

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Twentieth Delegated Legislation Committee

DRAFT STATE AID (AGRICULTURE AND FISHERIES) (AMENDMENT) (EU EXIT) REGULATIONS 2019

Tuesday 19 March 2019

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab)	† Jones, Darren (<i>Bristol North West</i>) (Lab)
† Debonnaire, Thangam (<i>Bristol West</i>) (Lab)	† Jones, Graham P. (<i>Hyndburn</i>) (Lab)
† Docherty-Hughes, Martin (<i>West Dunbartonshire</i>) (SNP)	† Morris, David (<i>Morecambe and Lunesdale</i>) (Con)
† Duguid, David (<i>Banff and Buchan</i>) (Con)	† Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op)
Eagle, Ms Angela (<i>Wallasey</i>) (Lab)	† Pursglove, Tom (<i>Corby</i>) (Con)
† Goodwill, Mr Robert (<i>Minister for Agriculture, Fisheries and Food</i>)	† Stewart, Iain (<i>Milton Keynes South</i>) (Con)
† Hall, Luke (<i>Thornbury and Yate</i>) (Con)	Yasin, Mohammad (<i>Bedford</i>) (Lab)
† Harper, Mr Mark (<i>Forest of Dean</i>) (Con)	Dominic Stockbridge, <i>Committee Clerk</i>
† Hoare, Simon (<i>North Dorset</i>) (Con)	
† Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con)	† attended the Committee

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Tuesday 19 March 2019

[MR LAURENCE ROBERTSON *in the Chair*]

Draft State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

8.55 am

The Minister for Agriculture, Fisheries and Food (Mr Robert Goodwill): I beg to move,

That the Committee has considered the draft State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019.

I make my debut, once again, Mr Robertson; the Government are very much in favour of recycling, and here I am.

The regulations are one of a number of affirmative statutory instruments to be considered as the UK leaves the EU, made under the European Union (Withdrawal) Act 2018. The SI makes technical, legal amendments to maintain the effectiveness and continuity of retained EU legislation, so that following our exit from the EU the law will continue to operate effectively. I assure the Committee that the adjustments contain no policy changes, nor will they have any significant impact on businesses or the public.

The instrument refers to specific state aid regulations on agriculture and fisheries. It does not make provision for the broader domestic state aid framework, which is addressed in the State Aid (EU Exit) Regulations 2019. That instrument, laid by the Department for Business, Energy and Industrial Strategy, passed through the upper House last week. It transfers monitoring and reporting functions from the European Commission to the UK domestic state aid regulator, the Competition and Markets Authority—ably chaired by our former colleague, the now Lord Tyrie—and provides the framework for the instrument we are discussing today. I hope, Mr Robertson, you will agree that wider questions about the new domestic state aid regime are not, therefore, within the scope of the debate. I will endeavour not to be tempted if right hon. and hon. Members raise questions along those lines. The House will have the opportunity to debate the BEIS framework state aid instrument in due course.

The relevant EU regulations covered by the instrument we are discussing fall into three groups. The first consists of two block exemption regulations that currently exempt certain categories of agricultural and fisheries funding from the state aid requirement under articles 107 and 108 of the treaty on the functioning of the European Union: Nos. 702/2014, the agricultural block exemption regulation, and 1388/2014, the fisheries block exemption regulation. With the second group, the amended legislation provides that agricultural and fisheries aid under a certain *de minimis* threshold does not constitute state aid under agricultural, and fisheries, *de minimis* regulations, Nos. 1408/2013 and 717/2014 respectively.

Finally, the statutory instrument amends state aid clauses in some of the common agricultural policy regulations, exempting funding provided under those regulations from the state aid requirement under articles 107

and 108 of the treaty on the functioning of the EU, and also ensures the proper operation of those funding arrangements. Those regulations are 1303/2013, the CAP common provisions regulation; 1305/2013, the rural development regulation; 1307/2013, the direct payments regulation; and 808/2014, the implementing regulation under the rural development regulation.

The statutory instrument corrects deficient references throughout the retained agriculture and fisheries state aid regulations to, for example, the Commission, member states and the internal market. For instance, in regulation 5 of the agricultural block exemption regulation, references to “Commission notices” are being replaced with references to “Competition and Markets Authority statements of policy”.

The SI also transfers a number of minor Commission functions to the domestic regulator. For example, regulation 1(4)(a) of the agricultural block exemption regulation provides that when the UK has exceeded its annual state aid budget certain categories of aid are exempted from state aid rules for six months only, unless the Commission extends the period, and the SI gives the Competition and Markets Authority the power to extend that period.

I emphasise that the instrument corrects deficient references in retained EU regulations from day one. We have not made any substantive policy changes. I underline the fact that the legislation ensures that all exemptions continue. As we leave the EU, the amended regulations will ensure that the agriculture and fisheries state aid exemptions are operable in the UK, which will give continuity and greater certainty to businesses across the UK. I therefore commend the instrument to the Committee.

9 am

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Robertson. I welcome the Minister to his re-debut. As is normal when the Opposition respond in a statutory instrument Committee, I place on record our concerns about the speed and volume of statutory instruments being pushed through the Commons, and our fear that, within those SIs, there could be a little nugget that might otherwise have been caught with greater scrutiny and which could have severe consequences in the future.

Thangam Debonnaire (Bristol West) (Lab): I thank my hon. Friend for giving way, unusually to his Whip, but on that point, does he agree that it is concerning that the Fisheries Bill and the Agriculture Bill appear to be missing in action? Will he join me in placing on record our concerns about those Bills being missing and about how they might relate to the SI?

Luke Pollard: My hon. Friend the Member for Ipswich (Sandy Martin) said yesterday that the Agriculture Bill is stuck in the long grass and the Fisheries Bill has sunk without trace. Notwithstanding the play on words, the mysteriousness is certainly true. Many of the SIs that we are considering are designed to fit into an administrative jigsaw alongside those two pieces of primary legislation, but they are nowhere to be seen. It would be good if the Minister, as the new Minister with responsibility for those Bills, confirmed on the record when he expects them to make a comeback. SIs such as this need to fit

neatly with the provisions in primary legislation, and if we cannot see what the primary legislation looks like—especially if the cause of the Bills’ long delay is that the Government are rethinking large parts of them—it is uncertain how the implementation of the SIs will fit perfectly with it.

I appreciate that the Minister has said that the SI makes no new policy changes, but I have a few questions about how it will be implemented. Unfortunately, he dangled the hook of asking technical questions about the implementation, which I will take him up on, with apologies to him and his officials.

In a similar SI on state aid last week, the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, Lord Henley, said:

“The main practical change under the new regime is that the rules will be regulated by the CMA. To prepare for EU exit and its new state aid role, the CMA received £20 million for 2019-20. This is in addition to the £23.6 million it received for 2018-19. The Government are working to ensure that the CMA will be ready to take on this new role and have every confidence in its ability to do so.”—[*Official Report, House of Lords*, 14 March 2019; Vol. 796, c. 1146.]

That was a fine assertion from the Minister, but I would be grateful if this Minister also confirmed that he believes that the CMA has sufficient resources in place, and has hired sufficient additional staff to ensure that implementing the SI will not be put on the backburner, but will be done properly.

Concerns have been expressed by stakeholders in that regard. Dr Liza Lovdahl-Gormsen from the British Institute of International and Comparative Law talks about the significant challenges that the CMA will face at an administrative level, including the real risk of being under-prepared and under-resourced to take on the duties of the Commission. That is also our concern, as I will explain when I come to the SI’s implementation.

Dr Lovdahl-Gormsen sets it out that the challenges facing administrative bodies in the UK, particularly the CMA, can be understood as possessing three key dimensions: internal organisation issues, external co-ordination issues and substantive legal issues. She and her colleagues argue that, in many instances, those three dimensions will be in tension with one another, so the reality of reforming administration post-Brexit will involve trade-offs between questions of internal organisation, external co-ordination and substantive law. I would be grateful if the Minister addressed whether any of the challenges set out by Dr Lovdahl-Gormsen apply in relation to the powers contained in the SI.

The Minister will know—or if he does not, he will get used to it, because it happens quite a lot in SI Committees where I speak on behalf of the Opposition—that I remain concerned about there being no impact assessment. The explanatory memorandum states the SI has

“no, or no significant, impact”,

and also that no impact assessment has been done. The tension between confidently asserting that there is no impact, when there could be some, and saying that there is no impact assessment does not sit well with me. I know that in many cases the problematic tension comes from the text required by the House, but as the Government control the House—at least in theory—changes could be made to help hon. Members and those watching our proceedings to understand the distinction there.

In regulations 29 to 46, references to aid co-financed by the European Agricultural Fund for Rural Development—the EAFRD—are substituted with a loose ambition of “support for rural development”, which is not accompanied by any firm or tangible objectives. I would be grateful if the Minister set out how he intends to make that clearer. The EU framework for rural development programmes follows six priorities, and “support for rural development” in no way replaces the EAFRD’s objectives. Will the Minister set out how he intends to do that?

Those six objectives are good principles for rural stewardship. They are: fostering knowledge transfer and innovation in agriculture, forestry and rural areas; enhancing the viability and competitiveness of all types of agriculture, and promoting innovative farm technologies and sustainable forest management; promoting food chain organisation, animal welfare and risk management in agriculture; restoring, preserving and enhancing ecosystems related to agriculture and forestry; promoting resource efficiency and supporting the shift toward a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors; and promoting social inclusion, poverty reduction and economic development in rural areas.

I hope that the Minister and members of the Committee realise that that is a much more comprehensive and important list of priorities than the simple phrase “support for rural development”. My concern is that some of the detail of those important programmes and priorities could be lost within such a vague, catch-all title.

Although Brexit presents an opportunity to re-write some of the rural objectives outside the CAP, Opposition Members have concerns about how that will be done without the firm commitments to supporting rural development I have just outlined, and which will be lost when the CAP moves off. I realise that some of those commitments may be contained within a refreshed agriculture Bill, but, as I noted earlier, without such a Bill it is hard to see the deletion from one set of principles and insertion into another that would greatly aid our scrutiny of the SI.

In the Fisheries Bill, we see that the Government have made no commitment to matching the current funding from the European maritime and fisheries fund, which is essential for so many of our coastal fishing communities and the facilities infrastructure they rely on. In Plymouth in my constituency, EMFF funding has been instrumental in providing a new ice plant at Sutton harbour, which has been important in ensuring that fishers have the ability to get good-quality ice, which enables them to sell their products. Without the commitment to replace every single penny of EMFF funding, there is a concern that state aid rules, however drafted, may cause problems, because less money will be available to those coastal communities. Will the Minister set out when he will be in a position to announce whether the EMFF funding will be cut? We have seen with the agricultural subsidies that rural communities could lose 40% of the current subsidy level under the new public goods scheme.

Also on EMFF funding, I would also be grateful if the Minister set out, in relation to state aid rules, what criteria will be used, what projects and beneficiaries might be identified, and what sums will be made available. Is it the Government’s intention in their negotiations that, if we are to leave the European Union, parts of the

[Luke Pollard]

UK will be able to continue bidding into European-funded projects, as in Norway? The Minister's predecessor had a particular penchant for the Norway option in relation to the promotion of Brexit; I have not yet got to the bottom of where this Minister stands, but the example of Norway is a good one in understanding how, or whether, our farmers would be able to access European funding.

What constitutes state aid is a deeply political issue that has been debated on the Floor of the House and in Committee Rooms more than once. My noble Friend Lord Stevenson of Balmacara, when debating the State Aid (EU Exit) Regulations 2019, said:

"It is generally recognised that state aid can do more than simply reduce distortions in competition. It can enhance public welfare, address inequalities, allow for investment in research and development for which there is no direct benefit to individual companies—which is probably therefore a public good—and address inequalities across various areas and regions."

My noble Friend continued:

"Who has the power to set the framework under which the state aid is to operate? I have already mentioned that variable limits exist across the EU at the moment. There is no absolute limit on what you can spend. There are general rules. These are all matters which should surely have political rather than administrative control. Where will that lie? As I understand it, Parliament will not have a role in this. This matter is being devolved solely to the Secretary of State, who can issue guidance on what is or is not state aid. That surely needs some further check."—[*Official Report, House of Lords, 14 March 2019; Vol. 796, c. 1150-52.*]

I would be grateful if the Minister set out what level of parliamentary scrutiny will be applied to any changes to the Government's definition of state aid in respect of agriculture and fisheries, and what opportunities there will be for hon. Members to debate that to ensure that that definition is appropriate for all parts of our United Kingdom.

The Opposition do not intend to oppose the SI, but I would be grateful if the Minister provided clarity to ensure that there is good scrutiny of the provisions and that some of the concerns raised can be addressed.

9.11 am

Martin Docherty-Hughes (West Dunbartonshire) (SNP): It is good to see you in the Chair, Mr Robertson. I will not take up too much of the Committee's time. Following what has just been said by the Opposition spokesperson, I am sure the Minister will appreciate that, although there is a need for continuity, there is still, at least on these Benches, opposition to withdrawal from the EU.

Nevertheless, in practical terms, the official Opposition have raised important points that need to be answered. Replacement of the European maritime and fisheries fund and how that relates to the devolved settlement raises grave concerns about design, implementation and involvement. Will the Minister say who has been involved in the design, whether that be the Scottish Government, the Welsh Government or the civil service of Northern Ireland?

Will the Minister also advise which elements will be devolved and if there is a timeframe for that? In relation to the devolved settlement, will the Minister be clear where in terms of the SI, the Scottish Government, the Welsh Government and specifically the civil service of

Northern Ireland, given that there is not a sitting Government there to hold to account, have been involved? Will the Minister explain where that settlement is going?

9.12 am

Mr Goodwill: I thank the hon. Member for Plymouth, Sutton and Devonport for the constructive way that he has approached this matter. The questions he asked me were precisely those that I asked my officials, to be reassured that nothing is changing.

The hon. Gentleman spoke about the speed and volume of the SIs. I apologise that there is so much legislation that we must transfer from the competence of the European Union so that we can take back control of some of these measures. I can reassure him that there are no missed nuggets. Indeed, one nugget that we did spot was the change that is under way in the European Commission to increase the de minimis fishing limit from €25,000 to €30,000 and we have managed to include that.¹

The hon. Gentleman talked about progress on the Agriculture Bill and the Fisheries Bill. I am also keen to make progress and this SI relates to some of the measures that we could implement through the Agriculture Bill in particular, so that we can deploy taxpayers' resource to deliver those public goods that we all want to see as a way to continue agricultural support. We are keen to schedule that business and particularly keen, as I discussed earlier, not to lose all the hard work that has been done.

The hon. Gentleman also talked about resources for the CMA. I can reassure him that the CMA has been allocated £20 million for 2019-20 to prepare for EU exit, which includes resources for setting up its new state aid function. That is in addition to the £23.6 million allocated for the financial year 2018-19. The SI heads off potential challenges to the CMA over what could be described as illegal state aid because it now makes it legal state aid. I am talking about, for example, the subsidies that farmers get—the greening schemes and the aid for the fishing industry—and the SI allows for that without its being illegal state aid.

The hon. Gentleman talked about the impact assessment. We did not do one because nothing has changed. All we are doing is transferring responsibilities from the European Commission to the CMA. If we did not pass the measure today, that would change and there would be additional work for the CMA. On rural development, we intend to maintain the aims of the work that is being done. We are not making any changes as we leave the EU. We will maintain the status quo as we leave. The rural development regulations are being rolled over by other SIs.

The hon. Gentleman talked about the EMFF. The Secretary of State announced on 10 December four schemes comparable with the EMFF to support industry from 2021 onwards. The funding quantum will be set following the spending review in 2019.

The hon. Member for West Dunbartonshire is understandably concerned that the measure might be seen as a land grab by the Westminster Government, but if he peruses page 4 of the document he will be reassured to read that article 2B states:

"In relation to Scotland, in respect of areas within devolved competence, the competent authority is the Scottish Ministers", and the same will apply to Wales. As somebody who has just finished being a member of the Northern Ireland Affairs Committee, I share his concerns about the need

1. [*Official Report, 29 March 2019, Vol. 657 c. 5MC.*]

for a restoration of the devolved Administration in Northern Ireland so that they can make the decisions. Currently the civil service in Northern Ireland—the Department of Agriculture, Environment and Rural Affairs in the case of agricultural policy—is in effect on automatic pilot. It is becoming more and more difficult for it to navigate a way forward, given that the co-ordinates it is using were set when there was an Administration in place.

Martin Docherty-Hughes: I am grateful to the Minister for what he has said, but I ask him again: has his Department discussed the SI with the civil service in Northern Ireland?

Mr Goodwill: Yes. We continue to have close contact with the devolved Administrations, whether they have been democratically founded or whether we have the situation that exists in Northern Ireland. I can reassure the hon. Gentleman that I spoke to Fergus Ewing, who is responsible for this matter in Scotland, and I look forward to having a productive and cordial relationship with Mr Ewing, whom I found to be very positive about what we can do together to deliver not only for Scottish agriculture, but for Scottish fishermen.

I think I have covered the points made.

Question put and agreed to.

9.18 am

Committee rose.

