

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT TOBACCO PRODUCTS AND NICOTINE
INHALING PRODUCTS (AMENDMENT) (EU EXIT)
REGULATIONS 2020

Tuesday 3 November 2020

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The Committee consisted of the following Members:

Chair: †DAVID MUNDELL

† Argar, Edward (*Minister for Health*)

† Double, Steve (*St Austell and Newquay*) (Con)

† Fell, Simon (*Barrow and Furness*) (Con)

† Gullis, Jonathan (*Stoke-on-Trent North*) (Con)

Harman, Ms Harriet (*Camberwell and Peckham*)
(Lab)

Howarth, Sir George (*Knowsley*) (Lab)

† Langan, Robert (*High Peak*) (Con)

† Millar, Robin (*Aberconwy*) (Con)

† Norris, Alex (*Nottingham North*) (Lab/Co-op)

O'Brien, Neil (*Harborough*) (Con)

Osamor, Kate (*Edmonton*) (Lab/Co-op)

Rees, Christina (*Neath*) (Lab/Co-op)

Thompson, Owen (*Midlothian*) (SNP)

† Throup, Maggie (*Lord Commissioner of Her
Majesty's Treasury*)

† Vickers, Matt (*Stockton South*) (Con)

† Western, Matt (*Warwick and Leamington*) (Lab)

† Williams, Craig (*Montgomeryshire*) (Con)

Nicholas Taylor, *Committee Clerk*

† **attended the Committee**

Fifth Delegated Legislation Committee

Tuesday 3 November 2020

[DAVID MUNDELL *in the Chair*]

Draft Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020

2.30 pm

The Minister for Health (Edward Argar): I beg to move,

That the Committee has considered the draft Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Mundell.

At the outset, may I highlight that we should all recognise our cross-party achievements in respect of tobacco control legislation over the past two decades. They have brought smoking rates to their lowest on record in the UK, and the individual and public health improvements that that has driven for everyone. However, smoking still causes more than 78,000 deaths each year and is one of the leading causes of preventable illness and premature death in England. That is why we have set out an ambition for England to be smoke-free by 2030. We are developing our plans and we will share them as swiftly as we can.

As hon. Members will be aware, the United Kingdom is a global leader in tobacco control, and the regulations that we are debating today will ensure that we maintain that strong commitment to tough tobacco control legislation up to and beyond the end of the transition period.

Through the regulations before us we are making the necessary arrangements to implement the terms of the withdrawal agreement and the Northern Ireland protocol in law for tobacco control. That will ensure that the robust arrangements for tobacco control are able to function effectively from 1 January. The 2020 regulations will amend existing 2019 regulations, which were made in preparation for our exit from the European Union. With your permission, Mr Mundell, for simplicity I will refer to them as the 2019 regulations.

The amendments made by today's statutory instrument to the 2019 regulations further amend how the Tobacco and Related Products Regulations 2016 apply in Great Britain and Northern Ireland after the end of the transition period.

The 2020 regulations introduce four main changes. First, it is essential that tobacco and e-cigarette producers provide notification of their products. That ensures that companies comply with legislation on product standards, and competent authorities are aware of all the products on the market. In accordance with the Northern Ireland protocol, the EU's tobacco products directive will continue to apply to Northern Ireland after the end of the transition period. That means that suppliers of tobacco and e-cigarette products wishing to place a product on the market in Northern Ireland will continue notifying via the EU common entry gate system.

Those wishing to sell their products in Great Britain will be required to notify through a domestic system, as set out in the 2019 regulations. That domestic system is already developed and will be hosted by Public Health England, and its successor organisation, for tobacco products, and by the Medicines Healthcare Products Regulatory Agency for e-cigarette products. Despite a requirement to notify on two systems, that will place a minimal burden on industry as the notification format and information required will be extremely similar.

Secondly, to limit the financial burden on industry, the SI makes amendments to the Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017 and the Electronic Cigarettes etc. (Fees) Regulations 2016 to reflect that if a producer notifies via both the Northern Ireland and the Great Britain systems, they are only required to pay one fee. If a producer wishes to notify in relation to placing products on just one of the markets, the same one fee will be payable. We will, however, of course keep the fee structure under review. I am sure that the shadow Minister may wish to comment on that.

Thirdly, the SI places into law requirements for picture warnings, which are central to tobacco control. As a result of the Northern Ireland protocol, the EU's library of picture warnings will continue to feature on tobacco products sold in Northern Ireland. However, our Government does not hold the copyright for the EU's pictures for use on a Great Britain market. We therefore require the industry to switch to the picture warnings as set out in schedule A1 of the 2019 regulations, pictures kindly licensed by the Australian Government free of cost. The industry is already accustomed to supplying different markets with varying packaging requirements across Europe and worldwide.

Finally, the regulations amend the sell-through period for existing stock which feature the EU picture library on the Great Britain market in accordance with the withdrawal agreement. That will allow stock first supplied before the end of the transition period to continue to circulate until it reaches its end user.

The instrument will allow goods to move freely between Great Britain and Northern Ireland, subject to the tobacco picture warning requirements. We acknowledge that this will have some impact on industry. To minimise that, we communicated with stakeholders in August, making them aware of the legislative changes; we also circulated further guidance last month regarding the specific requirements for picture warnings. We are clear that it is important that industry has the guidance that it needs, and I know that it is a point that the shadow Minister raised in a similar context in a similar Committee yesterday afternoon. Public Health England and the MHRA will also be publishing detailed guidance on notification requirements for both notification systems later this autumn.

My officials have engaged with the devolved Administrations throughout the development of the SI and may I put on record, as I always do, my gratitude for their contributions, and the positive and pragmatic collaborative approach that has been adopted. Although tobacco legislation is largely a reserved matter, there was a particular devolved matter relating to Northern Ireland about e-cigarettes on which we are grateful to have gained formal consent from the Northern Ireland Executive.

In conclusion, the SI is a necessary measure to ensure that the withdrawal agreement and the Northern Ireland protocol are reflected in law for tobacco control purposes. It is essential that the robust level of tobacco control currently operating in the UK remains in place after the end of the transition period to ensure that we continue to protect the nation's health. I therefore commend the measure to the Committee.

2.36 pm

Alex Norris (Nottingham North) (Lab/Co-op): It is a pleasure to serve under your chairship, Mr Mundell, for the first time. As the Minister said, we discussed similar regulations yesterday, and we are heading for a third bout in our series tomorrow, which is proving so juicy that it will held in the main Chamber. So something for everyone.

Matt Western (Warwick and Leamington) (Lab): The rumble in the jungle.

Alex Norris: Quite. I made that joke yesterday.

Matt Western: If only I had been there.

Alex Norris: Exactly; that's what all they all said. It is a challenge not to repeat the content, especially not my gags, although some points may bear repeating. The regulations were the subject of very good exchanges in the other place yesterday, which as well as covering the minutiae of the subject also addressed important points about general tobacco control. I may refer to those exchanges briefly, but first I should like to echo what my predecessor, my hon. Friend the Member for Washington and Sunderland West (Mrs Hodgson), said 18 months ago when debating the 2019 regulations. She outlined how dangerous it was that so much planning was needed for a no-deal scenario, and yet there was so little clarity on a no deal at that point. She warned that with 18 months to go, it was far too close to the deadline not to know where we were going. Well, we are now 60 days away, and we still know very little more. That is concerning: the Government need to get the deal that was promised to the British people, otherwise there will be significant disruption.

As the Minister said, the 2020 regulations amend the 2019 regulations, and implement the Northern Ireland protocol of the withdrawal agreement to ensure that the UK meets its obligations on tobacco control policy under that agreement. They will ensure consistency between the requirements relating to tobacco products placed on the market before and after the end of the implementation period, change the fees payable by producers when reporting information about their products in order to account for such amendments in Northern Ireland and ensure that tobacco control legislation continues to work effectively at the end of the implementation period. To that end, I will not be forcing a Division on the SI, because we do not want to render the nation's tobacco control policies ineffective. However, I want some reassurance on the Northern Ireland aspects and the smoke-free agenda generally.

As per the withdrawal agreement, Northern Ireland is obliged to rely on specific EU rules, but looking at the bigger picture, time is running out for the Government

to implement the remaining elements of the protocol. Any update on when that is likely to happen would be helpful, because proper implementation is vital to the protection of the Good Friday agreement.

Whatever happens in terms of these regulations, and our exit from the EU, that must not slow down our journey towards smoking cessation. I live in and represent one of the most challenged communities on health inequalities in the UK, and half of our health inequality is smoking based. We could remove half of health inequalities at a stroke by achieving that smoke-free goal. To me, that is an absolute priority project for Government. If they want to talk about levelling up, smoke cessation is perhaps the best thing that could be done to achieve that. The Minister made an accurate, well-expressed point about the cross-party record on declining smoking rates in the past couple of decades, and we should all be proud of that. However, smoking still remains the biggest preventable cause of cancer and death. There is an awful human cost, as well as the treatment costs of £2.4 billion each year – cutting smoking represents a really big prize to us.

It was interesting to note the Cancer Research UK report, 'Making Conversation Count', which set out the health and economic benefits of improving smoking cessation support in UK general practice. It is worth a read, and I would be interested in the Minister's reflections on it. Before I draw attention to couple of the report's highlights, I want to make a broader point about smoking cessation.

Local authorities have been under exceptional financial challenges for a decade. We could have a big political conversation about the necessity or otherwise of that, but I am less interested in that today. What we know for sure, however, is that those challenges have led to a diminution in smoking cessation services. Those services are strongly evidence-backed, and save us money in the long run. It is the falsest of false economies that hard-pressed local authorities are having to make. That matters today, beyond the fact that in itself it is a bad thing, because as councils deal with the impact of covid—it is clear that the total cost to each and everyone of our local authorities will not be met by central Government and that that initial promise will not be met—they will have to make difficult decisions. I know that in Nottingham, and I suspect this will happen across the country, we will see in-year budgets. They are horrendous not least because to try to get a 12-month saving from a six-month budget means that councils have to cut twice as much. Councils can try to finesse reserves, but they are in short supply. I am very concerned, and I hope that the Department are keeping a watchful eye on the aggregate impact on smoking cessation services in this country. If we lose them, we will face significant challenges. I sense that I am in danger of my comments being ruled out of the scope of the regulations. Am I?

The Chair: Possibly; I am sure that you will return right back to the regulations.

Alex Norris: I am on the edge; I am coming back to the substance of the regulations, and how important it is that we do not weaken our approach to the smoke-free agenda. The Cancer Research UK report is worth reading. The target of being smoke-free by 2030 is equivalent to less than 5% of adults still smoking,

[Alex Norris]

which could prevent more than 400,000 smoking-related diseases, 90,000 premature deaths and 10 billion quids-worth of smoking-related health care costs. The price for us is significant.

To pivot back to the regulations, I want to refer particularly to the ban on tobacco products with characterising flavours. Those regulations came into force five months ago, but those products are still being produced and made available for sale. I understand that the Minister's Department has instructed an investigation into that, which is welcome, but my sources tell me—I would love to be told that I am wrong, because I think it is extraordinary—that actually we are waiting for the European Commission to make a decision on the matter. Does that mean that it is now Government policy that when we come to these regulations, and others, it is likely that we will wait for the EU to act and then we will take mirror action? If so, we will have lost our voice in that institution, just to wait to mirror it daily. I do not think that was what people were enthusiastic for, and certainly was not sold as a benefit of leaving the EU. I would be grateful to receive a commitment from the Minister that that is not so.

We will be in a much stronger position once we have a deal, and it is worrying that we are considering these regulations at a time of such uncertainty, when we still do not know whether a deal will be reached. The regulations before us underpin and are fundamental to the bigger prize of smoking cessation by 2030. I know that the Minister is committed to pushing us towards that, and I mirror that by saying that I am committed to reaching that target when we are in government in the latter half of the decade.

2.44 pm

Edward Argar: I will not dwell on what may be the triumph of hope over reality in the shadow Minister's final comment. It is always a pleasure to appear opposite the hon. Gentleman, not only as a fellow east midlands Member of Parliament, but as part of our regular double act in these Committee Rooms. He is always pragmatic and highlights reasonable questions.

In terms of implementing the Northern Ireland protocol, and other aspects of the withdrawal agreement, the hon. Gentleman understandably raised the same question today as he did yesterday, and I am afraid that I will give him the same answer. The fact that he is here today, as am I, debating regulations on another aspect of the protocol should give him some reassurance that we will all play our part in the coming days to ensure that the protocol is delivered.

The hon. Gentleman also mentioned, as is his wont, the need to secure a good deal—a good future trade arrangement with the EU. I would remind him that we did of course secure such a deal with the withdrawal agreement—we left not with no deal but with that withdrawal agreement—but I take his point about the importance of the ongoing negotiations. As ever, it will not surprise him to learn that I will not prejudge what will emerge from them.

I agree with the hon. Gentleman about the importance of continuing to focus on tackling smoking and its consequences. We both highlighted the importance of what has been achieved cross-party, but of course there is no room for complacency, and we need to continue leading the way. He highlighted a recent report by Cancer Research UK; I confess that I have not read that full report, but it always produces extremely erudite and important documents, so I am happy to take that recommendation from him and read it.

The hon. Gentleman touched on local council services. In an endeavour to remain within the scope of the debate, I address that point more in the context of how those services and his points about them are important in setting the context in which today's regulations sit. I served as a councillor for many years before entering the House, including for a period as cabinet member for health and adult social care, so I recognise the importance of council services to smoking cessation. I will of course flag that.

On the hon. Gentleman's final point about the review of flavoured e-cigarettes, I will ask my colleague who has direct responsibility for that policy area, the Under-Secretary of State for Health, my hon. Friend the Member for Bury St Edmunds (Jo Churchill), to update him in writing, if appropriate.

On the matter of divergence or otherwise, as I said yesterday, I have been in the House long enough not to be tempted by the hon. Gentleman to answer that question. It is a matter for future negotiations. We continue to lead the way, I believe, in Europe and indeed the world in tackling smoking. We will continue to do so in the future. The regulations are largely of a technical nature, but they will ensure that we can continue to protect people's health, and that we have a strong tobacco regulatory regime in place after 1 January. I commend the regulations to the Committee.

Question put and agreed to.

2.48 pm

Committee rose.

