

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT GAS TARIFFS CODE (AMENDMENT)
(EU EXIT) REGULATIONS 2019

Monday 21 October 2019

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The Committee consisted of the following Members:

Chair: JAMES GRAY

† Afolami, Bim (*Hitchin and Harpenden*) (Con)
 † Cartlidge, James (*South Suffolk*) (Con)
 † Cowan, Ronnie (*Inverclyde*) (SNP)
 † Doyle-Price, Jackie (*Thurrock*) (Con)
 † Duguid, David (*Banff and Buchan*) (Con)
 Garnier, Mark (*Wyre Forest*) (Con)
 † Herbert, Nick (*Arundel and South Downs*) (Con)
 Kawczynski, Daniel (*Shrewsbury and Atcham*) (Con)
 Kendall, Liz (*Leicester West*) (Lab)
 † Kwarteng, Kwasi (*Minister for Business, Energy and
 Clean Growth*)

† McCarthy, Kerry (*Bristol East*) (Lab)
 Reeves, Ellie (*Lewisham West and Penge*) (Lab)
 Simpson, David (*Upper Bann*) (DUP)
 † Smith, Nick (*Blaenau Gwent*) (Lab)
 † Stewart, Iain (*Milton Keynes South*) (Con)
 † Turley, Anna (*Redcar*) (Lab/Co-op)
 † Whitehead, Dr Alan (*Southampton, Test*) (Lab)

Stuart Ramsay, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 21 October 2019

[JAMES GRAY *in the Chair*]

Draft Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019

4.30 pm

The Minister for Business, Energy and Clean Growth (Kwasi Kwarteng): I beg to move,

That the Committee has considered the draft Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Gray. The draft regulations were laid before the House on 10 July this year. As Members will know, a significant part of the legislation that governs our energy markets is derived from EU law. The European Union (Withdrawal) Act 2018 will have the effect of making such legislation retained EU law, and as we approach EU exit my Department is determined to ensure that that energy legislation continues to be operable in the event of a no-deal exit.

The extension of the article 50 period to 31 October means that additional EU law that is now applicable will be retained EU law on exit day, and the draft regulations deal with precisely that issue. Chapters II, III and IV of the network code on harmonised transmission tariff structures for gas, known as TAR, applied across the UK and the EU from 31 May 2019. The tariffs regime therefore needs to be amended to correct deficiencies in what will be retained EU law, such as where there are functions in relation to EU entities that will no longer have a role in our affairs, and EU references that are no longer appropriate. A clear example of that is replacing references to member states with reference specifically to the UK. We are amending the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 to address that very issue. That supports our aim to retain regulatory functions and frameworks if the UK leaves the EU without a deal, by keeping Great Britain and Northern Ireland's gas markets working effectively and providing continuity for UK industry and consumers.

The TAR network code covers the ways in which transmission system operators collect revenues associated with the provision of services at entry and exit points via capacity and commodity-based transmission tariffs and non-transmission tariffs. By retaining those technical specifications we will maximise business continuity for market participants and cross-border gas trading. The modifications are straightforward and ensure that on exit day TAR will operate effectively, maintaining regulatory certainty in its entirety.

The draft regulations are an appropriate use of the powers set out in the 2018 Act. They will maximise continuity in our energy regulation and, crucially, ensure business continuity for operators in the UK market. They will facilitate continued international trade in gas and protect the security of affordable cheap gas supply for UK consumers as we leave the EU. I commend the draft regulations to the Committee.

4.33 pm

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. As the Minister set out, the changes being made regarding the applicability of the TAR regulations to the UK are very straightforward: they bring the nomenclature in the regulations into line with UK purposes, rather than the intent of the regulations, which was to include the UK within a wider EU context. The suggested changes are therefore straightforward and pretty uncontroversial. However, I will put one or two points to the Minister for clarification, which I hope will help our deliberations.

I start by asking about the relationship of this statutory instrument to one made earlier this year, the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019, which set out what at that point was thought to be the entirety of the elements of the TAR regulations that it was necessary to incorporate into UK law, instead of retained EU law, at the original time of exit from the EU. That SI incorporated into UK law chapters VI and VIII of the TAR regulations, which had come into force in October 2017 following the passing of the regulation. It was not thought necessary to incorporate chapters II, III and IV into UK legislation, because they were not, at that time, coming into force until after the EU exit date. Because EU exit day has been pushed on somewhat, it becomes necessary to incorporate those chapters into UK law. That is essentially what this SI does.

When the original SI was introduced, we were told that it was the intention of the Government to pass legislation to deal with what would have been the effect of chapters II, III and IV on a separate occasion after EU exit. I therefore assume that what we see before us is what the Government would have done had Brexit taken place when it was originally going to take place, and that no more legislation relating to the TAR regulations will forthcoming after the SI before us today. Will the Minister confirm that that is the case? If it is, we potentially have a landscape for the applicability of the TAR regulations overall to the future arrangements for UK gas supply.

Assuming that that is the case, what appears to happen concerning the applicability of chapters II, III and IV is quite interesting. Not everything in the TAR regulations is identical. The first SI dealt mainly with the solidarity—the extent to which EU member states would be obliged to supply each other with gas during conditions of difficulty affecting one or more member states. It was indicated at that point that those solidarity conditions would not apply post Brexit. However, chapters II, III and IV do not deal with that; instead, among other things, they deal with the alignment of tariff regulations and the permanent agreements on reserve prices and tariffs between those who trade with each other within the EU and, in this case, an external state and the EU. As the Minister will of course be aware, that is done mainly, but not exclusively, through interconnectors, which implies that we will now have a permanent arrangement of tariff solidarity between the UK and the EU. Personally, I think that is a good idea, but I am not sure that that sits entirely squarely with what has been said previously about the future regime for tariffs. In principle, it appears that, by accepting the TAR regime now in its entirety, that is what we have

done. Is that the Minister's understanding, or does he think there is a different interpretation possible of the acceptance of those TAR regulations?

My final point is about a rather odd addendum to the draft SI, which is the statements that are required to be made relating to an instrument's compliance with the EU withdrawal Act—in particular, its compliance with admissibility, the assurance that the legislation does not go beyond what is appropriate, and equalities legislation. Those statements are all signed by the right hon. Member for Kingswood (Chris Skidmore), presumably in his role as the stand-in Minister for the then Minister of State for Energy and Clean Growth, the right hon. Member for Devizes (Claire Perry), when she was taking a leave of absence from her duties. Of course, the right hon. Member for Kingswood is no longer the Minister, stand-in or otherwise, for Energy and Clean Growth. Indeed, the Minister here today occupies that post.

What is stated in the EU withdrawal Act 2018 is that all such statements have to be signed and signed off by “the relevant Minister”. It may be the case that there is covering legislation that states that whenever a Minister signs these documents or statements, the assurance is good for any subsequent Minister, but I would have thought that the right thing to have done on this occasion and for this SI would have been for the present Minister to sign off those statements, so that we would be completely clear that the relevant Minister had signed them, in accordance with the EU withdrawal Act. I would be grateful if the Minister commented on that.

4.43 pm

Kwasi Kwarteng: On the first question, I think the hon. Member for Southampton, Test was trying to get me to say that we will somehow be locked in forever, but the point of this legislation is to ensure that retained EU law is not affected in the event of no deal. I know about this sort of thing, because I am Under-Secretary of State at the Department for Exiting the European

Union in charge of the withdrawal Bill. The principle behind that was that we did not want any discontinuity, or as little as possible, between 31 October—or 29 March as was—and the following day. That principle, as the hon. Gentleman suggests, is enshrined in this SI. He is quite right to say that the reason chapters II, III and IV were not covered by the original SI is that they have only been in operation since 31 May, so that is quite in order.

On the hon. Gentleman's second point, it is a principle of the UK Government that if a Minister signs in his capacity as Minister, which is what my right hon. Friend the Member for Kingswood did, and he is the relevant Minister at the time of the signing, it does not invalidate that if he is then moved on. In fact, he has not really been moved on; he is still a Minister in the Department. At the time of signing, he was technically not the relevant Minister anyway because, as the hon. Gentleman says, the relevant Minister was taking a leave of absence, but he was standing in for her and signed the requisite documents. As I understand it, that does not make any difference.

Dr Whitehead: I would be grateful for an indication that the Government do not intend to introduce any further legislation relating to the TAR regulations as they now stand, as was implied in the original statutory instrument, which I think has been superseded by the present one.

Kwasi Kwarteng: The Government have no intention to review or change the tariff regime. Obviously, once we have left the EU, future Governments may decide to review that, but the present Government have no intention to change anything in regard to gas tariffs.

Question put and agreed to.

4.46 pm

Committee rose.

