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OFFICIAL REPORT

Tenth Delegated Legislation Committee

DRAFT LIVESTOCK (RECORDS, IDENTIFICATION
AND MOVEMENT) (AMENDMENT) (EU EXIT)
REGULATIONS 2019

Tuesday 26 March 2019

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The Committee consisted of the following Members:

Chair: MR GEORGE HOWARTH

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| † Cunningham, Mr Jim (<i>Coventry South</i>) (Lab) | † Rutley, David (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Scully, Paul (<i>Sutton and Cheam</i>) (Con) |
| † Drew, Dr David (<i>Stroud</i>) (Lab/Co-op) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| Farrelly, Paul (<i>Newcastle-under-Lyme</i>) (Lab) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | † Swayne, Sir Desmond (<i>New Forest West</i>) (Con) |
| † Keegan, Gillian (<i>Chichester</i>) (Con) | † Syms, Sir Robert (<i>Poole</i>) (Con) |
| † O'Hara, Brendan (<i>Argyll and Bute</i>) (SNP) | † Twigg, Derek (<i>Halton</i>) (Lab) |
| Pearce, Teresa (<i>Erith and Thamesmead</i>) (Lab) | |
| † Philp, Chris (<i>Croydon South</i>) (Con) | Jack Dent, <i>Committee Clerk</i> |
| † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) | † attended the Committee |

Tenth Delegated Legislation Committee

Tuesday 26 March 2019

[MR GEORGE HOWARTH *in the Chair*]

Draft Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019

8.55 am

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (David Rutley): I beg to move,

That the Committee has considered the draft Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019.

Mr Howarth, it is, as always, a pleasure to serve with you in the Chair. The European Union (Withdrawal) Act 2018 enables the Government to provide continuity and legal certainty by bringing EU legislation into UK law as retained EU law and to fix any legal deficiencies in the retained texts that exist as a consequence of EU exit.

The statutory instrument makes operability amendments to retained EU legislation on the identification and traceability of livestock, especially for cattle—all bovines—sheep and goats, so that it continues to function correctly on our statute book after the UK exits the European Union. Pigs are not mentioned in the SI, because EU legislation on pig identification and traceability has been fully transposed into UK law, as it originated in a European Community directive.

EU legislation in this area consists of an EU Council regulation for bovines, and one for sheep and goats. Underneath them sit Commission regulations or decisions that set out more technical details. In summary, the Council regulations prescribe regimes to help to control disease outbreaks by ensuring that the movements of farmed bovines, sheep and goats can be traced. To do that, they say how and when animals are identified, what records their keepers shall maintain and when they must report movements to a competent authority. The Commission regulations that sit below them address such details as criteria for selecting farms for compliance inspections, rules on ear-tagging and passports for bovines, and technical standards for electronic ID tags used for sheep.

I should make it clear that the changes being made to the retained law are technical operability changes. They include such matters as changing references to “Member States” to “the appropriate Minister” or to “the United Kingdom”, “Community rules” to “rules set out in retained EU direct legislation” and so on.

The EU legislation to be retained is directly applicable in each member state. As animal health policy and its delivery are a devolved competence, each territory of the UK enforces them via its own separate existing SIs, and will continue to do so with the retained law. The devolved Administrations were fully involved in the preparation of the instrument, and their Assemblies have consented to its being made.

I should also emphasise that the SI does not introduce new policies. The current rules that livestock keepers or businesses must comply with will be unchanged by the SI. The UK Administrations have plans to modernise our respective livestock traceability systems and rules over the coming years—for example, to make them more digital. That work is not affected by the content of the SI, which is about maintaining the status quo.

I will now address points made about the SI by the Committees that sifted it as a negative procedure SI in December: the Commons European Statutory Instruments Committee and the Lords Secondary Legislation Scrutiny Committee. Both Committees considered that it met the requirements to be changed to an affirmative SI, because they saw it as conferring significant new legislative functions on Ministers and allowing Ministers to charge for certain controls.

On the first point, the Committees considered amendments made by the SI as conferring new legislative functions on Ministers in the UK, in the Department for Environment, Food and Rural Affairs or in the UK devolved Administrations. In practice, animal health policy is a devolved competence in the UK. How that function is exercised is therefore already a matter for devolved Ministers. The changes made by the SI simply clarify that the delivery of livestock ID and movement functions will, as now, be for the appropriate Ministers in the UK: the Secretary of State at DEFRA, Welsh and Scottish Ministers, or Ministers in the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

The transfer of legislation-making functions—the ability to make policy changes in the future—from the Commission to appropriate Ministers in the area of retained animal health law is effected by a different affirmative SI, which some of us may remember, that was approved by this House on 27 February: the Animals (Legislative Functions) (EU Exit) Regulations 2019.

Thangam Debbonaire (Bristol West) (Lab): I remember it!

David Rutley: The hon. Member for Bristol West shows how assiduous she is in her duties by remembering that SI. Excellent! That is particularly good at such an early hour in the morning in Parliament.

On the second point, both Committees noted that the draft SI contains a charging power, with the Commons sifting Committee noting that Regulation 4(12) has the effect of allowing Ministers to charge to cattle farmers the costs of systems set up to identify and register cattle and trace their movements. I simply note that although that possibility is set out in article 9 of the retained Council regulation on the identification and registration of bovines, charging for those controls is not the policy of present and past UK Administrations. There are no plans to make it so.

The power to make EU exit SIs exists to fix deficiencies in retained law that there would otherwise be as a consequence of EU exit. The existence of the charging power is not such a deficiency. The change that article 4(12) of the draft SI makes to that provision is to change the term “Member States” to “appropriate Minister”. The SI has also been considered by the Joint Committee on Statutory Instruments, which has made no observations on it.

Key stakeholders, including farming unions and sector bodies, were informed in the early stages that this instrument was being prepared. None has commented on drafts of the instrument during its preparation. Given that it is concerned simply with ensuring that the retained EU legislation is operable, and as the changes it makes entail no changes to the day-to-day rules that keepers comply with or to the systems they use to record and report movements, that is understandable. The stakeholders have been much more focused on, and involved with, our plans to develop our livestock movement tracing systems over the next few years but, again, they are not part of the SI. An impact assessment has not been produced for the draft instrument, as it will have no impact on the livestock or other sectors.

The SI will ensure that the law on livestock identification and traceability, as retained, will continue to function correctly after we leave the EU. For the reasons that I have set out, I commend the draft regulations to the Committee.

9.2 am

Dr David Drew (Stroud) (Lab/Co-op): I am delighted to serve under your chairmanship, Mr Howarth. It is good to see the Minister in his place—I am glad he is still there and that DEFRA remains intact, unlike most other parts of the Government. We are thankful for that at least.

I give the usual caveat: that the draft regulations are one of those bits of secondary legislation that in themselves are minor, but if the Government get them wrong they shut down the country. We saw that with both BSE and foot and mouth. It is therefore not unimportant that we give the correct scrutiny.

I am intrigued by what the Commons European Statutory Instruments Committee said about the draft regulations. I slightly disagree with the Minister. To quote from the Committee's report of 27 November, paragraph 4.5,

"The Committee disagrees with the Department's position set out in the accompanying Explanatory Memorandum to this proposed negative statutory instrument, which states that the amendments made by this instrument are 'minor and technical'. In the Committee's view, this instrument makes significant amendments, and is required by law to be subject to the affirmative procedure"—

Which, of course, is why we are in Committee today. The draft regulations were seen to be of greater importance than the Government placed on them in the explanatory memorandum.

The important functions we are looking at, to go back to what the sifting Committee said, include

"determining mandatory time periods; extending time periods, derogating from obligations, and adding to criteria set out in legislation; creating obligations; and laying down rules on penalties for breaching obligations set out in legislation."

We will start with charges. The Minister said that the Government have no intention of charging for cattle, but the draft SI—unless I am wrong—will give the mechanism by which the Government could impose charges. That is why we need to be careful about what we allow through today.

As always, I have a number of queries and questions, which relate to the nature of the disease control that we are talking about, how to report animal movements and which competent authorities are to look at how that will be done. I start with the obvious point: this will not be

carried out at no cost. What are the financial implications of the transition? What authoritative body will oversee the costs of databases and new mechanisms for monitoring the movement of animals? Will it be the Rural Payments Agency or some other body?

The Lords sifting Committee was particularly critical about some of the issues. It picked up on the fact that the Government have the means to charge fees to cover the cost of identification and registration of cattle—the point is not that they will, but that they have the means to do so. I have already touched on what the Commons sifting Committee said.

Regulation 1760/2000 is amended by two different instruments because it covers two discrete areas: identification and registration of bovine animals, and the labelling of beef and beef products. These areas have been worked on separately by DEFRA. Although we are looking at one SI today, it is something of a composite because the two different areas have been brought together.

What are the timetables for these two different areas and do they coincide? Is there any flexibility in how the timetables can be operated? Again, the instrument makes it clear that this is a devolved matter. It is good that the Scottish National party is represented here; no doubt it will have something to say about the impact on Scotland.

Will there be transparency between the different Administrations? So far, England and Wales seem to do reasonably similar things; Scotland does its own thing; and Northern Ireland is completely hamstrung by the absence of an Administration—effectively, it is being administered through Whitehall. Will there be transparency in how this new arrangement will work as we move from being a member state to being an independent nation looking at our own thing?

The Government have said that no charges apply for different animals—sheep, goats and pigs. Nevertheless, there are 12 separate legislative changes in the instrument. Who will defray the costs? There is a change, and we will come to what the National Pig Association says. The Minister said this does not relate to pigs, but why not? Pigs should be covered. The NPA said that the direction of travel through the Agriculture Bill implied certain things, and yet pigs are left out of this SI. The NPA's point is that we want to improve public health, manage microbial resistance and cope with zoonotic pathogens, but where is the incentive to ensure that that is done properly?

The Minister will be pleased to hear that I am coming to my final points. They relate to our usual questions about the database. DEFRA has revealed that the livestock traceability system will be operational from 2019. If we crash out next week, what will the interim arrangements be? The Livestock Information Service will identify and track animal movements—initially cattle, sheep, goats and pigs—using electronic IDs.

Is the database on schedule? Who is doing the work? It is replacing the AML2 movement licence system. Are we going to change the tagging system at all, or is this going to be completely capable of dealing with the tagging system? Are we going to share our information with our current friends in the EU or are we going to keep our own information and see what happens? Clearly, animal diseases do not respect territorial borders—they come and go. We are facing a real challenge at the moment with African swine fever, which is coming our

[Dr David Drew]

way shortly. It is important to know what the mechanism will be, if and when we leave the EU, for sharing information with our current colleague states and what information we expect from that. Presumably, the Livestock Information Service will be compatible with current arrangements; otherwise, we will find all sorts of problems with how we can exchange information, which is the only way to bear down on disease. One hopes that that will be the case, otherwise there will be some attempt by other countries to use that for non-tariff barriers.

In conclusion, my biggest concern is where we are with the IT. Is the replacement system on track to be introduced this year? If not, why not? If not, what do we do in its stead, given that, presumably, we have to go back to relying on the EU to allow us to continue to use some of its systems? Although we will not be voting against the instrument, which is minor in its context, the wider ramifications are important. That is why it is here under the affirmative procedure and why we make no apologies for asking these questions.

9.11 am

Brendan O'Hara (Argyll and Bute) (SNP): Thank you, Mr Howarth. Like the hon. Member for Stroud, we will not be opposing this statutory instrument. However, I gently remind the Minister, who talked about the devolved Assemblies, that Scotland does not have an Assembly: Scotland has a Parliament. That is an important distinction—particularly when talking about the devolution of agriculture, which I will come to in a moment.

We will not oppose this SI. If Brexit has to happen, it is important that preparations are made, and we have to be seen to be doing the right thing. We accept that this instrument will ensure that retained EU legislation on the identification and registration of livestock will continue—it is vital that it does—and that, if we are to leave the EU, the law has to change with regard to traceability, disease control, how species are identified, what records keepers must retain and what reports there are of animal movement. We also accept that the relevant authorities must be able to record the information on a central basis. We recognise how important that is.

However, I have a couple of questions for the Minister. He said that no impact assessment was deemed necessary. Then he said that the introduction of a new central database will have an impact and the fact that the legislation allows for the introduction of charges means that there could be an impact further down the line. The Minister needs to explain a bit more about the charges. If there is no intention of ever using them, why are they there? What groups, stakeholders and industry bodies were consulted on the matter? Did they agree with the Minister that there would be no impact on the industry? If so, what was their input into the discussions when they came to that conclusion?

Finally, can the Minister guarantee that, through this SI, the devolution settlement will be fully respected and protected, with absolutely no threat to the Scottish Parliament's rights with regard to agriculture?

9.14 am

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): Before I start, I wish to declare an interest: my little sister is a sheep farmer who farms rare breed sheep in Cornwall. She does a brilliant job.

I have two questions for the Minister in relation to Regulation 1760/2000. The first one relates to 5(c)(ii) of these regulations, in which

“The appropriate Minister may not make use of an electronic identifier compulsory as one of the two means of identification provided for in paragraph 1 before 18 July 2019.”

Will the Minister set out why 18 July 2019 is an operable date? What happens if the commencement date of this statutory instrument is on exit day? What happens in respect of the ability to deploy electronic identifiers if exit day and 18 July 2019 do not align?

In relation to Regulation 1760/2000 (6), these regulations state:

“In Article 4a, for ‘Member State in which the animal was born’ substitute ‘appropriate Minister’”

I have been looking on the EU website and this provision does not seem to fit with the language of that article—this is in relation to ear tags worn by the animal. This could be a drafting error. Will the Minister state whether that is the correct wording? It seems to sit slightly awkwardly with the wording of the regulation itself.

9.16 am

David Rutley: I thank hon. Members for their contributions. A number of important points have been made. Yes, these are minor technical changes but they come against a landscape of important Government policy, so I take seriously all the issues raised. I reassure Committee members that these changes are very technical: they do not change the day-to-day processes that keepers currently have to comply with.

I reassure the hon. Member for Stroud that the SI does not change powers that already exist. The Government have no plans to change the balance of funding between the taxpayer and the industry, except in the matter already announced: sampling fallen stock for transmissible spongiform encephalopathy, or TSE. That accounts for about £15 a year on average for farmers.

The hon. Member for Argyll and Bute asked why the ability to charge was being transferred across. We are trying to maintain continuity in the law and to minimise the number of changes; we want to make only changes that need to be made. I reassure the hon. Gentleman again. As I said on my opening remarks, what he mentioned is not the current policy of present or past UK Administrations and devolved Administrations, and there are no plans for it to be. The issue is continuity.

The hon. Member for Stroud was concerned about why pigs are not included in this statutory instrument. I reassure him—I did try to get this across in my opening remarks—that the operability fixes for domestic pig movement were in a negative SI that has already been approved. They have been taken care of in another piece of legislation.

The hon. Member for Stroud also asked about changes to beef labelling and timetables of bovine identification. The SI regarding changes to beef labelling references was approved yesterday. It is complicated: we are discussing several different SIs at any given point. The hon. Member for Stroud, and other Members, were concerned about a new database. We are working in partnership with the industry to improve animal health with a new database. We are working closely with industry partners on taxpayer-funded programmes, and we want to encourage our partners to share data. The system is in development. Our current systems remain in place, and both function for international trade, including with the EU.

Another issue raised by the hon. Member for Argyll and Bute related to the amount of consultation. There had been an active dialogue. I meet with the National Farmers Union every week along with other food industry trade bodies. They have been engaged in the early stages of this SI, but no issues came up because it is so technical. There has been much more active engagement on new plans for the future related to livestock tracking, and that might have been confusing. That relates to future plans, and is not included in this SI.

I am seeking inspiration so that I can answer the questions from the hon. Member for Plymouth, Sutton and Devonport. He will be pleased with my answer: could he please repeat the question? I think that means that I will come back to him in writing. I know that he takes these questions very seriously; rather than giving him an answer on the fly, I will give him a full answer, if that meets with his approval.

Luke Pollard *indicated assent.*

David Rutley: I am very grateful for that. The hon. Gentleman asked a question about the date of the introduction of bovine electronic identification. The date comes from the EU Council regulation, and we have retained that date.

I think I have answered nearly all the questions—except for some; we will respond about the technical ones.

Brendan O'Hara: Very quickly, one question that the Minister has not answered is about the impact on the devolved Parliaments and the Welsh Assembly. Can he guarantee that there will be no impact in respect of agriculture?

David Rutley: That was an oversight on my part. I assure the hon. Gentleman that there will be no impact.

I am grateful to Committee members for their valuable contributions to the debate. To summarise, these regulations are making technical changes to ensure that existing EU law operates appropriately once we leave the EU. For those reasons, I commend the statutory instrument to the Committee.

Question put and agreed to.

9.21 am

Committee rose.

