

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT AGRICULTURE (PAYMENTS)
(AMENDMENT, ETC) (EU EXIT) REGULATIONS 2020

DRAFT COMMON ORGANISATION OF THE
MARKETS IN AGRICULTURAL PRODUCTS
(PRODUCER ORGANISATIONS AND WINE)
(AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

Monday 2 November 2020

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Friday 6 November 2020

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The Committee consisted of the following Members:

Chair: MR PHILIP HOLLOBONE

† Bradley, Ben (*Mansfield*) (Con)
 † Brereton, Jack (*Stoke-on-Trent South*) (Con)
 Davies, Geraint (*Swansea West*) (Lab/Co-op)
 Eagle, Ms Angela (*Wallasey*) (Lab)
 Eagle, Maria (*Garston and Halewood*) (Lab)
 Fovargue, Yvonne (*Makerfield*) (Lab)
 † Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
 † Howell, Paul (*Sedgefield*) (Con)
 † Hunt, Tom (*Ipswich*) (Con)
 † Jones, Fay (*Brecon and Radnorshire*) (Con)
 † Lewer, Andrew (*Northampton South*) (Con)

† Morris, James (*Lord Commissioner of Her Majesty's Treasury*)
 † Nici, Lia (*Great Grimsby*) (Con)
 † Prentis, Victoria (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)
 Thompson, Owen (*Midlothian*) (SNP)
 † Young, Jacob (*Redcar*) (Con)
 † Zeichner, Daniel (*Cambridge*) (Lab)

Elektra Garvie-Adams, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 2 November 2020

[MR PHILIP HOLLOBONE *in the Chair*]

Draft Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020

4.30 pm

The Chair: I remind Members about the social distancing regulations. Spaces available to Members are clearly marked; unmarked spaces must not be occupied. The usual convention of a Government side and an Opposition side is waived on this occasion, so Members may sit anywhere. Members are welcome to sit in the Public Gallery, but if they wish to speak in the debate, they will need to come forward to the main part of the room. *Hansard* colleagues would be grateful if you sent any speaking notes via email to hansardnotes@parliament.uk.

I will now call the Minister to move the first motion and to speak to both statutory instruments. At the end of the debate, I will put the Question on the first motion and ask the Minister to move the remaining motion formally.

4.31 pm

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

That the Committee has considered the draft Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020.

Victoria Prentis: It is a pleasure to serve under your chairmanship, Mr Hollobone.

The two statutory instruments, which were laid before the House on 5 October, are closely related and apply to retained EU law relating to the common agricultural policy. Hon. Members may well be aware that the common agricultural policy has three strands: direct payments, rural development and marketing measures. Both instruments amend EU marketing regulations relating to the fruit and vegetables and the processed fruit and vegetables sectors and to the producer organisation aid scheme. The payments regulations also amend a number of other areas of the common agricultural policy.

As hon. Members are aware, the Department for Environment, Food and Rural Affairs has the largest SI programme in Government. In recognition of that, it has identified instruments whose delivery has been deemed essential to prevent significant disruption at the end of the transition period and has rolled several of them up together, which is why there are items dealt with collectively in the instruments before us that in normal times would perhaps be dealt with individually.

The draft instruments make technical amendments that will enable regulation to continue to operate effectively. They do not introduce new policy; they preserve the

regime for supporting rural development and marketing measures beneficiaries. The instruments do not enable that in relation to direct payments, for reasons that I shall set out shortly. Although one of the instruments is reserved, we have worked closely with the devolved Administrations in producing both instruments, and where necessary the DAs have given their consent.

The payments SI contains provisions for different aspects of CAP rules. First, following the ratification of the withdrawal agreement, it updates a number of DEFRA EU exit SIs made at the end of last year. To avoid duplication, ambiguity or contradiction in the future, it is necessary to remove the direct payment provisions in our 2019 SIs and to clarify that those SIs relate only to marketing measures and rural development. No policy changes are made through these amendments; they just minimise any ambiguity in the rules that might occur if all regulation continued.

Secondly, the instrument makes amendments to reflect other aspects of the withdrawal agreement that relate to the Northern Ireland protocol and article 138 of the agreement. The protocol-related provisions will clarify where Northern Ireland will apply EU rules, while creating no new trading barriers between Northern Ireland and Great Britain.

Thirdly, the instrument makes provision to ensure that public intervention and private storage aid can continue functioning in much the same way. At present, this is an administrative process under which the Commission makes technical decisions affecting tendering for intervention schemes and, in a short space of time, publishes its decisions using implementing Acts. The purpose of the changes that we hope to make is to allow the appropriate authorities to act in a similar and timely way.

Fourthly, the instrument makes amendments relating to producer organisations in the fruit and vegetables sector. It also makes amendments to EU regulation 2017/1185 to ensure that DEFRA and the DAs can continue to obtain certain production and price data from economic operators.

Finally, the instrument takes the opportunity to update other aspects of retained EU law to reflect amendments made by the EU in 2019 and 2020 after our earlier SIs were made at the end of last year. These amendments are mostly technical and are intended to avoid ambiguity in the regulations. We are also taking the opportunity to correct some small errors in the earlier EU exit SIs, such as references to the Commission that should have been amended to read “the appropriate authority”. Again, no policy changes are made by these amendments.

The draft Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 amend provisions of retained EU legislation relating to the CMO in the reserved areas of regulation of anti-competitive practices and agreements, international relations, import and export controls, and intellectual property. These amendments are to ensure that, at the end of the transition period, functions currently carried out by the European Commission or by member states in those reserved areas can be carried out by the Secretary of State.

The instrument amends six retained EU regulations and one domestic SI in the areas of producer co-operation; producer organisations in the fruit and vegetables sector;

and wine, with respect to protected designations of origin, protected geographical indications and traditional terms. It also revokes implementing Acts adopted by the Commission that set out its decisions concerning the protection of particular designations of origin, GIs and traditional terms. Those implementing Acts are not needed after exit because the effect of those decisions—what appears in the protected designations of origin or protected GIs register—is all that is required to ensure continuity. Removing the implementing Acts simply tidies up our statute book.

I turn first to the provisions concerning producer organisations. Once recognised as a producer organisation, producers in the fruit and vegetable sector can apply for match funding under the fruit and vegetable aid scheme, which allows producer organisations to take members from across the EU. At the end of the transition period, the aid scheme will become a domestic scheme in respect of new programmes. It will still be possible for members of a producer organisation to be based outside the UK, but for operational programmes started after the end of the transition period, aid will no longer be paid in respect of land that is not located in the UK.

The instrument amends the retained EU law and ensures that functions relating to the recognition of producer organisations in the fruit and vegetables sector can continue to be exercised by the Secretary of State. By virtue of article 138 of the withdrawal agreement, EU law will continue to apply to producer organisations' ongoing programmes after 31 December until they come to an end, which could be at any time between December 2021 and December 2024.

Retained EU regulations 880/2012 and 2016/232 relate to producer co-operation. They build on the rules for recognition of producer organisations and contractual negotiations in the CMO, which are covered in an EU exit SI already considered and approved by this House in March 2019. The amendments made by the draft instrument omit provisions on transnational producer organisations and update a reference to another regulation, just to tidy things up once again.

I turn now to the provisions that relate to wine. Changes are needed to ensure that arrangements for the protection of wine designations of origin, GIs and traditional terms operate effectively and that GB is able to process applications in respect of domestic protected designations of origin, GIs and traditional terms, and those from third countries, which of course includes the EU. We also need to ensure that the UK is compliant with World Trade Organisation rules.

The amendments in the instrument will ensure that the arrangements for wine continue to function after we leave the EU. They will give the Secretary of State the power to approve a protected designation, a protected GI or a traditional term, and powers to register one of the above if the UK has agreed to protect it as part of an international trade agreement. Finally, they will allow the Secretary of State to deal with UK applications that have been submitted to the EU, but on which a decision is still pending at the end of the transition period, as if they had been submitted under the new GB scheme—in respect of wine, we have a protected designation of origin application for Sussex that falls into that category. The amendments made by the instrument will

enable the Secretary of State to make administrative decisions without the need to make legislation after the end of this year.

The draft statutory instruments provide important and necessary continuity and clarity for stakeholders and beneficiaries. They will help to ensure that farmers, scheme participants and land managers have a clear legal framework with minimal ambiguity, and they will help our domestic wine industry to protect its growing international reputation. I urge hon. Members to agree to the amendments proposed in the regulations. I commend both instruments to the Committee.

The Chair: The debate can last until 6 o'clock.

4.41 pm

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to see you in the Chair, Mr Hollobone. I cannot tell you with what joy I heard that DEFRA has the largest programme of SIs in Government. I am sure that everyone is looking forward to the blizzard of SIs that is likely to descend on us.

I have to say that I found the Minister's explanations helpful; I suspect that, like me, she spent much of the recess reading the detailed trail that leads to these statutory instruments. The question for Members is how we can be absolutely sure about what they do and whether it is actually the case that nothing much is changing. Obviously, we trust the Government entirely, but there may be more to this than meets the eye. It strikes me that it is like a palimpsest: there are now layers and layers, and as we peel them back we find some quite interesting things—sometimes some odd contradictions, and sometimes things that are not immediately explicable. As on previous occasions, I suspect that some of my questions are not instantly answerable, and I would be happy for the Minister to write to me about some of them. However, there will be people to whom these things matter very directly, and clarity is important.

As a relatively new Member of Parliament, although five years seems like a lifetime here, I have to say that this is an odd process: we have a lot of very detailed legal explanations, but every now and then quite important things go through the process—or not—that have an effect on the real world. I have mentioned this in passing to the Minister before, but back in the summer, when there were competition issues affecting the food chain, there were SIs that were never discussed in this place. I raise that only because, sadly, we may well face the same situation again. I gently encourage the Government to discuss some of those matters, because at the time we were told that the lack of discussion had led to an impact, or a lack of impact, in the real world.

The payments SI is a kind of omnibus piece of legislation, with many bits and pieces in it. The farming sector needs clarity on a range of issues at the moment; it is a long time since formal advice was issued to the sector on what it faces in the new year, which is now some 58 days away. Could the Minister clarify when we will get advice on some of those big things, such as the sustainable farming initiative or bridging payments through to next year?

Paragraph 2.3 of the explanatory memorandum refers to some 16 previous statutory instruments, some of which were discussed at length in Committee sittings like this one. It is quite intriguing to go back in time and

[Daniel Zeichner]

re-read the previous debates. It is a bit like a detective novel, really—I find myself wondering who the villain was, whether there was a villain, who did it and whether it was ever resolved.

The first five SIs were discussed on 25 March 2019, when we were just a few days away from a potential no-deal crash-out from the European Union. Those measures were being put in place quickly at that time to try to deal with such an eventuality. The then Minister explained in particular the impact on the pillar 1 and pillar 2 CAP payments, which are hugely significant to many people.

We then moved on. In fact, this was when the current Minister and I started to discuss these things. Back in January this year, we had the Direct Payments to Farmers (Legislative Continuity) Act 2020 and a whole range of SIs that followed on from that. Therefore, we are now, in effect, on our third wave of SIs, and some of them of course refer back to the previous one and the previous one.

I hope that everyone is still with us, because this is not particularly simple or straightforward. Of course, it is tempting to make the obvious point that it is not quite as simple as some people suggested this time last year—but perhaps that is unfair. But there is a joke in here somewhere, because if we get to paragraph 9.1 of the explanatory memorandum—I do have sympathy for the civil servants—it tells us that DEFRA

“does not intend to consolidate the relevant legislation at this time.”

Well, good luck to whoever has to consolidate the relevant legislation; I think that that would be quite a task.

Let us now go back to March of last year—paragraph 7.6 in the explanatory notes refers to this. I think that we do need to look at some of the details, and of course if we turn to the instrument itself, we see that it has 48 pages of detailed amendments. Many of them are indeed just minor changes—for example, to ensure that the “relevant authority” is no longer the Commission and so on—but not all of them are. I have to confess that even having read them at some length, I am still not sure what some of them mean, and there are a few that I would really like the Minister to explain to us.

In part 3, there are mentions of the Agriculture and Horticulture Development Board and the rural development funds. I am not entirely sure what regulations 11 to 13 actually do, and that is important, because, certainly in relation to pillar 2, there are real concerns outside the House. I was talking to the Welsh Government at the end of last week, and they certainly had many concerns. The Minister will know—I have teased her before on this—that Wales modulates it to the full extent and does a lot of good things with the pillar 2 funds.

In the previous discussion about SI 2019/764 on 21 March 2019, the then Minister brought this to life a bit, because he said:

“The draft Rural Development (Amendment) (EU Exit) Regulations 2019 amend the EU regulation that provides the general rules and structures that govern support for rural development, provide payments to be made to agreement holders and lay down rules on programming, networking, management, monitoring and evaluation. That includes the countryside stewardship and environmental stewardship schemes, which improve the environment; the countryside productivity fund, which supports productivity improvements in farm and forestry businesses; and the growth

programme, which supports rural business development, food processing, tourism and broadband.”—[*Official Report, Twelfth Delegated Legislation Committee*, 21 March 2019; c. 4.]

When it is put like that, it suddenly does not sound quite so dry, because we suddenly see that there are an awful lot of things going on out there that are directly affected by that.

At the same time, my predecessor, David Drew, said:

“I am glad that the Minister mentioned that this is about £430 million for existing programmes. My concern is what will happen at the end of 2020”—

he was very prescient. He continued:

“There is no clarity at all from the Government on their rural policy, because it does not really have one, despite needing a rural strategy. What will the Government do then?”—[*Official Report, Twelfth Delegated Legislation Committee*, 21 March 2019; c. 5.]

I think that that question is as valid today as it was then, because the issues about the shared prosperity fund and the discussions about the United Kingdom Internal Market Bill do not lead us to a clear position some 58 days from the key point. Of course, many rural organisations, including the Rural Services Network, have been pressing for some time for a proper rural strategy to deal with all this, but that is missing at the moment.

At paragraphs 7.9 and 7.10 in the accompanying notes, there is talk of public intervention and storage. I listened closely to the Minister’s comments on this. I appreciate that this Government have never been as keen on these interventions as some of our European neighbours, but I want to be clear on what is actually done in that case—what being

“carried out administratively...rather than by regulations”

actually means. Certainly in the past, these things have been quite controversial. Often, there has been a kind of political influence on decisions as to whether to open up these schemes. I appreciate that in general—this was in the Agriculture Bill—the Government do not see this as a way forward for the future. But it could hardly be said that we are not at a time of potential market volatility—let us put it like that—and this would be exactly the kind of time when one might imagine that it would be useful to have access to some of these kinds of scheme. I am not sure that it can just be done administratively. It might require political judgment and decisions, so I would be interested to have some clarity on that.

The producer organisations model is one that has always been pursued to a much greater extent in other European countries than in the UK, but we have some. I just wanted to make a general comment about the explanatory notes. They are dry stuff, but to understand at all how important this issue might be, we need to know how many organisations there are, and what they are, but despite digging around, it was difficult to find some of that information.

Moving on from producer organisations to transnational producer groups, the questions I found I was asking myself were, who are they, what do they do and how big are they? I came to the conclusion that we may have only one such producer organisation in the UK, which might or might not be Dairy Crest.

Victoria Prentis indicated dissent.

Daniel Zeichner: The Minister is shaking her head, so I may be wrong about that. Perhaps she will tell me what the other milk producer organisations are. A consultation is going on at the moment, on a quite delicate set of issues to do with mandatory contracts, or not,

and some of the points I have raised could be relevant to that. I found it puzzling—this is where it gets very detailed—that article 149(2)(c) of regulation 1308/2013 has been introduced and seems to set a limit of one third of the raw milk production to be taken into account in establishing one of the organisations in question. I do not understand why that is, or whether it is significant, but I would be interested to know the reason.

I dug out a DEFRA report that tells us that there were 32 fruit and vegetable producer organisations in 2017. I do not know how many there are now. What also struck me, in passing, was that measures in the Agriculture Bill seemed to take us into a new environment. I wondered whether we would be back here in a few weeks' time having a similar discussion about SIs that might follow from that Bill.

We are told that those fruit and vegetable producer organisations must have at least five members. I am not clear whether that is a change from the past or whether it is bigger or smaller. The minimum value those organisations have to sustain has now become quite a simple calculation, whereas it was very complicated before. Again, I am not sure why there has been a change, and what the impact might be on any current organisations in this country. Perhaps the Minister could explain that.

The subject of wine made my team's eyes light up, but I had to tell them that it was not quite as exciting as they thought, although geographical indications are certainly important for our producers. It struck me on the basis of last year's discussion that there seem to have been changes with respect to the right to appeal if an application is turned down, and I am not sure what has changed to result in that. There seem to have been some subtle changes to amendments to article 115 in relation to the appeals and publication process and the introduction of an appeal to the first-tier tribunal. Again, I am not entirely clear why that has happened, and what has changed.

Finally, there used to be a part 3, which dealt with EU regulation 543/2011. It seems to have disappeared completely this year, but it was there last year. There may be perfectly clear explanations for all that, but it would be useful to know, and I am grateful for the opportunity to quiz the Minister on those points.

4.54 pm

Victoria Prentis: I am absolutely sure that the regulations are necessary. I am also absolutely sure that they are not bringing about a great deal of change in policy terms, and that the hon. Member for Cambridge, keen as he is on detective stories, will not find any victims this afternoon. Law is multi-layered, and that is one of the pleasures of engaging with it.

The hon. Gentleman wants me to be drawn into the new policies for the farming sector. He will not have long to wait. The Secretary of State plans to make a major announcement later this month, and of course we hope that the Agriculture Bill will receive Royal Assent shortly, once it has passed its remaining stages.

The hon. Gentleman asked a large number of technical questions, for some of which I have the answers to hand; for others, if he wishes to press them further, it might be helpful for officials in DEFRA to give him a teach-in on producer organisations—I enjoyed such a teach-in earlier this year. Of course, he would be most welcome to avail himself of that if he wished to.

On the hon. Gentleman's technical questions, the private storage process is a technical one. EU practice at the moment is for the Commission to invite tenders, to consider them and to publish its decision. Decisions are taken according to guidance, which is made available to the industry in advance. At the moment, there is no domestic equivalent to that process, so the draft statutory instrument is to ensure that at the end of the transition period we are able to set up a similar system, which would allow intervention to continue to operate smoothly, minimising disruption to stakeholders. Unfortunately, because of the pandemic, that might be necessary sooner than we had hoped. We will continue to monitor the situation. Once a decision is taken, all of that is published on gov.uk and may be scrutinised by anyone who needs to do so.

On the dairy question, there is one dairy producer organisation, Dairy Crest, as the hon. Gentleman said. There are 34 other producer organisations in the UK, which are all in the fruit or veg sector. About four of them, I believe, are transnational in some way, though not necessarily much of them, proportionately. And no, there is no change in the minimum membership.

That probably deals with most of the hon. Gentleman's questions—apart from on wine. How could I forget that? The new guidance on wine is set out clearly on the gov.uk website, and I politely refer him there. The guidance has changed in the past few weeks, but it is well and clearly set out.

Daniel Zeichner: I am an avid reader of DEFRA publications every day, and I noticed the wine guidance coming out—at the end of last week, I think. Was that prefiguring the decision today?

Victoria Prentis: No, not at all. That merely set out the policy intention for the future, which is to assist people who import. If we make the regulations this afternoon, there will be an update to the gov.uk website. I am sure that the hon. Gentleman will find that there in due course but, if not, I will be happy to share it with him.

The two draft SIs make necessary and appropriate amendments to retained EU legislation to ensure that there is a smooth transition from the CAP to our new domestic regime and that the functions carried out by the Commission or member states in reserved areas may be carried out in future by our own Secretary of State. The amendments make changes to ensure that the policy regimes set out continue to operate with the minimum of disruption and ambiguity for stakeholders after we have left the EU, and to allow the UK Government to operate and/or to make any necessary technical changes in each policy regime. I commend the draft regulations to the Committee.

Question put and agreed to.

**DRAFT COMMON ORGANISATION OF THE
MARKETS IN AGRICULTURAL PRODUCTS
(PRODUCER ORGANISATIONS AND WINE)
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020.

4.59 pm

Committee rose.

