

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT WASTE (MISCELLANEOUS
AMENDMENTS) (EU EXIT) REGULATIONS 2019

Thursday 7 March 2019

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Monday 11 March 2019

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The Committee consisted of the following Members:

Chair: IAN AUSTIN

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| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Jenkin, Sir Bernard (<i>Harwich and North Essex</i>) (Con) |
| † Coffey, Dr Thérèse (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) | † Johnson, Gareth (<i>Dartford</i>) (Con) |
| Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | † Lewer, Andrew (<i>Northampton South</i>) (Con) |
| Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | † Martin, Sandy (<i>Ipswich</i>) (Lab) |
| † Day, Martyn (<i>Linlithgow and East Falkirk</i>) (SNP) | † Parish, Neil (<i>Tiverton and Honiton</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | Rimmer, Ms Marie (<i>St Helens South and Whiston</i>) (Lab) |
| † Dhesi, Mr Tanmanjeet Singh (<i>Slough</i>) (Lab) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | Joseph Watt, <i>Committee Clerk</i> |
| † Hill, Mike (<i>Hartlepool</i>) (Lab) | † attended the Committee |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | |

Eighth Delegated Legislation Committee

Thursday 7 March 2019

[IAN AUSTIN *in the Chair*]

Draft Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

11.30 am

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 Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Austin. The need for the statutory instrument arises 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. I assure the Committee that the adjustments represent no change in policy and will have no impact on businesses or the public.

The matters under consideration are devolved, but the four Administrations have agreed to make most of the necessary changes through the statutory instrument, so its territorial extent and application is the United Kingdom. That said, the following amendments do not cover the whole United Kingdom.

First, in part 2, the Environmental Protection Act 1990, which is amended by regulations 2 and 5, does not extend or apply to Northern Ireland. Secondly, Council decision 2003/33/EC, which is amended by regulation 15, does not form part of retained EU law in relation to Scotland, as the requirements of that decision have previously been implemented directly in Scottish domestic legislation. Thirdly, of the new reporting requirements that replace the existing reporting requirements to the Commission, which I will cover later in my speech, a particular example refers to England only, as the devolved Administrations did not want that duty to apply to them in the instrument. We have worked with the devolved Administrations during the drafting of the instrument. They have all given their consent, as has the Scottish Parliament.

The instrument covers the waste management areas of waste batteries and accumulators, end-of-waste criteria, packaging waste, end-of-life vehicle destruction certification, landfill acceptance criteria, the classification of hazardous waste, the management of waste from extractive industries, and calculation methods for verifying compliance with recycling targets under article 11.2 of the waste framework directive.

To ensure operability, the instrument will make amendments to three waste-related Acts of Parliament and 14 related EU regulations and decisions. More broadly, as has often happened with such statutory

instruments, a large number of the changes are due to amending references to the European Union, EU institutions and EU administrative processes to make them refer to their domestic equivalents in the UK, and to updating legal references to refer to relevant domestic legislation.

Neil Parish (Tiverton and Honiton) (Con): I thank the Minister for giving way and assure her that I will not keep her long. The end-of-life vehicles directive puts a sum of money in place to dispose of vehicles. Naturally, the statutory instrument only passes the legislation from European to British law, but further down the road, I would like the Minister to consider the cost of scrapping vehicles. Perhaps electric vehicles and hybrid vehicles could have a lesser charge, which would be yet another way to encourage people to use electric vehicles so that we improve our air quality in the long run.

Dr Coffey: My hon. Friend makes an interesting policy point, but he will recognise that the purpose of the instrument is not to generate new policy at this stage. That will be a matter for a future separate debate. I fully understand where he is coming from—he mentioned the matter in the Environment, Food and Rural Affairs Committee yesterday—but to keep the debate relevant to the statutory instrument, I suggest we talk about it another time.

Neil Parish: I understand.

Dr Coffey: A significant part of the instrument addresses the way in which references to EU directives will be applied after exit day. I now turn to the detail of the changes that are being made through the instrument.

In part 2, regulations 2 and 3 effectively bring references to the waste framework directive up to date with respect to part II of the Environmental Protection Act 1990 and the Waste and Emissions Trading Act 2003. That is enabled by section 2(2) of the European Communities Act 1972. Part 2 of the draft regulations therefore brings our existing regulations up to date with the correct references.

Part 3 comprises the substantial changes needed to make the retained law operable, with respect to primary legislation, after exit from the EU. That is the element directly relevant to the withdrawal Act. Regulation 4 considers the Control of Pollution (Amendment) Act 1989, which contains a specific power for the Secretary of State to exempt—by secondary legislation—a waste carrier operating in the UK from the need to be UK registered, based solely on meeting the legal requirements in other EU member states. That power has never been used and will be redundant upon exit so we are revoking it, but the existing general power to exempt registering when prescribed conditions are met will remain. I emphasise that all carriers operating in the UK will still need to meet the requirements set by UK competent authorities.

Regulation 5 inserts new section 75A into the Environmental Protection Act. The new section clarifies how the waste framework directive will be applied after exit to maintain the existing effect and operation of the law.

Regulation 6 contains two strands of amendments to the Waste and Emissions Trading Act 2003. Regulation 6(2) amends section 1 of that Act. It omits subsection (2),

which referred to landfill targets contained in article 5.2 of the landfill directive, as those targets are already set out in domestic legislation. Subsection (4) is also amended to require the Secretary of State to consult the appropriate devolved Administration for each part of the UK before setting any new landfill targets or amending existing ones. That fully respects the devolution agreements as waste is a devolved matter. A similar change is made by regulation 6(3) to the secondary legislation-making power in section 23 of the 2003 Act. Regulation 6(4) amends section 37 of that Act, which defines waste for the purpose of the Act, and inserts new section 37A to provide modifications to clarify the way that the waste framework directive will be applied after exit, in order to maintain the existing effect and operation of the law.

Part 4 of the instrument makes amendments to and revocations of retained direct EU legislation. The lawyers have drafted the regulations by number in order of year, but I will speak to groups of new regulations that refer to specific waste-related subject areas. Chapter 1 of part 4 makes amendments to EU regulations. Regulations 8 and 10 of the instrument are about batteries. They make amendments to Commission regulation 1103/2010, which relates to capacity labelling of batteries, and to Commission regulation 493/2012 on the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators.

The amendments include replacing references to “Member States” with “The Secretary of State”, and defining “appropriate agency”, which would be the environmental regulators in England, Scotland and Wales, and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. The amendments also insert modifications that clarify the way that the various EU directives referenced in those EU regulations will be applied after exit in order to maintain the existing effect and operation of the law.

Regulations 9, 11 and 12 cover waste criteria and make amendments to three EU regulations made under article 6.1 of the waste framework directive. Those three EU regulations provide criteria for determining when certain types of scrap metal, glass cullet and copper scrap cease to be waste. The required processes for businesses to achieve end of waste will not change as a result of the instrument. The assessment of end-of-waste status and the guidance provided by regulatory agencies will still apply as before.

The principal amendments made to those EU regulations insert modifications to the way that references to EU directives in those regulations are to be applied on and after exit day. For example, references to “Member States” are to be read as references to the “appropriate authority”, “competent authority” or “local authority”, which was responsible for the UK’s compliance with that obligation or was able to exercise that discretion before exit day. To be clear, those are not new burdens; they merely maintain the status quo about who does what currently.

In addition, the amendments account for the fact that environmental verification under the eco-management and audit scheme—known as EMAS—will no longer apply in the United Kingdom. Hon. Members who have regularly attended such Delegated Legislation Committees will know that the amendments relating to that scheme have already been passed by both Houses.

Chapter 2 covers EU decisions. Regulation 13 amends Commission decision 2000/532/EC, which contains a list of waste classifications for hazardous and non-hazardous waste. The amendments introduce modifications to clarify the way that various EU directives will be applied to maintain the existing effect and operation of the law.

Regulations 14 and 16 make amendments to decisions made under directive 94/62/EC on packaging and packaging waste relating to derogations for glass packaging and plastic crates and pallets. References to “Member States” will be replaced by the “Secretary of State”, references to “Community” will be replaced by the “United Kingdom”, and appropriate agencies defined as the regulator of each nation and DAERA in Northern Ireland. They also introduce modifications that clarify the way in which EU directives referenced in the legislation will be read.

Regulations 15 and 17 to 20 amend various decisions made under directives 1999/31/EC and 2006/21/EC relating to the landfilling of waste and extractive waste respectively. These amendments include replacing references to “Member States” with “The Secretary of State”, and references to “Community” with “the United Kingdom”, and provide certainty on definitions and defining the appropriate agency. Two amendments convert requirements to report information to the European Commission into a statutory duty to publish the same information reports. As before, they introduce modifications that clarify the way in which EU directives referenced in the legislation will be applied.

Regulation 21 relates to Commission decision 2011/753/EU on establishing rules and calculation methods for verifying compliance with a target set in the waste framework directive. Regulation 21(7) applies to England only. This is where we have amended article 5 of the decision so that it now requires the Secretary of State to publish the progress report on whether the current target to recycle 50% of household waste by 2020, set by article 11.2 of the waste framework directive, has been met in respect of England. The progress report must be published before 1 January 2022. The devolved Administrations did not want this duty to apply to them in this instrument.

In chapter 3 of part 4 and the schedule, the instrument revokes some directly applicable EU legislation on waste. Some of this legislation has been revoked because it is redundant in a domestic context, for example Commission decisions that set the format of questionnaires and data reports that EU member states complete and return to the Commission in relation to the implementation of EU directives.

Other pieces of the directly applicable EU legislation are being revoked because their requirements are already embedded in domestic legislation. For example, Commission decision 2003/138/EC covers material and component coding standards for end-of-life vehicles; and Commission decision 2002/151/EC relates to minimum standards for the certificate of destruction for those vehicles. In both cases, the requirements of those decisions are already set out fully in the End-of-Life Vehicles Regulations 2003.

This statutory instrument is long and technical, but as I said at the start, it does not change policy. It simply makes the rules that we have today applicable.

11.42 am

Sandy Martin (Ipswich) (Lab): This statutory instrument is an attempt to replicate current arrangements with the EU and to enable the current statutory regime on waste to continue after Brexit day. However, we believe there are very good reasons why that regime may not be effective after Brexit day, and we are sceptical about whether this SI will be able to remedy that. It also revokes some EU legislation that the Minister tells us it is not necessary to retain, but I re-state our profound concerns about the rate at which SIs are being driven through, and the lack of available time to scrutinise them before they come to Committee. It would be very serious if any of the revocations turned out to be of regulations that were not adequately replicated elsewhere.

This is a very important matter; if waste is not properly regulated in this country there could be a significant additional contribution to our carbon footprint, and thus climate change, and also to the pollution of our seas, air and countryside. Labour is extremely concerned that without the regulatory umbrella of the EU, recycling and waste management will take a major step backwards. I am seeking cast-iron guarantees from the Minister. If she does not feel able to give us those guarantees, I am afraid we will have no option but to vote against this SI to register our unease at the situation.

The UK target to recycle 50% of household waste by 2020 is important. It is of great public concern at a time when plastic and the lack of recycling more generally is often highlighted as causing damage to our natural world, blighting our countryside and coasts. Clearly, the lack of recycling does not of itself cause litter, but a strong social focus on recycling, particularly a regime that gives every citizen a financial incentive to recycle, as in Germany, will tend to reduce littering and pollution. Adequate recycling facilities in the UK would remove the need to export our waste, and so would bring an end to much of the outrageous pollution of our seas from materials supposedly being recycled in Malaysia and Indonesia.

Sir Bernard Jenkin (Harwich and North Essex) (Con): Will the hon. Gentleman explain to the Committee why he thinks the United Kingdom is incapable of providing these policies and legal frameworks for ourselves?

Sandy Martin: I do not believe that the United Kingdom is incapable, which is why I am asking the Minister to give us a cast-iron assurance that these things will be put in place.

The recycling rate in Labour-run Wales is 57.7%. Wales is already meeting its target, but the rest of the UK is falling below the 50% recycling rate. The rate in England has flatlined at about 40% to 45% for the past 10 years. We all know some of the reasons for that: the lack of resources for local government and the complete lack of a joined-up national strategy. The Secretary of State has bombarded us with Bills, strategies and consultations over the past few months, so it certainly appears that the Government recognise the need for action, but the appearance of action here in Westminster does not necessarily translate into actual, practical action on the ground. The 50% target and future targets are critical to hold the Government to account and ensure that there is a materially significant driver to remove the hurdles to increased recycling. Will the Minister give a

cast-iron guarantee that the progress report provided for in the SI does not in any way reduce or dilute the requirements imposed on the UK as a current member state by article 11.2 of the waste framework directive, which stipulates a minimum 50% recycling rate by 2020? Will she reiterate the Government's firm commitment to the 50% recycling rate by 2020 target?

Under current EU legislation, it is a requirement for the UK Government to report to the European Commission on their record with regard to meeting targets. If targets are not met, the report must include the reasons for failure and the actions that the member state intends to take to meet them. Under the new rules set out in this SI, the Government will produce a progress report on whether the 50% recycling target has been met by 2022,

“in a manner which the Secretary of State considers appropriate.”

So far as I can tell from this SI—I invite the Minister to correct me if I am wrong—that will be the only action required if the UK fails to meet its targets. That would drastically erode the importance of the UK's obligation to meet the 50% target. Will the Minister give a cast-iron guarantee that, in the event that the 50% recycling target in the waste framework directive has not been met as required by 2020, the report that the Secretary of State must produce by January 2022 will include, as the directive would have required, the reasons for failure, the actions that the Government intend to take, and the date by which the target will be met?

Recent additions to EU legislation require member states to recycle staged, enhanced target percentages of municipal waste—55% by 2025, 60% by 2030 and 65% by 2035. If we are to maintain our current good standing as a nation and, depending on future trade arrangements, if we are to maintain some of our trade with the EU, particularly in the field of waste management, we need to ensure non-regression with the EU. Will the Minister give a cast-iron guarantee that those enhanced targets will form part of the UK statute book, alongside the current 50% target?

If an EU member state were to be found guilty of failing to meet its targets in a directive, the EU penalty formula would be applied—in this case, a maximum fine of about €700,000 every day if we do not meet the target in 2020 and continue not to meet it for a significant period. To try to replicate that level of deterrent, we would require a strong, accountable watchdog, completely independent of Government, with the power to impose significant financial sanctions on the Government, which would have to be spent outside the immediate remit of the responsible Department if it was to have any chance of concentrating the minds of those responsible for the targets in the Department for Environment, Food and Rural Affairs. This SI simply states that the Secretary of State must produce a progress report in a manner that they consider appropriate. That is a policy change. We are going from a compulsory and obligatory target with strict fines to an advisory target with no consequences for targets being missed. Will the Minister give us a cast-iron guarantee that the watchdog proposed in the Government's draft Environment (Principles and Governance) Bill will be set up within a reasonable timeframe and will have the power to impose actual and significant sanctions on the Government in the event of recycling targets being missed—including any missed before it came into operation?

Current EU legislation requires member states to report progress—a requirement that currently covers the entire UK—but the SI requires the Secretary of State to publish a report only on whether the UK target to recycle 50% of household waste by 2020 has been met with respect to England. It sets no obligation for the devolved Administrations to publish such a report. Wales is well ahead of England in meeting recycling targets and there is no reason to suppose that Scotland might not be well ahead of it in the future, but, while waste and recycling policy are devolved matters, there are UK-wide issues that will affect the Scottish and Welsh Governments' ability to continue to improve their levels of recycling. Will the Minister therefore give a cast-iron guarantee that the Government will work with the devolved Administrations to ensure that a UK-wide report is produced on the extent to which the 50% recycling target has been delivered by the 2020 deadline, as well as separate reports for each country?

Sir Bernard Jenkin: I am the Chair of the Select Committee on Public Administration and Constitutional Affairs, of which the hon. Gentleman was a member. He will recall how much work we did on trying to reinforce the linkages between Whitehall and the devolved Administrations and the relationships between the devolved Parliaments and this Parliament, and to create consensual frameworks around exactly the kind of thing that he is discussing. I hope that the Minister will treat his request extremely seriously.

Sandy Martin: I thank the hon. Gentleman for his intervention, and I am sure that if he agrees with me the Minister will be able to do so, too.

The Opposition are concerned about the potential significant weakening of the UK's obligations to meet existing EU recycling targets. No legislation is set to be in place on exit day to hold the Government to account for their action or inaction on recycling rates and other crucial environmental targets, and the least that we can do is demand a firm guarantee from the Minister that the Government intend to abide by them.

The Minister claims that the SI simply replaces the reporting requirements in the waste framework directive with an equivalent domestic requirement. However, in effect it changes the important recycling rate targets from obligations to advisory targets that can be easily ignored. We need strong targets that the UK must stick to, and an environmental watchdog that is funded, well resourced and independent of Government, to hold the Government to account. It will need the power to impose sanctions that will deliver real compliance with those important environmental objectives.

We are still waiting for the details of the office for environmental protection, and to know whether it will have powers to issue fines equivalent to the EU powers currently in operation. It should not solely be down to organisations such as ClientEarth, in the case of air quality, to bring cases against the Government for failure to hit their own targets. Only a statutory body with independent statutory powers will do. I await the Minister's response with interest.

11.53 am

Martyn Day (Linlithgow and East Falkirk) (SNP): It is a pleasure to serve under your chairmanship today, Mr Austin. I am grateful to the Minister for her summary

of the regulations before us, which deal with fairly complex areas. I am grateful also to the Opposition spokesperson for setting out their position. I find myself in some of the same territory, although not entirely.

I am grateful to hear about the respect for the devolution agreement, which is positive. However, I am left with some concerns about continuing uncertainty as to wider environmental protections post-Brexit, and about the possibility of backsliding on standards, if that is needed to secure trade deals in the future. That should not happen. The UK should work with the EU on maintaining the same or better environmental protection standards.

11.54 am

Dr Coffey: It is a pleasure to respond to the questions, starting with the hon. Member for Linlithgow and East Falkirk. The Government absolutely recognise the devolution arrangement. The hon. Member for Ipswich effectively complains that reporting requirements apply only to England, and is trying to get the UK Government to make sure other Administrations prepare reports. It is not our obligation to do so.

The 50% target is not advisory; it is already in domestic legislation, and that is not changing in any way. Such targets are not imposed on the United Kingdom; we vote for them in the Council. We also voted for the adoption of the circular economy package. We said in the resources and waste strategy that we intend to bring that package into effect, but the detail of the transposition of directives has yet to be resolved, because elements are still going through certain processes.

Sandy Martin: The Minister is well aware that, although it is certainly the case that EU targets are derived from decisions made by all EU members working together, which is why some of us believe that the EU is a fairly democratic body, none the less once those decisions have been made, they are imposed on the member states. Imposing something on a member state is very different.

Dr Coffey: I do not accept that—the decisions are not imposed on the United Kingdom. We have that system of decision making. It is a collaborative process at the moment, so they are certainly not imposed; we agree to them. That is why we put them into our legislation. The 50% target is already in domestic law.

The hon. Gentleman is right to praise Wales, which is ahead of the target already. At the moment, Scotland is the lowest of the four nations, but I know that active work is being done to improve that. We have already started to see improvements in Northern Ireland. I really hope that hon. Members are aware of the current consultations on how we are considering changing the recycling system, the exchange of producer responsibility, with the packaging recovery network process, and other fiscal measures that we believe will stimulate an increase in recycling.

The hon. Gentleman will be aware that the office for environmental protection is now going through pre-legislative scrutiny. The Secretary of State and I gave evidence yesterday to the Environment, Food And Rural Affairs Committee. We are due to give further evidence to the Environmental Audit Committee. We await their views, which we will consider as we go through to the

[Dr Thérèse Coffey]

next steps in the creation of the new body. It is worth pointing out that only the European Court has the ability to submit fines. To date, I am not aware of any fine that has been imposed on the United Kingdom regarding an environmental matter, although I recognise that we may have been on that journey in several places regarding infraction.

There is a desire to ensure that we improve recycling. I believe that the regulations do exactly what they are supposed to. As I said, we updated part 2 using the European Communities Act 1972. The rest of the regulations simply provide that what happens today will happen the day after exit day. It is important that we have that level of regulation, recognising the issues that have been raised about the challenges on what we need to do to ensure that we still have an effective waste system. I hope that the Committee will support the regulations.

Question put.

The Committee divided: Ayes 9, Noes 4.

Division No. 1]

AYES

Afryjie, Adam	Johnson, Gareth
Coffey, Dr Thérèse	Lewer, Andrew
Heaton-Jones, Peter	Parish, Neil
Hughes, Eddie	Stewart, Iain
Jenkin, Sir Bernard	

NOES

Debonnaire, Thangam	Hill, Mike
Dhesi, Mr Tanmanjeet Singh	Martin, Sandy

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

11.59 am

Committee rose.