

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT ELECTRICITY AND GAS ETC.
(AMENDMENT) (EU EXIT) REGULATIONS 2020

DRAFT ELECTRICITY AND GAS (INTERNAL
MARKETS AND NETWORK CODES)
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020

Monday 7 September 2020

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Friday 11 September 2020

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The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

† Anderson, Lee (<i>Ashfield</i>) (Con)	Osamor, Kate (<i>Edmonton</i>) (Lab/Co-op)
† Cairns, Alun (<i>Vale of Glamorgan</i>) (Con)	Rees, Christina (<i>Neath</i>) (Lab/Co-op)
Davies, Geraint (<i>Swansea West</i>) (Lab/Co-op)	† Stevenson, Jane (<i>Wolverhampton North East</i>) (Con)
† Eastwood, Mark (<i>Dewsbury</i>) (Con)	Tarry, Sam (<i>Ilford South</i>) (Lab)
† Fletcher, Mark (<i>Bolsover</i>) (Con)	† Tomlinson, Michael (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab)	† Wakeford, Christian (<i>Bury South</i>) (Con)
Grady, Patrick (<i>Glasgow North</i>) (SNP)	† Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab)
† Hinds, Damian (<i>East Hampshire</i>) (Con)	
† Kwarteng, Kwasi (<i>Minister for Business, Energy and Clean Growth</i>)	Kevin Maddison, Nicholas Taylor, <i>Committee Clerks</i>
† Moore, Robbie (<i>Keighley</i>) (Con)	† attended the Committee

The following also attended (Standing Order No. 118(2)):

Davies, Gareth (*Grantham and Stamford*) (Con)

First Delegated Legislation Committee

Monday 7 September 2020

[JULIE ELLIOTT *in the Chair*]

Draft Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020

4.30 pm

The Chair: Everybody is socially distanced. If anybody has notes, can they please email them to *Hansard* rather than hand them to *Hansard*? I call the Minister to move the first motion and to speak to both instruments. At the end of the debate, I will put the question on the first motion and then ask the Minister to move the second motion formally.

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

That the Committee has considered the draft Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020.

Kwasi Kwarteng: It is a pleasure to open this short debate—I hope it will be short, anyway—under your chairmanship, Ms Elliott. The regulations were laid before the House on 22 June and 6 July respectively. When the transition period ends, as members of the Committee know, direct EU legislation and EU-derived domestic legislation that form part of the legal framework governing our energy markets will be incorporated into domestic law by the European Union (Withdrawal) Act 2018. These two SIs form part of my Department's work to ensure that the UK's energy legislation continues to function smoothly after the end of the transition period at the end of this year. The SIs ensure that the energy markets will be smoothly managed in the event that the UK does not reach an agreement or should the agreement that we do reach not cover the relevant policy area.

The first SI relates to what was done in the Department for Business, Energy and Industrial Strategy before the withdrawal agreement was agreed. Prior to the UK's departure from the EU, BEIS laid several SIs that prepared for the eventuality that we would not achieve a withdrawal agreement. Members will have noticed that, since the SIs were made, the UK has left the EU on the terms of the withdrawal agreement, so those now have to be amended to take account of the fact that we have a withdrawal agreement.

The first SI makes consequential changes to reflect new legislation that has come into force since the original SIs were made. An example of where the first SI amends the original SIs is that we can now refer to electricity regulation, and that is now made consequential on the gas directive, which has also been changed as a consequence of the past two years. The SI also amends the original SIs with respect to the Northern Ireland protocol, which

was attached, as we all remember, to the withdrawal agreement. The original SIs governing this space were made in 2019 before the withdrawal agreement was signed and agreed, and therefore the amendments in this SI fix the deficiencies that resulted from the fact that the original SIs were made on a UK-wide basis. Under the Northern Ireland protocol, however, EU legislation that applies in respect of the wholesale energy market will continue to apply in Northern Ireland after the transition period, and therefore the first SI removes provisions that were originally made relating to Northern Ireland that are no longer relevant because we have a withdrawal agreement and also the Northern Ireland protocol.

Finally, the SIs will now take effect from the implementation period completion day rather than exit day. Consequently, this SI updates the references that were previously made in the old SI. It essentially takes into account the fact that we have a withdrawal agreement and amends the SIs that were laid before the withdrawal agreement was signed up to.

The second SI relates to the period after the end of the transition period and reflects the fact that, since we laid the previous SIs in 2019, new EU legislation has come into effect. It makes amendments and revocations to the following new pieces of EU legislation: the electricity regulation and three of the electricity network codes. That new EU legislation will become retained EU law at the end of the transition period through the withdrawal agreement. Deficiencies in the legislation therefore need to be fixed so that we can make the regime workable after the end of the transition period. The SI also revokes the agency regulation, as it includes obligations that would be inappropriate and would not make sense after the end of the transition period, because Great Britain will no longer be a member of the Agency for the Cooperation of Energy Regulators.

By amending existing rules to ensure that they operate effectively in domestic law and amending provisions that will no longer be relevant after the transition period, the two SIs will maintain the operability and integrity of the UK energy market and UK energy legislation. They will provide maximum certainty for businesses and continuity for market participants.

In conclusion, the regulations are an entirely appropriate use of the powers of the withdrawal Act, which are designed to support a well-functioning, competitive and resilient energy system for consumers. They also provide clarity about the role and functions of UK bodies and market participants after the transition period ends on 31 December. As a consequence, I commend them to the Committee.

4.37 pm

Dr Alan Whitehead (Southampton, Test) (Lab): I rise to tell the Committee, in the first instance, that we do not think the proposals are particularly contentious and that we will, therefore, not seek to divide the Committee—although someone might say that, even if we did, we would not get very far, because of who is present. Having said that, I would like to seek a little elucidation from the Minister about certain aspects of the SIs, particularly so that it is on the record. That elucidation relates to slightly separate issues within the two SIs, so I will talk about them separately.

As the Minister said, one SI—the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020—essentially deals with common standards for internal markets and network codes. In the event of no further agreement being reached between the UK and the EU on these matters—or, indeed, of agreements not extending to this area—amendments will be made to allow those common standards and common code arrangements to be effectively maintained, which is important. We have an intricate network of trading arrangements on energy with European Union member states, most notably through both gas and electric interconnectors, and it is important that there are common standards on both ends and that the codes by which that trade takes place are also compatible with each other over the period. This is not an insignificant thing that is happening in this SI as far as our future arrangements are concerned.

The Minister did not say what the future agreements are that could be reached before IP date that could avoid these regulations taking place. I must say I am a little puzzled, because the explanatory memorandum states:

“This instrument is one of several statutory instruments required to ensure that legislation governing the energy system in Great Britain (‘GB’) will function effectively if at the end of the implementation period...the UK does not reach a further agreement with the European Union...or if the agreement reached does not cover the relevant policy area.”

If we reach further agreement before the IP date, one might assume from that that the regulations that presently exist would effectively continue, or continue in similar form.

If, on the other hand, an agreement is not reached, it appears that what is being put forward in this SI are measures that will unilaterally do that anyway—that is, it will introduce measures for harmonisation of transfer arrangements and codes to allow that trade to continue. I am sure the Minister will be able to explain this to my satisfaction, but I am not sure whether the difference that there might be, in terms of what we are about to agree this afternoon in the event of no agreement being reached, is significant in terms of the possibility of agreement being reached, if we are able to find out exactly what agreement could be reached in order to continue with arrangements as they are at the moment.

Later on, the explanatory memorandum states that if these measures are not agreed, there could be problems and that this

“uncertainty could result in an increase in wholesale prices.”

I am not quite sure why an agreement that makes no great difference between what is there now if a deal is reached and what we are putting in place here to ensure harmonisation and the continuance of trade would increase wholesale prices. Is it simply because of the uncertainty that would arise if there is no final elucidation on these matters, or is there anything in the wording of any change that might cause those wholesale prices to rise? I am not clear. I do not have the answers to this—it is not a trick question, but a request for some elucidation about what the effect of doing nothing today would be if an agreement is either reached or, alternatively, not reached by IP date. Indeed, if no agreement is reached, would there, for example, be an imbalance in trading arrangements that would exacerbate arbitrage arrangements, with the result that wholesale prices might rise? If, on

the other hand, we had an agreement that would not do that, or, alternatively, we had these measures in place, that additional arbitrage probably would not arise in the first place.

The second statutory instrument that we are looking at are the draft Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020. As the Minister has mentioned, it looks rather more straightforward than the first one, in that it essentially, for future reference, proves legislation in the correct way—that is, it substitutes, in the main, the IP date for the exit date so far as the legislation is concerned. So far, so good. However, the SI does not, in the main, extend to Northern Ireland. Indeed, Northern Ireland is specifically left out. Again, our reliable explanatory notes tell us that this might be useful for the Northern Ireland Executive at a later date—if they do not organise things properly in Northern Ireland, they can refer to the SI in their domestic legislation in the future. That is significant because, unlike Great Britain, Northern Ireland has a grid system and an internal energy market system that are wholly integrated with the Republic of Ireland. It is therefore essential that there is harmonisation from day one, in order for what are essentially internal systems within the island of Ireland to work well.

I am slightly surprised that that section of the SI appears to have been left for possible measures at a later date. Given the importance of harmonisation from the start, I would have thought that it would be something that we should, in the first instance, look at here. I am somewhat persuaded in that view by information that is generally known: there are, in fact, two interconnectors between Great Britain and the island of Ireland. One goes to Larne in Northern Ireland; the other goes between Wales and the Republic. We could be faced with the possibility that what is essentially an internal interconnector within the UK is not harmonised, whereas an external interconnector between the UK and the Republic of Ireland is harmonised. That would, in turn, make a nonsense of the internal market and the single arrangements for the grid within the island of Ireland as a whole.

Does the Minister have any thoughts on those potential problems? Perhaps he does not consider them as potential problems at all and he can give me assurances that these matters have been thought out—that there is an agreement that will sort them out or that the legislation in front of us can fully take account of the issues to which I have given some consideration in this afternoon’s debate.

The Chair: There appear to be no other Members of the Committee wishing to take part in the debate, so I ask the Minister to respond.

4.47 pm

Kwasi Kwarteng: I am very pleased to respond to the hon. Gentleman, whose diligence in these matters is always to be commended, but I feel that there is a slight misapprehension about the force of the two SIs. As I described in my opening remarks, the whole point of the first SI is that it amends SIs that were laid before the withdrawal agreement was signed. Those SIs reflected, or tried to describe, the arrangements in Northern Ireland. The hon. Gentleman will know, as will other Members of the Committee, that at least a third of the

[*Kwasi Kwarteng*]

withdrawal agreement related to the Northern Ireland protocol. I know that, because I was the Minister on the relevant Bill, but I failed to get the Bill through, as you, Ms Elliott, will remember. As the withdrawal agreement has come through, the SIs that we laid before its agreement are essentially redundant.

The first SI that we are debating essentially amends those SIs in the light of the fact that we have a withdrawal agreement and that the agreement has a Northern Ireland protocol attached to it, which determines many of these issues in relation to Northern Ireland. The hon. Gentleman is quite right to say that the second SI does not deal directly with the Northern Ireland issue. However, what has happened since then is that we have got a Northern Ireland Government. We all know—this was an issue that we have talked about at length, and I think that he and I debated it—that the single electricity market, or SEM, is what largely determines these issues on the island of Ireland. The workings of the SEM have been the subject of other SIs, as both he and I know well.

To answer the hon. Gentleman's first question, it is not true to say that if we do not legislate in this way and there is not an agreement, the status quo just carries on. It does not just carry on, because, as I have said, the SIs have been superseded by the withdrawal agreement. In a way, this measure is a sort of safety blanket. We fully expect that there will be a deal, and that when there is a deal, we will have to reflect the institutions and how the energy market works according to that future deal, whenever it arrives and whatever its details are, when they are fleshed out. This measure is essentially just a safety blanket. It is not true to say that if we do nothing, we can simply carry on as before.

Dr Whitehead: I accept, of course, that it would not just be a case of status quo. Nevertheless, there is a question, in my mind at least: within a wider and overall deal, what would a specific deal on energy markets and

energy transmission consist of? Does the Minister have information on that, with which he can reassure us this afternoon?

Kwasi Kwarteng: It would be quite an extraordinary ask, given that the negotiations are ongoing, for me to be able to tell the hon. Gentleman exactly what the details of those negotiations are. He will understand—this is public knowledge—that we hope to be part of or have a stand-alone emissions trading scheme, which is related to the EU's ETS. However, as I have said, that is exactly the meat of the negotiations that are taking place, and it would be extraordinary for me in this public forum to say what the outcome of those negotiations will be.

If I may, and without further ado, I will say a couple of words in conclusion. The Government are committed to achieving a smooth end to the transition period so that our energy system operates with continuity and certainty. We confidently believe that these regulations will help to accomplish that in the event—the regrettable event—of there being no further agreement. We think that there will be an agreement, but should there not be one, these SIs will be very useful, because they will ensure continuity for our energy system, they will remove outdated references to legislation that no longer exists and that is not relevant, given the passing of the withdrawal agreement, and, as a consequence, they will provide more certainty for market participants. On that basis, I am pleased to commend them to the Committee.

Question put and agreed to.

**DRAFT ELECTRICITY AND GAS
(INTERNAL MARKETS AND NETWORK
CODES) (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020.—(*Kwasi Kwarteng.*)

4.53 pm

Committee rose.

