

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT DETERGENTS (AMENDMENT) (EU EXIT)
REGULATIONS 2019

DRAFT DETERGENTS (SAFEGUARDING)
(AMENDMENT) (EU EXIT) REGULATIONS 2019

Tuesday 12 March 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

Saturday 16 March 2019

© Parliamentary Copyright House of Commons 2019

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: Ms KAREN BUCK

- | | |
|--|---|
| † Coffey, Dr Thérèse (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) | † Martin, Sandy (<i>Ipswich</i>) (Lab) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Paterson, Mr Owen (<i>North Shropshire</i>) (Con) |
| † Garnier, Mark (<i>Wyre Forest</i>) (Con) | † Perkins, Toby (<i>Chesterfield</i>) (Lab) |
| † Heald, Sir Oliver (<i>North East Hertfordshire</i>) (Con) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| † Jones, Mr David (<i>Chwyd West</i>) (Con) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| Kendall, Liz (<i>Leicester West</i>) (Lab) | † Trevelyan, Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con) |
| † Kerr, Stephen (<i>Stirling</i>) (Con) | |
| Lammy, Mr David (<i>Tottenham</i>) (Lab) | Dominic Stockbridge, <i>Committee Clerk</i> |
| † Mc Nally, John (<i>Falkirk</i>) (SNP) | |
| † McMorris, Anna (<i>Cardiff North</i>) (Lab) | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 12 March 2019

[Ms KAREN BUCK *in the Chair*]

Draft Detergents (Amendment) (EU Exit) Regulations 2019

8.55 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 Detergents (Amendment) (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to consider the draft Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019.

Dr Coffey: It is a pleasure to serve under your chairmanship, Ms Buck. The first statutory instrument relates to reserved matters. The second SI relates to devolved matters, and the devolved Administrations have consented to that SI. Devolved Administrations have also been involved in the preparation for and discussions about the first SI.

This is one of a number of affirmative SIs 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 the legislation that controls the placing on the market of detergents and that would otherwise be left inoperable so that, following our exit from the EU, the law will continue to function as it does today.

As the Committee will see, these SIs make many adjustments, but I can assure the Committee that they represent no change of policy and will not have any impact on businesses or the public.

The territorial extent of this provision is the United Kingdom, and the provision applies to all of the United Kingdom. Health and Safety Executive officials engaged with representatives of the main trade association with an interest in detergents and cleaning products, and no particular concerns were expressed at that time in relation to detergents.

The EU regulation on detergents establishes common rules to enable detergents and surfactants to be sold and used across the EU. Technical changes are made in these instruments to ensure the continuation of standards and requirements in relation to the placing on the market of detergents and to provide clarity for manufacturers.

Regulation 1 of the first SI makes introductory provision, including for the commencement date. In part 2, regulation 2 amends the domestic Detergents Regulations 2010, which provide for enforcement of the EU detergents regulation and related penalties. The amendments make corrections to the domestic regulations to reflect the fact that they will now be cross-referring to retained EU law, rather than a directly applicable EU regulation.

Part 3 of this SI amends EU detergents regulation EC 648/2004. Regulation 3 of the SI defines terms used throughout the instrument. Regulations 5 and 6 remove references to the free movement of detergents in the EU internal market and to the Union customs territory in articles 1 and 2. Regulation 7 refers to changes to article 3 that cross-refer to a number of other pieces of EU legislation, some of which are out of date and are updated through this instrument. Provision about manufacturers of detergents being established within the Community is omitted. After exit, a manufacturer established in the UK will no longer be an operator established in the EU, and as a consequence it would not be appropriate to have that as a requirement.

Regulations 8 and 9 amend articles 5 and 6 on the derogation provision. If a surfactant passes the primary biodegradability test but fails the ultimate biodegradability test, the manufacturer can apply for derogation, which the Commission has a power to consider granting for a product in line with certain criteria. That function is to be transferred to the Secretary of State.

Regulation 10 amends article 7, transferring functions of the Commission. The Secretary of State will have power to determine disputes about testing methods for a product, taking expert advice as appropriate. Provision is included for the manufacturer to appeal that decision by the Secretary of State to a domestic court.

Regulation 11 amends article 8 about the duties of the member states to notify to the Commission the list of approved laboratories that are authorised to carry out the tests required by the regulation. Provision is made so that tests required by the regulation may be carried out by approved laboratories, and there is a requirement for the Secretary of State to publish that list. In practice, the HSE will publish the list, as it undertakes the regulatory work under an agency agreement with the Department for Environment, Food and Rural Affairs.

Regulation 12 amends article 9 on the information to be provided by manufacturers. Paragraph 3 of article 9 requires that manufacturers placing detergent products on the market shall make available an ingredient datasheet, and provides that member states may request that such a datasheet be made available to a specific public body to which the member state has assigned the task of providing the information to medical personnel. The article is amended to refer specifically to the National Poisons Information Service or any other such body that the Secretary of State or the devolved Administrations may assign for that purpose. The NPIS already undertakes that role across the United Kingdom.

Regulation 13 amends article 10, on control measures, to ensure the compliance of detergents with the provisions of the regulation. The Secretary of State must make a decision as to whether a test concerned produced a false positive result. Advice to the Secretary of State will be provided by HSE, which is already well established in this area. An appeal provision for the manufacturer is provided. Regulation 14 amends article 11, on labelling, to provide that the information specified in this article must be in English. Regulation 15 omits article 12, which is no longer appropriate as it is an EU institutional working procedure.

The power of the Commission under article 13 to adapt the annexes to the regulation in line with scientific and technical progress is transferred to the Secretary of State by regulation 16. The Secretary of State will be able to

do so by making a statutory instrument. Regulation 17 omits article 13(1), on the power of the Commission to adopt delegated Acts, and article 14, which contains provision about the free movement of detergents within the European Union. Regulation 18 omits article 16, on the Commission's reporting assessments of the regulation to the European Parliament and Council. That refers to reports that the Commission had to have completed by 2014 and 2016. Regulation 19 omits article 17(4), which provides for repeal by member states of transposing measures for superseded directives on detergents. In effect, this is a legal tidying up exercise for what will be retained EU law.

Regulation 20 omits article 18, which requires member states to prescribe penalties for infringements of the regulation. Enforcement mechanisms for the UK were set out in the Detergents Regulations 2005. Regulation 21 inserts a new article 18A into the retained EU version of the regulation on appeals. With regard to determinations on testing, provision is included for the manufacturer to appeal that decision by the Secretary of State to a domestic court. Regulation 22 amends article 19, which is a standard provision about entry into force of the regulation.

Regulations 23 to 29 amend annexes 1 to 8 to the regulation. The annexes to the regulation contain technical detail, such as the required detail of the labelling and ingredient datasheet, as set out in annexe 7, and labelling provisions for consumer automatic dishwasher detergents, as set out in annexe 7B. The annexes contain references to various technical standards and other pieces of EU legislation and are being amended to make them operable, such as by removing references to member states. Out-of-date references have also been updated.

The draft Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019 have been tabled on behalf of the four Administrations. The safeguard clause was introduced for member states to take provisional measures in relation to those detergents which, while fully compliant with the EU regulation, were deemed to pose a risk to the safety of humans, animals or the environment. Currently, member states intending to use the safeguard clause must immediately inform the Commission, documenting their reasons. The safeguard clause in article 15 of the detergents regulation is amended by the draft instrument, otherwise it would be an inoperable part of retained EU law because, as it stands, it refers to member states and the European Commission. It is amended to reflect arrangements in domestic law.

Regulation 1 of the draft instrument makes introductory provision. Regulation 2 provides a definition of terms used throughout the draft instrument. Regulation 3 amends article 15 of the detergents regulation. The Secretary of State and the devolved Administrations will have the full powers currently held by the European Commission and member states to initiate safeguarding action across the UK in relation to detergents. The Secretary of State and the devolved Administrations—where the matter is devolved—will be able to take urgent, temporary restrictive action in relation to products through this amended safeguard clause.

The draft instruments address technical deficiencies, do not introduce new policy and preserve the current regime, therefore providing legal clarity, certainty and continuity to businesses and the public. I commend them to the Committee.

9.3 am

Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck. These draft instruments are largely non-contentious, and it would be easy to rush them through with very little scrutiny. However, there is a danger, even with SIs as straightforward-looking as these, that the changes proposed will in fact fail to enshrine the same protections in UK law as currently exist in EU law. The fact that we are addressing so many SIs over such a short period of time makes that possibility of failure all the greater.

Protecting our human health and our natural environment from inappropriate and dangerous detergents is absolutely crucial. The existing EU regulations are detailed and fairly restrictive. If it operates properly, the draft Detergents Amendment (EU Exit) Regulations 2019 should ensure that all the protection we currently enjoy from the EU will continue under UK law. The Opposition would certainly support that. I would like an assurance from the Minister that the UK Government have no intention of relaxing any of the regulations at any stage in the foreseeable future.

As EU members, we could rely on all future UK Governments being bound by the regulations, which are clearly in the best interests of the whole of Europe, with a degree of certainty that may not be quite so great if the decision is simply down to one country's Government. Leaving the EU also makes it far more difficult for the UK to persuade other European countries to adopt higher standards if that becomes our position.

The corollary to the environmental and health protection is the provision of equal standards across the EU that enable detergents and surfactants to be produced and traded across the EU. To maintain the economies of scale necessary to enable detergents to be manufactured in the UK at a competitive price, most manufacturers will need to continue to meet the requirements of the EU market. In that regard, I am concerned about the passing of the power to make derogations in the UK to the Secretary of State, albeit that it will be administered by the Health and Safety Executive in practice. Will the Minister assure me that derogations of that sort will not have the potential to undermine the UK's ability to produce and export detergents to the EU market?

We would also like to know whether the Minister believes that any changes in the regulation of detergents in the EU in future should be mirrored by similar changes in UK regulations. If not, what impact does she believe any future divergence will have on the ability of the UK to manufacture and trade detergents?

The power to make derogations, and the need to make amendments in future, will take expertise and diligence. Does the Minister believe that the HSE will receive additional resources to take on that additional workload post Brexit? Given that the HSE's remit is to protect human health rather than to protect the environment per se, what scrutiny will there be of the effects of any future changes or derogations on the health of the natural environment?

The safeguarding SI is simple, straightforward and wholly sensible, and we support it. I am not aware of any element in the SIs with which we would disagree, but we will abstain due to our concerns about the limited means of scrutiny offered by the timeframe within which they are being presented, and the lack of any possible in-depth examination of the implications.

9.7 am

John Mc Nally (Falkirk) (SNP): It is a pleasure to serve under your chairmanship, Ms Buck. It is worth noting that the regulatory powers will be devolved to the relevant Administrations, so they will be going in their own direction, particularly in the areas of the environment and public health. We need to uphold these things in Scotland as much as possible.

The Environmental Audit Committee went on a visit to Washington. We were told by every agency bar one that we need to preserve REACH at all costs and that the regulations need to be tightened as much as possible. We subsequently heard that something like 100,000 companies had re-registered in Ireland because of Brexit complications. Can the Minister give us reassurance that she has had visitations from the chemicals industry about REACH and that she has provided it with assurances that standards will be maintained?

9.8 am

Dr Coffey: In response to the hon. Member for Falkirk, I have not had direct representations from the detergents industry specifically, but as I shared with the Committee, HSE has had those discussions and seems content—this is about business continuity.

I assure the hon. Member for Ipswich that we will not relax environmental standards. There is no need to do so. I am not aware that the derogation is being used in this country, and I think it is probably only rarely used across the European Union. I do not anticipate a sudden flurry of applications given that, as he said, many manufacturers will want to ensure that their products can be sold as widely as possible.

Discussions are happening on future divergence and mirroring EU laws. In essence, as has been said, particularly in respect of the withdrawal agreement, Parliament will have to make those choices. It is not the case that measures will go through automatically—I anticipate that we will vote on those matters. What does future divergence mean? I will not rule out future divergence—that is a decision for future Parliaments—but I anticipate that most businesses whose main market is other parts of the European Union will follow the market, as long as a product is acceptable in this country. They will always have to comply with the rules of the European Union if that is the market in which they wish to sell.

On HSE and additional requirements, HSE already does the work and we believe that any additional work will be minimal. In effect, this is the day job—HSE already undertakes those obligations on our behalf as an agency contracted into the Department of Environment, Food and Rural Affairs.

I have covered the questions asked by the hon. Gentlemen, and therefore believe we can agree the SIs.

Question put and agreed to.

**DRAFT DETERGENTS (SAFEGUARDING)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019.—
(*Dr Thérèse Coffey.*)

9.11 am

Committee rose.