

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT WASTE AND ENVIRONMENTAL  
PROTECTION (AMENDMENT) (NORTHERN  
IRELAND) (EU EXIT) REGULATIONS 2019

*Tuesday 22 October 2019*

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**The Committee consisted of the following Members:**

*Chair:* MR LAURENCE ROBERTSON

† Bradley, Ben (*Mansfield*) (Con)  
 † Burden, Richard (*Birmingham, Northfield*) (Lab)  
 † Courts, Robert (*Witney*) (Con)  
 † Davies, Glyn (*Montgomeryshire*) (Con)  
 † Debonnaire, Thangam (*Bristol West*) (Lab)  
 † Fabricant, Michael (*Lichfield*) (Con)  
 † Harrison, Trudy (*Copeland*) (Con)  
 † Johnson, Gareth (*Dartford*) (Con)  
 Jones, Graham P. (*Hyndburn*) (Lab)  
 † Jones, Ruth (*Newport West*) (Lab)  
 † Kyle, Peter (*Hove*) (Lab)

† Lopresti, Jack (*Filton and Bradley Stoke*) (Con)  
 † Martin, Sandy (*Ipswich*) (Lab)  
 † Morris, James (*Halesowen and Rowley Regis*) (Con)  
 † Pow, Rebecca (*Parliamentary Under-Secretary of  
 State for Environment, Food and Rural Affairs*)  
 Simpson, David (*Upper Bann*) (DUP)  
 Snell, Gareth (*Stoke-on-Trent Central*) (Lab/Co-op)

Bradley Albrow, *Committee Clerk*

† **attended the Committee**

# Ninth Delegated Legislation Committee

Tuesday 22 October 2019

[MR LAURENCE ROBERTSON *in the Chair*]

## Draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

2.30 pm

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

That the Committee has considered the draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

I am delighted to be serving under your auspices today, Mr Robertson. This statutory instrument, laid before the House on 15 July, is one of a number of statutory instruments with the purpose of ensuring the continued operability of our environmental law as the UK leaves the European Union. Like other such instruments, it does not make policy changes, and has no effect beyond making sure that current environmental protections continue to be effective.

The regulations extend and apply solely to Northern Ireland. They concern devolved areas of policy that would normally be dealt with by a devolved Administration at Stormont. In the absence of the Northern Ireland Assembly, it is necessary that we consider this instrument in this House. That is unfortunate, but if Parliament did not deal with these regulations it would not be possible to make them, which would leave inoperable and inconsistent provisions in Northern Ireland's environmental legislation. While there is no Northern Ireland Executive at the moment, the Northern Ireland civil service continues to operate, and officials from the Department of Agriculture, Environment and Rural Affairs in Northern Ireland are here today to help answer any questions that members of the Committee may have. They are very welcome.

The regulations are made under section 8 of, and schedule 7(21) to, the European Union (Withdrawal) Act 2018. That Act retains EU-derived legislation in UK law. Section 8 of the Act enables regulations such as these to be made to address deficiencies in EU-derived legislation that arise from the UK leaving the European Union.

**Michael Fabricant (Lichfield) (Con):** Will my hon. Friend confirm that this instrument will not mean any diminution in standards? Will she also say whether it prevents us from improving standards over and above those currently in place for the European Union as a whole?

**Rebecca Pow:** My hon. Friend is as astute as ever, and I thank him for his intervention. The instrument will not result in any lowering of environmental standards, but in those standards being maintained. He will be interested to hear that later, I will talk about something called “best available techniques”, which is a technical term; we are going to be putting in our own system for

that. Hopefully, more information will be revealed as I go through my speech, but there will be no diminution of standards at all.

Similar legislative updates to those contained in these regulations were made for England and Wales on 3 July through the Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019, which amended the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019. As with other regulations made under the withdrawal Act, these regulations have been drafted on the basis of leaving the EU without an agreement. It is, of course, the Government's preference that there will be an agreed basis for leaving the EU. However, it is prudent to ensure that we preserve our environmental protections upon leaving the EU in all eventualities.

The draft Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 correct operability amendments made by three other Northern Ireland European Union exit instruments, and amend one piece of Northern Ireland primary legislation. Part 2 of the instrument amends the Waste and Contaminated Land (Northern Ireland) Order 1997, and part 3 amends the three Northern Ireland EU exit SIs in order to correct some earlier operability changes made to primary and subordinate waste legislation in Northern Ireland. This is considered necessary to ensure that a consistent approach is taken to addressing operability issues in Northern Ireland waste legislation.

The particular operability issues all concern how article 16 of the waste framework directive will be applied in domestic law once the UK exits the European Union. To summarise, article 16 encourages member states to put in place infrastructure to deal with their own waste. The amendments ensure that that stipulation is appropriately reflected in domestic law. They do so by requiring the United Kingdom to move towards the aim of becoming self-sufficient in waste disposal and recovery.

The amendments also ensure that the relevant domestic legislation in Northern Ireland no longer refers to “best available techniques” where that could be interpreted by reference to EU definitions and processes, which will no longer be valid when we are no longer EU members.

The amendments are technical in nature and, as I have said, do not alter policy. Crucially, there is no reduction in the environmental standards or obligations to which Northern Ireland is currently subject.

I want to acknowledge at this point, Mr Chairman, that the issue of environmental standards has been contested during consideration of the instrument by the Secondary Legislation Scrutiny Committee. In reporting its consideration, the Committee published comments by Green Alliance to the effect that the removal of references to “best available techniques” in Northern Ireland legislation could lower environmental standards. That is absolutely not the case.

**Michael Fabricant:** Good.

**Rebecca Pow:** The UK has committed to maintaining environmental standards and to ensuring that the current best available technique conclusion implementing decisions, which set out the relevant requirements and emission limit levels for installations—just in case anyone was

wondering what these best available techniques were, they refer to the emission limit levels for installations—will continue to have effect in UK law after the UK's exit from the European Union.

Best available techniques for waste treatment have been set out and issued under Commission implementing decision (EU) 2018/1147, in accordance with the industrial emissions directive. That decision, as amended, has been adopted as part of retained EU law and, therefore, the conclusions set out within it will continue to apply post the UK's exit from the European Union.

The Government have committed to put in place a process for determining future UK best available technique conclusions for industrial emissions post the UK's exit from the European Union. That is being developed with the devolved Administrations and competent authorities across the UK. Legislative changes may be required to reflect the agreed process in due course. I hope that assures my hon. Friend the Member for Lichfield that this is all under way, and that standards will indeed be addressed and upheld.

The corrections and amendments to remove the requirement to take best available techniques into account in the context of article 16.1 of the waste framework directive ensure that the relevant domestic legislation and retained EU law do not commit the United Kingdom to comply with future amendments to best available technique arrangements and emission limits that may be produced by the European Commission. That is, of course, the crux of the matter.

Just to clarify, as it is a tad complex: amendments have been made through UK legislation either to remove or update references in respect of best available techniques, in order to ensure the operability of the relevant provisions, as the process of establishing and agreeing best available techniques is driven by the European Commission under the industrial emissions directive. Once the UK exits the European Union, it will no longer be a member state and will, therefore, no longer be part of the process of developing and agreeing future EU best available technique requirements. Rather, the UK will take its own approach to the development of future best available technique requirements to be met by UK industry. That could also take into consideration developments that are ongoing in the EU.

In respect of the amendment to the Waste and Contaminated Land (Northern Ireland) Order 1997, the reference to best available techniques in schedule 3, which was directly copied from article 16 of the waste framework directive, has been omitted because the term is not defined or used elsewhere in the order. Furthermore, there is already a requirement to take best available techniques into account in the context of establishing an adequate network of waste disposal installations and installations for the recovery of mixed municipal waste from households in another piece of Northern Ireland legislation, the Waste Management Licensing Regulations (Northern Ireland) 2003, which has been updated to ensure operability post the UK's exit from the European Union.

In conclusion, for the purposes of addressing the instrument before us, if we did not address those deficiencies, the result could be legal uncertainty and ambiguity around the meaning of Northern Ireland's environmental laws. This instrument ensures legal certainty in Northern

Ireland as we approach our exit from the EU and ensures that we maintain environmental standards and protections across the UK. I commend it to the Committee.

2.40 pm

**Sandy Martin** (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson. I will not try to pretend that the eyes of the world are on us here in this room; I am sure that some or all of the hon. Members here would have preferred to be in the Chamber. [HON. MEMBERS: "No!"] However, I am thrilled and slightly surprised to see that the hon. Member for Lichfield is perfectly capable of being in two places at the same time. I have a great deal of respect for that.

I am delighted to speak on the Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. Let us be very careful that we do not muddle today's SI with the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 or the Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, because, of course, those are the amendments that we made in those regulations, and these are the amendments that we are making to the amendments that we made, which we are amending here today. Indeed, let us also be very careful in future not to muddle the Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 with the waste and environmental protection (amendment) (Northern Ireland) (EU exit) Regulations 2020, which we could very well be dealing with in three or four months' time.

I am not just trying to be funny or to waste hon. Members' time. The fact is that we are here amending amendments that were previously made in these three previous amending SIs, and one piece of Northern Ireland primary legislation that got away and failed to be amended at the time when the other amendments were being made. I say here and now that I am in no way casting any aspersions whatever on the DEFRA staff and others who have had to make such strenuous efforts over the past year to carry out a near-impossible job; but, however hard we try, we are not going to be able to get all the regulations right for leaving the European Union.

Our 46 years of regulatory alignment, 46 years of developing the most comprehensive and effective protections in the world for food safety, animal welfare, environmental protection and waste management, and 46 years of seamless, safe and trouble-free trade cannot be undone quickly or without extreme difficulty. I hope that hon. Members facing these detailed and technical SIs, which are attempting—sometimes unsuccessfully—to untangle the threads of the legislative fabric that we have woven alongside our European partners, will consider quietly and honestly whether they really think that what we are doing is in the best interests of the people of this country.

With the greatest respect to the Minister, who has attempted to explain away the change to the wording on taking into account the "best available techniques", and her careful answer to the hon. Member for Lichfield, I am afraid I still do not understand why it is necessary to remove the words from the Waste and Contaminated Land (Northern Ireland) Order 1997. I am sure that the Minister would not want any best available techniques

[Sandy Martin]

not to be taken into account. It would have been very helpful if the explanation had been given in writing, in the explanatory memorandum. I will be interested to see that explanation in writing in the future. I can quite understand why the Minister believes that the words are not necessary; what I cannot understand is why she believes it is necessary to remove the words.

The other matter that I have still not understood is why we need to move towards the aim of becoming something rather than aiming to become it, or indeed moving towards it. Perhaps the Minister will explain the significance of those changes, and also explain why we will not go the whole hog and consider the possibility of seeking to move towards the aim of becoming something. Most people would want to know whether we were actually going to achieve our aims and not have all this additional hedging added in.

I hope we do not have to hold many more of these amendment SI Committees. On that point, I confidently expect all hon. Members to agree with me, but I fear we have much of this to come.

2.45 pm

**Rebecca Pow:** I thank the shadow Minister for his very clear points about how there have been a great many amendments. I am sure none of us wants to see any muddling of amendments, because these are really serious bits of legislation that affect business in a fundamental way. However, we can take heart that the technicality was spotted and we have made the changes, which shows that our scrutiny systems work. We have a Scrutiny Committee in the House of Lords and a similar one in the Commons. This legislation has been passed by them with a microscope and they are now happy with the changes that we have made. I hope that that sets the hon. Gentleman's mind at rest.

It is important that some areas have been identified during the laying of this legislation. As the hon. Gentleman knows, the volume of legislation that has progressed over the past 12 to 18 months—and the timescales involved in producing it—has been on an unprecedented scale. Every effort has been made to ensure that the legislation that comes before Parliament does not contain errors, and processes are in place, as I said, with the Scrutiny Committees and so on to correct them, because it is important that they are corrected. Although they might sound confusing to the ordinary person out there on the street, to those for whom the regulations apply they are absolutely crucial.

We had a reference to the best available techniques being removed from the Waste and Contaminated Land (Northern Ireland) Order 1997. I thought I had made it

clear in my speech why that had changed. In respect of the amendment to that order, the reference to the best available techniques was directly copied from article 16 of the waste framework directive, and it has been omitted because the term is not defined or used elsewhere in the order. It is an absolute technicality. Furthermore, there is already a requirement to take the best available techniques into account in the context of establishing an adequate network of waste disposal installations and installations for the recovery of mixed municipal waste from households in another piece of Northern Ireland legislation, the Waste Management Licensing Regulations (Northern Ireland) 2003. Those regulations have been amended by previous EU exit instruments—the Environment (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 and the Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019—to ensure operability post the UK's exit from the European Union, so I hope I have cleared that up.

The shadow Minister also mentioned standards and the change in respect of the reference to moving towards the aim of becoming self-sufficient in waste disposal and the recovery of waste, which are consistent with the current requirement on member states, again in article 16 of the waste framework direction in EU legislation. The corrections that these amendments make maintain the current ambition and objectives relating to becoming self-sufficient in waste disposal and the recovery of waste. That is the wording used in the EU directive. The previous amendments were not consistent with the current approach. I hope that clears up those points; it is slightly complicated.

**Michael Fabricant:** Very logical.

**Rebecca Pow:** I thank everyone on the Committee, particularly our colleagues from Northern Ireland, for their help and input. Just in case hon. Members have any queries, I assure them that these regulations will have no effect on other things connected with Northern Ireland, such as the peace process, the Good Friday agreement and border security. These regulations make corrections and minor technical amendments to address shortcomings in the retained EU environmental law in Northern Ireland arising from the withdrawal of the United Kingdom from the European Union. As my hon. Friend the Member for Lichfield said, it is to everyone's benefit to maintain the integrity of environmental protection rules here and—particularly in relation to these regulations—in Northern Ireland. I commend the regulations to the Committee.

*Question put and agreed to.*

2.51 pm

*Committee rose.*



