit of labelling on them, even if the regulations are, as the Minister indicates, good and sound regarding the environmental and energy consequences of the sale items.

Although the Opposition do not intend to oppose the regulations, we think that a lot remains to be done to clarify how the arrangements will work. I look forward to hearing from the Minister whether that work will be done in time for the Brexit we all hope will not occur on 29 March—a disorderly Brexit that causes these problems to arise in the first place.

**The Chair:** I do not see anyone else energetically bobbing to catch my eye, so I call the Minister.

6.22 pm

**Claire Perry:** I wonder why, Mr Paisley. I thank the hon. Gentleman for his usual thoughtful and in-depth analysis and scrutiny. I will try to answer some of his questions and then explain why I cannot answer them all.

He asked a question that comes up reasonably frequently in these Committees: why are the Government using this form of legislation and not primary legislation? The response in this case, as in many of the others, is that the European Union (Withdrawal) Act is a wide-ranging Act that effectively allows us to transpose EU legislation, with tweaks, into UK statute. In this case, we are making technical fixes to retained law to ensure that the functioning statute book would work if we were to have a no-deal exit.

The hon. Gentleman raises valid points about the intent of policy and its design. There is no change in policy intent. If we were to go down that route and create a conforming or, in some cases, diverging, group of regulations, that would be subject to further primary legislation. However, I want to reassure the Committee that the instrument has been subjected to the usual detailed scrutiny provided by the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee. Members of both those Committees deserve our thanks for what can be a thankless task. They are scrutinising well and passing things with, if you like, a bill of health. We are where we are with introducing legislation.

The hon. Gentleman asked an important question about time-limiting periods and about what happens immediately. We have always said that in the event of a no deal we will have a continuity principle, with no divergence on exit day between UK and EU requirements. That is in the best interests of business, and we are anxious to avoid any increase in red tape or any consumer confusion arising from the decision. There would be a continuity principle on day one and, as we set out in our technical notice on 13 September 2018, we would then allow a grace period in which products assessed by EU testing bodies, those bearing the CE mark and those meeting EU requirements could continue to circulate in the UK. If we were then to change that or to set a time-limited closure for those allowances, we would go through the usual process of consulting businesses heavily.

As I think the hon. Gentleman alluded to in his closing remarks, this matter has material consequences for other members of the EU, as well as for the UK. A disorderly, no-deal Brexit is not in the interests of any member of the EU, because the millions and millions of consumer goods items that are manufactured and imported into the UK would be subject to confusion and a loss of consumer confidence. That is why, when we talk about no deal, we must get the message out very clearly that it is a real problem for anyone hoping to export to one of the continent's largest markets.

The hon. Gentleman rightly alluded to a related SI, the draft Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019, which are part of this suite of regulations. I can assure him that that SI was laid last week on 7 February, and I am sure he looks forward to debating it very shortly—I cannot wait. Essentially, if we were going down this route of being able to diverge, we would potentially have the opportunity to review our own testing and marking limits.

I believe in theory there is nothing to stop us adopting the CE mark through negotiation, if it was a trusted mark, assuming that we had agreement on what that meant in terms of testing standards, but those will be decisions that we will take in the interests of the UK, based on what works for our businesses and our public consumers. We would work to minimise disruption to ensure that those changes could be usefully made.

I thank the hon. Gentleman for allowing us to proceed with the regulations, which are an important part of our no-deal preparation. Of course, that brings home once again just what myriad tasks are involved in unpicking 40 years of close conformity; it is my strong belief that this would be a most undesirable outcome for the continent and for the UK, but any responsible Government must prepare for all eventualities. On that basis, I commend the regulations to the Committee.

*Question put and agreed to.*

6.27 pm

*Committee rose.*