

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

AGRICULTURE, ENVIRONMENT AND RURAL
AFFAIRS (AMENDMENT) (NORTHERN IRELAND)
(EU EXIT) (NO. 2) REGULATIONS 2019

Monday 28 October 2019

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The Committee consisted of the following Members:

Chair: STEVE McCABE

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|--------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| † Bottomley, Sir Peter (<i>Worthing West</i>) (Con) | † Lewer, Andrew (<i>Northampton South</i>) (Con) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | † McGinn, Conor (<i>St Helens North</i>) (Lab) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Offord, Dr Matthew (<i>Hendon</i>) (Con) |
| † Daby, Janet (<i>Lewisham East</i>) (Lab) | † Selous, Andrew (<i>South West Bedfordshire</i>) (Con) |
| † Drew, Dr David (<i>Stroud</i>) (Lab/Co-op) | † Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Eustice, George (<i>Minister of State, Department for
Environment, Food and Rural Affairs</i>) | † Thomson, Ross (<i>Aberdeen South</i>) (Con) |
| Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>)
(Lab) | † Whittingdale, Mr John (<i>Maldon</i>) (Con) |
| † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) | Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| † Killen, Ged (<i>Rutherglen and Hamilton West</i>) (Lab/
Co-op) | Ian Bradshaw, <i>Committee Clerk</i> |
| | † attended the Committee |

Fifth Delegated Legislation Committee

Monday 28 October 2019

[STEVE McCABE *in the Chair*]

Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019

6 pm

The Minister of State, Department for Environment, Food and Rural Affairs (George Eustice): I beg to move,

That the Committee has considered the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 (S.I., 2019, No. 1313).

This statutory instrument was due to be made under negative resolution, but was transferred to be made affirmative to ensure that it was on the statute books before our planned EU exit on 31 October 2019. The SI is made under the European Union (Withdrawal) Act 2018 which, as hon. Members know, retains EU-derived legislation in UK law, and corrects deficiencies in EU-derived legislation arising from the UK leaving the European Union.

The instrument relates only to Northern Ireland and concerns devolved areas of policy normally dealt with by the devolved Administration. The Government's preference is that the regulations be made and scrutinised by the devolved institutions in Belfast, remaining absolutely committed to the restoration of devolved government in Northern Ireland, but in the current circumstances we have decided to process this and other Northern Ireland regulations through Parliament, working closely with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

This SI is prepared on the basis of leaving the EU without an agreement, although the Government's intention remains for an agreement to be in place when we leave. Should an agreement involve a transition period, the SI will not take effect for that period, although it may be needed thereafter.

The SI will make minor amendments to Northern Ireland domestic legislation. In some cases, it corrects minor errors in previous SIs, but predominantly it concerns final changes to make retained EU law relating to various biosecurity regulations operable. First, it makes changes to the Eggs and Chicks Regulations (Northern Ireland) 2010. The SI amends those regulations to ensure operability following the UK's exit from the EU by omitting redundant EU requirements, namely, specific offences of not marking eggs or not marking eggs correctly for delivery between member states. Those specific provisions would no longer be relevant since we would no longer be a member state.

Secondly, the SI makes minor technical amendments to the Importation of Animal Pathogens Order (Northern Ireland) 1999 in relation to a reference to and a definition of "another member state". Since we will not be a member state, that reference must be changed.

Thirdly, the SI amends the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 to insert a corrected reference to the community marketing rules offences in the Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010. The amendment in the original EU exit SI provides transitional arrangements for fresh horticultural products placed on the market after EU exit day to ensure that fruit and vegetable marketing labels allowed under EU law will continue to be permitted in the UK during a transitional period of 21 months after exit. The labelling requirements set out in article 7 of Commission implementing regulation 543/2011, however, should have referred to regulation 15 rather than regulation 17, and that is corrected by this instrument.

Fourthly, the instrument makes an operability amendment to the Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995.

Nick Smith (Blaenau Gwent) (Lab): If the Prime Minister's deal is agreed, will eggs, for example, still have to be labelled as decided by the European Union?

George Eustice: During the implementation period, they would. In an implementation period under the provisions of the withdrawal agreement Bill, there are saving provisions for that EU law during the implementation period. As for what comes thereafter, they would be superseded by the future agreement put together during the implementation period.

Nick Smith: I thank the Minister for giving way. My sense is that the eggs will still have to be labelled as decided by the EU after the implementation period. Is that not correct?

George Eustice: I think the hon. Gentleman is mixing up several things. If we were selling eggs into the European Union, they would probably require certain labelling to comply with its laws for people serving that market. The provisions we are talking about are much narrower, referring to a specific type of marking that one EU member states makes on its eggs when selling to another member state. We would no longer be a member state, so those specific, narrow provisions would no longer be relevant, since we had ceased to be a member state.

The fourth instrument to be amended is, as I said, the Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995. This SI will amend those regulations by making a substitution of "United Kingdom" at regulation 4A, in place of the "European Union".

Fifthly, the SI amends the Plant Health (Wood and Bark) Order (Northern Ireland) 2006 by removing references to the European Union and omitting EU decision references that are not operable outside the EU, and references to EU decisions. Those references would no longer be needed, since they will have been replaced by the UK common list.

The SI amends the Plant Health Order (Northern Ireland) 2018 to omit definitions of decision (EU) 2018/1503 relating to the organism *Aromia bungii*. That EU decision was originally added to the order after the first Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were made. It is now included in the UK common list, so it is no longer required and this SI removes it.

Sir Peter Bottomley (Worthing West) (Con): Presumably, we are talking about the red-necked longhorn beetle, which affects *Prunus* trees in China?

George Eustice: I have been shown a picture, and—my hon. Friend knows a great deal about this—it looks like a beetle.

Nick Smith: Good catch!

George Eustice: Finally, this SI amends the Invasive Alien Species (Enforcement and Permitting) Order (Northern Ireland) 2019 to ensure parity with retained EU law, omitting the definition of “Union list” throughout the order and, where appropriate, replacing that term with “list of species of special concern”. That list is defined in the amendments to reflect that the list is derived from the EU’s list of invasive alien species. Similar amendments have been made to the UK Invasive Alien Species (Enforcement and Permitting) Order 2019.

The amendments made to Northern Ireland domestic regulations in this SI maintain the integrity of the Northern Ireland statute book, ensuring legal certainty as we approach our exit from the EU, and ensuring that we maintain standards and protections across the UK. I therefore commend the regulations to the Committee.

6.9 pm

Dr David Drew (Stroud) (Lab/Co-op): It is a delight to serve under your chairmanship, Mr McCabe. This is the second of the three statutory instruments that we must consider today and the only one not about the CMO, the common organisation of agricultural markets, about which some of us have become quite knowledgeable.

Were the Northern Ireland Assembly sitting, would this SI have come before this Committee, or is it here entirely because—the Minister seems to nod, but he can answer when he sums up—the Assembly is not sitting? Will the Assembly recapture this responsibility as and when it does sit again? It is important that we know what we are doing here. Most of what we do relates to wider UK responsibilities, even though agriculture is a devolved function.

Scottish National party Members have made it clear in Delegated Legislation Committees that they do not necessarily agree with some of the ways in which these measures are debated. Sadly, we have no representative from the Democratic Unionist party with us. The hon. Member for Upper Bann (David Simpson) came to the earlier Committee—and we sent him away. It would be interesting to know his party’s position on these changes.

I have a number of reasonably detailed questions for the Minister. The regulations amend two Northern Ireland statutory rules and four Northern Ireland orders, and we have eight headings of regulatory change identified, but it is not at all clear which changes apply to which headings and how they fit with existing Northern Ireland regulations. It would be useful to know exactly what we are dealing with; otherwise we may have to come back again, to amend the amendments to the amendments, as we have done in the past. It would be useful at least to know what we are amending and why. As I said, there are eight different pieces of regulatory change to two statutory rules and four orders. Where do they all fit?

These are important regulations dealing with pathogens and seeds and plant propagating material, which have quite an impact on Northern Ireland. The obvious question is, to what extent will this be affected by the Prime Minister’s withdrawal agreement? Materials of those types could be transported, whether deliberately or accidentally, so who is responsible for ensuring that we allow the proper trade to take place but that someone deals with risk material? Of course, there are arrangements now, but those are within the EU, and we are dealing now with a completely new situation. With a border in the Irish sea, how will that trade be policed and these regulations enforced? Which organisation will take that on and who will hold that organisation to account?

It would be interesting to know why the transitional period is 21 months. In the earlier Committee, on wine, the period was nine months. We seem to be getting a differentiated picture on transitional arrangements. How was that term arrived at? Who will oversee the transitional arrangements to ensure they are being adhered to? What will occur if, for any reason, there is slippage? Will we have to revisit the regulations, or is there a degree of flexibility in the arrangements?

These regulations are more straightforward than those considered by the earlier Committee, perhaps because they relate directly to one part of the United Kingdom—an important part of the United Kingdom. As always, the explanatory memorandum says:

“There is no significant impact on business, charities or voluntary bodies.”

One presumes that there will be some impact because of the nature of the changes to be introduced. I wonder what analysis the Government have undertaken. Again, no regulatory impact assessment has been undertaken, but someone somewhere must understand that there will be some impact. It would be useful to know what consultation has been undertaken.

I was in Northern Ireland a year ago talking to DAERA officials. I felt sympathy for them: they are having to pass all political decisions up the line, which is presumably why we are here today discussing this instrument, so that the Department for Environment, Food and Rural Affairs takes that responsibility. Again, however, that will not help the officials with the day-to-day administration of some quite complex regulation, even though, as I have said, it is a bit more transparent than some things we dealt with earlier and, no doubt, than what we shall deal with later when we reach our third Delegated Legislation Committee of the day.

It would be interesting at least to know from the Minister who—given that there is no Assembly or Executive—is discussing the impact of the measures. I do not know that much about the egg trade in Northern Ireland, but I know a bit about the poultry trade and the importance of chicken meat through Moy Park, which is a major exporter. I wonder who, within Northern Ireland, has had the opportunity to express their views on the sorts of changes that are taking place, and to make sure that the Government are aware of some of the implications, particularly given the currency of the Prime Minister’s withdrawal agreement. Has the matter really been worked through?

Conor McGinn (St Helens North) (Lab): One organisation that has spoken clearly and vociferously on the matter is the Ulster Farmers Union, which has asked for much more clarity about the new relationship

[Conor McGinn]

between Northern Ireland and Great Britain in relation to the provisions set out in the withdrawal agreement. It has been equally clear that a no-deal Brexit would be catastrophic for farming across the UK, but particularly in Northern Ireland.

Dr Drew: I have met Mr Ferguson on a number of occasions and he has made that very point to me. I wonder whether the Minister can tell us of an organisation that one would expect to be consulted and conferred with, and that would have to be listened to. It would be interesting to know, given the lack of an Assembly and Executive, who the UK Government have talked to about some pretty important elements that need to be clear before we nod the measure through.

Northern Ireland is different from Wales and Scotland, which have their own Administrations and devolved responsibilities. Northern Ireland has not, so effectively we are acting on behalf of that part of the United Kingdom. We therefore have to make sure that the measure is right. I hope that the Minister can allay any fears, because there is another statutory instrument to be considered tomorrow morning. It will probably be a bit more controversial than the one before us now, but we will again be acting on behalf of the Northern Ireland Assembly—or will we not? I go back to my original point. If the Assembly had been in place, would we not have debated the measures, given that it would have had the responsibility of seeing them through? It is important to know those things and have them explained on the record, at least.

6.19 pm

Sir Peter Bottomley (Worthing West) (Con): I shall be brief. It is 30 years since I was appointed Minister of Agriculture in Northern Ireland, when the Ministry was the Department of Agriculture for Northern Ireland, or DANI. It has now changed its name so that it is not quite an anagram of DEFRA.

I hope that I shall be forgiven for taking an interest in the beetle that was, I think, discovered only once, in a pallet about 11 years ago, in this country, but which caused some damage in Italy. My point, which I make almost interrogatively, is that if people spot that beetle, which has a red collar—I am sure it is beautiful to its mother—they should, in Great Britain, alert TreeAlert. In Ireland they should alert TreeCheck, the all-Ireland organisation, which I hope will continue as we leave the EU.

6.20 pm

George Eustice: I shall try to address as many of the issues raised as possible.

On the first point made by the hon. Member for Stroud (Dr Drew), if the Northern Ireland Assembly were sitting and we had an Administration in Northern Ireland, this statutory instrument would not be needed. The devolved Administrations have been taking forward their own regulations in devolved areas, and therefore they would have been dealing with these statutory instruments themselves. When an Administration is formed in Northern Ireland, which we hope will happen soon, they will take on that role again.

In the event of a Brexit, if the Administration wanted to make additional changes we might need to remove or change the statutory instrument, allowing them to fill that gap. Although nobody wants to step across the devolved settlement, it is important that Northern Ireland has a functioning statute book, so in the absence of an Administration we have taken this step to legislate on their behalf.

On our consultation in Northern Ireland, we have worked closely with officials in DAERA. The shadow Minister will have to ask the Democratic Unionist party where it stands on the matter, but my understanding is that it wants to have a functioning statute book for day one of exit.

The hon. Gentleman asked a specific point about the two categories of regulation. In my opening comments I gave a long list of orders and statutory instruments that were being changed by this instrument. The simple answer is that an SR is an order made in the devolved Administration in Northern Ireland; they tend to be business-as-usual regulations and we have changed some of them through this instrument, where necessary. The references to SIs tend to be about the SIs that we made earlier in the Brexit process, under the European Union (Withdrawal) Act 2018, which we are now changing. The SIs tend to be changes to Westminster legislation and the SRs are for Northern Ireland.

The hon. Gentleman asked whether the latest new deal that the Prime Minister has brought back has any implications for the SI, and he mentioned checks at the Northern Ireland border. He will be aware that that has no relevance to this SI, which is a no-deal SI. This SI would be necessary in the event that we leave the European Union without a withdrawal agreement, so it does not envisage any of the checks that he mentioned.

The hon. Gentleman asked a question about the transition period in some areas. As we have discussed, other SIs have a grace period of nine months but here we are applying a period of 21 months. The reason for longer transitions in some areas tends to relate to labelling requirements; this is specifically a labelling provision, so a longer period is needed. When these regulations were originally drafted, 21 months would have taken us to the end of December 2020. It was felt that for some of the marketing provisions, where there are labelling implications, it was appropriate to have a longer transition. In other areas, where it is simply a grace period, we have applied our continuity approach, which is that there should be no change for a minimum of six months but change thereafter is easier to contemplate.

The hon. Gentleman asked what consultation had taken place. As I said, we have discussed these issues in detail with officials in DAERA. Indeed, they have been supporting me today on this matter. Despite the numerous different political complexions in different parts of the UK, we have the advantage of a one civil service approach. I know that DAERA officials have engaged with the Ulster Farmers Union closely and that they have raised no concerns about these particular regulations.

Conor McGinn: I accept that point on these specific measures, but will the Minister tell us whether he has been to Northern Ireland to meet and hear from the Ulster Farmers Union directly? Has he discussed these

measures with representatives of the political parties? Given the all-Ireland nature of agriculture, has he discussed the consequences of a no-deal Brexit with his counterpart in Dublin?

George Eustice: As the hon. Gentleman might know, this is my second time in this post. I have been engaged in the last few weeks with taking care of issues such as this and with preparing for the prospect of a no-deal exit. The last time I was doing this role, I visited Northern Ireland on several occasions and had numerous meetings with the Ulster Farmers Union to discuss its concerns. I am sure that my predecessor, my right hon. Friend the Member for Scarborough and Whitby (Mr Goodwill), did the same. Yes, the UK Government have engaged with representatives of the Ulster farming community.

Sir Peter Bottomley: When the Ulster Farmers Union, which I admire, is spoken of, I always try to speak for the Northern Ireland Agricultural Producers' Association—the family farmers, of whom there are many more but on smaller pastures of land. NIAPA deserves attention.

George Eustice: I defer to my hon. Friend, who, as a former Minister, has great experience on these matters.

I conclude by mentioning, as my hon. Friend pointed out, the red-necked longhorn beetle. It is a distinctive, narrow beetle, with long antlers and a red neck, unsurprisingly. He is absolutely right that it is native across south-eastern and oriental areas. It has several common names, but “red-necked longhorn” is the most used here. It was first detected in Europe in 2008, when three adults were intercepted. It is a major threat, which is why we must be ever vigilant with this invasive species, as we should be with all other invasive species. I hope that I have been able to address some of the concerns raised by hon. Members, and that they will therefore feel fit to approve the regulations.

The Chair: Before I put the question, I should perhaps point out that none of our DUP colleagues were appointed to the Committee, which is why none were here.

Question put and agreed to.

6.28 pm

Committee rose.

