

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT STATE AID (REVOCATIONS AND
AMENDMENTS) (EU EXIT) REGULATIONS 2020

Tuesday 3 November 2020

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Saturday 7 November 2020

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The Committee consisted of the following Members:

Chair: PHILIP DAVIES

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| † Bowie, Andrew (<i>West Aberdeenshire and Kincardine</i>) (Con) | Richards, Nicola (<i>West Bromwich East</i>) (Con) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Scully, Paul (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † Davies, Dr James (<i>Vale of Clwyd</i>) (Con) | † Tarry, Sam (<i>Ilford South</i>) (Lab) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Tomlinson, Michael (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con) | † Whitley, Mick (<i>Birkenhead</i>) (Lab) |
| Grady, Patrick (<i>Glasgow North</i>) (SNP) | † Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Grundy, James (<i>Leigh</i>) (Con) | |
| † Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con) | Nicholas Taylor, <i>Committee Clerk</i> |
| Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab) | |
| † Morrissey, Joy (<i>Beaconsfield</i>) (Con) | |
| † Onwurah, Chi (<i>Newcastle upon Tyne Central</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 3 November 2020

[PHILIP DAVIES *in the Chair*]

Draft State Aid (Revocations and Amendments) (EU Exit) Regulations 2020

9.25 am

The Chair: Before we begin, I thank Members for observing the social distancing rules and the places set out for them. *Hansard* colleagues will be grateful if you could send any speaking notes to hansardnotes@parliament.uk.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.

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

I hope that the Committee will support the draft regulations and their objectives. The regulations were laid before the House on 29 September of this year. They were made under the powers in the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, which I will refer to as the “Withdrawal Act”.

The draft regulations remove redundant EU state aid law from the domestic statute book after the end of the transition period. However, it may help if I set out a little context. State aid, which is an EU concept, is support in any form from any level of Government that gives a business or another entity an advantage that could not be obtained in the normal course of business. The disadvantage is the potential to distort competition within the internal market, affecting trade between EU member states, when state aid is present.

The rules relating to state aid ensure that EU member states operate in a way that is compatible with the internal market. The European Union establishes the rules, and the European Commission enforces them. The rules, together with case law, set out the details on how and when aid can be granted. However, we are no longer members of the European Union or the single market and, after the transition period, we will no longer be bound by those rules. If we did nothing, therefore, after the end of the transition period, EU state aid law would become part of UK law as retained EU law under the Withdrawal Act, but it would contain fundamental deficiencies making such retained EU law for state aid inoperable in the UK.

The objective of this statutory instrument, therefore, is to revoke the redundant law. That is both appropriate and necessary to provide legal certainty for UK businesses and public authorities that EU state aid rules no longer apply in the UK, except where they apply directly under the Northern Ireland protocol. That clarity is essential for businesses. The Government have long been clear that the UK will not follow EU state aid rules after the

transition period, and will not align with EU state aid rules in any trade agreement with the EU. Instead, the UK will have its own subsidy arrangements to support its competitive, dynamic market economy.

My right hon. Friend the Secretary of State announced in a written statement to Parliament on 9 September 2020 that, from 1 January, the Government will follow World Trade Organisation rules on subsidies and other international commitments agreed in free trade agreements, and that we will consult on whether to go further, including on whether to legislate.

Kevin Hollinrake (Thirsk and Malton) (Con): Some of the provisions of the coronavirus business interruption loans and bounce back loans were restricted because of EU state aid rules, which the Government had to work alongside. In future, will we be more fleet of foot in drawing up our own schemes for such loans and, potentially, might we be able to extend them a bit further into the distance? At the moment, they only extend to the end of January. Will the Minister look at extending those schemes perhaps to the middle of the year, because we can determine the rules ourselves? Is that correct?

Paul Scully: I thank my hon. Friend for an apposite intervention. I will not be drawn too much into what we will do in future, but I will say that being fleet of foot is exactly the reason for switching off the state aid rules at this point and having our own sovereign approach.

Over the coming months, we will work closely with businesses and public authorities across all parts of the United Kingdom to ensure that we consider how best to design an approach to subsidy control that works, as my hon. Friend said, for the UK economy.

I now turn to the detail of this draft statutory instrument. The SI will disapply and revoke retained EU state aid rules, which are preserved by sections 3 and 4 of the Withdrawal Act. Articles 107 to 109 of the treaty on the functioning of the European Union, together with the EU regulations and decisions made under that treaty, govern the state aid regime. Article 107(1), for example, defines state aid and sets out the general prohibition on giving aid. That prohibition operates by providing that aid is incompatible with the EU internal market, insofar as it affects trade between member states, unless that aid has been approved by the European Commission. Article 107(2) and (3) set out where the Commission must give approval and where the Commission has discretion over whether to approve aid. Article 108 sets out the Commission’s role in monitoring state aid and obliges member states to notify the awarding of aid to the Commission in advance.

Aid cannot be awarded until approved by the European Commission. This is known as the standstill obligation. While the Commission has the exclusive competence to decide whether aid is compatible with the internal market, national courts can enforce the standstill obligation. In effect, national courts can suspend an aid measure until the Commission has considered whether that measure is compatible with the internal market. However, after the transition period, the UK will no longer be bound by EU state aid rules, so the rights and obligations I have just described will no longer be relevant. This SI ensures that they are not retained in UK law by the withdrawal Act.

Furthermore, several EU regulations are in place to enable the EU state aid regime to operate across the member states. These broadly consist of procedural and exemption regulations. The procedural regulations set out how the state aid regime operates and make clear the roles and responsibilities of the Commission and the member states. They set out the procedures to be followed on notification and investigation, and give the Commission information-gathering powers. The exemption regulations set out the conditions under which an aid measure is exempt from the requirement to notify the Commission in advance. After the transition period, these provisions will become retained EU law through the withdrawal Act, but they will have no practical application, because the Commission will not have a role in the UK's domestic subsidy control arrangements. The SI will therefore revoke these redundant provisions. Removing retained EU law that is both deficient and no longer relevant from UK statute books avoids any possible confusion about whether state aid laws must be complied with or not. The instrument also makes consequential amendments to other retained EU law and UK domestic legislation that refer to state aid rules, ensuring that this legislation can continue to operate appropriately beyond the transition period, when EU state aid rules will not form part of domestic law.

Hon. Members will recall that I mentioned that the regulations do not prejudice the Northern Ireland protocol. Article 10 of the Northern Ireland protocol will apply at the end of the transition period. The protocol will apply the EU state aid rules for measures relating to goods and wholesale electricity, affecting trade between Northern Ireland and the EU. The protocol is given effect in the UK by the withdrawal Act. The regulations will not affect the application of the Northern Ireland protocol. The regulations only make amendments to UK domestic law. The Government seek powers through the United Kingdom Internal Market Bill to ensure, if necessary, that there is no confusion or ambiguity in UK law about the interpretation of the state aid elements of the Northern Ireland protocol.

In conclusion, it is a fact that, from 1 January, EU state aid rules will no longer apply to the UK. The purpose of this statutory instrument is simply to revoke retained EU law on state aid from the UK statute book, and to fix any technical deficiencies in other retained EU law and UK domestic legislation that refers to state aid rules. I think we agree that clarity on the UK statute books about which rules do and do not apply after the transition period comes to an end is in the best interests of all. The instrument will ensure legal certainty for businesses, aid-granting authorities and courts. I therefore commend the regulations to the Committee.

9.33 am

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a great pleasure to serve under your chairship, Mr Davies. I am glad to be on the Committee considering the regulations.

I am particularly pleased that a Conservative Government recognise the role that state aid can play in the development of key sectors in a nation's economy. If deployed as part of a robust industrial strategy, it can help to create decent jobs, kick-start businesses and rebalance regional inequalities. State aid, public ownership and workers' rights are important building blocks of our nation's economic

model, and getting them right will be crucial to our future prosperity and the nature of any post-Brexit settlement. EU state aid rules on innovation clusters, broadband, culture and heritage, as well as on small and medium-sized enterprises, general economic interest and local infrastructure projects, have allowed member states lots of room to invest in and pursue their domestic priorities.

I should declare an interest here. When I worked for Ofcom I worked on state aid rules with particular regard to investment in broadband—for many years and in quite a lot of detail, although I shall not indulge myself by going into that during this debate, Members will be glad to know. However, I can say that state aid rules allow for support for industries of general economic interest. It is true that they prohibit heavy-handed state aid when it distorts competition, but there have always been ways to strengthen and support industries without falling foul of EU guidance.

State aid rules are a critical concern in providing the right level of financial and other support, but even within the EU different countries have interpreted state aid rules in different ways. Other countries within the European Union have always, shall we say, been far more innovative, creative and supportive with their strategic industrial capacity than the UK, despite the same state aid rules environment. The UK did not keep up with strategic investments. For example, the Government provided just 0.38% of GDP in state aid in 2018, compared with France's 0.79%, Germany's 1.45% and Denmark's 1.55%.

I give those figures to emphasise to the Minister that the Government cannot continue to hide behind the false excuse that it was the EU regime that was the reason for the lack of strategic investment. Further, it is strange that the state aid regulations should cause such an impasse in the negotiations, given the lack of support from the Conservative Government over many years for strategic investment and subsidy. While the Minister says that state aid is an EU concept, it is certainly recognised in the WTO subsidy regimes, which are essentially the same thing. When I asked the Secretary of State for International Trade in the House on 14 September, at column 35, what the difference was between the European Union state aid rules, which had been rejected, and the Japan trade deal state aid rules, which were being accepted, I did not get an answer. I hope that the Minister will perhaps give us some clarity on that.

Kevin Hollinrake: Is not the difference the fact that we would be able to make our own rules unilaterally; but if we remained part of the jurisdiction of EU state aid we would have to go to the European Court of Justice, potentially, or to the European Commission, to determine what support we might offer to business? Does the hon. Lady propose that should still be the case once we have left the European Union?

Chi Onwurah: I am afraid that the hon. Gentleman has entirely misunderstood me. We are leaving the European Union, as I said. In fact, we have left the European Union and the transition period is coming to an end. My question, like my question to the International Trade Secretary, was very specific. It was about the difference between state aid rules. In the case of what was agreed with Japan it is not something unilateral. In the Japanese trade deal state aid rules were agreed—as

[*Chi Onwurah*]

they are in all trade deals; it is difficult to agree them unilaterally with another country. My question was about the difference between those rules and those that were rejected as part of the European Union trade negotiations.

Kevin Hollinrake: The European Union position in the negotiations is that it wants us to be accountable to the European Union. That is exactly what it is saying, and that is what is different. Whereas in the Japan deal that was not the case, with the EU it is. There would be a requirement for us to agree our measures with the European Union. Is that what the hon. Lady wants? That is what the EU wants. That is its position.

Chi Onwurah: What I wanted to understand was the difference—comparing the rules agreed with Japan and the existing rules within the European Union state aid agreement. The way in which they are managed in the future is obviously part of the negotiations, but I wanted to understand the difference. I still do not understand what the difference is, and am not sure whether it has been set out clearly anyway; but I am sure the Minister will explain it to me.

As has been said, we have left the European Union, and the end of the transition period is fast approaching, so we call on the Government to protect British jobs and support regional communities that have been held back after 10 years of austerity. State aid can and should play an important role in that. Labour does not want a return to top-down subsidies and command-and-control intervention in the economy. Instead, we want to build an economy where public bodies work with the private sector to promote innovation and drive economic growth. The Government have had over four years to put together a replacement state aid regime. We were promised a framework way back in March 2020 and we are still waiting to see it. We agree with the need for this statutory instrument and will not be opposing it, but we believe it important for businesses and, indeed, for all of us, to have greater clarity.

With less than two months to go, there is regrettably no time left to carry out a meaningful consultation on a new, ambitious plan for state aid before the end of the transition period. Businesses that I am talking to are understandably frustrated. As we have discussed, negotiations with the European Union broke down earlier this month and Lord Frost confirmed that the UK would be operating under WTO rules from January 2021. While this gives a modicum of clarity to stakeholders—which is to be welcomed—we know that WTO rules are suboptimal, lacking in important detail on state aid. They also do not include provisions on services, which is a critical part of the UK economy.

On 11 March, the Chancellor of the Duchy of Lancaster told the Committee that the Future Relationship with the European Union that Great Britain-based businesses trading with Northern Ireland would categorically not be subject to European Union state aid rules come January 2021. Many experts say that WTO do not operate effectively as a subsidy control regime, and that a reliance on WTO rules should only be a stopgap. Does the Minister agree? Will he give an indication of what a future state aid regime built on the proposed WTO framework would look like?

We hope the Government will improve on the WTO baseline quickly and get this implemented, not only because that would give further clarity to UK businesses, but because it would improve free trade negotiations with the EU and other countries.

Businesses have raised concerns that under the Government's current proposals, subsidies made outside of Northern Ireland might still be regarded to have a potential effect on trade between the European Union and Northern Ireland. The Minister talked about the impact of these rules on Northern Ireland, but these outside subsidies could necessitate a European Union state aid assessment. What is the Minister's view and can he allay those concerns by confirming that the Government will prevent EU state aid rules from reaching back into the UK for trade between Great Britain and Northern Ireland, which is covered by the Northern Ireland protocol?

Before I conclude, I wish to say that we have long been concerned about how the Government's flagship shared prosperity fund might interact with a UK state aid regime. The Government have promised that details regarding would come with a comprehensive spending review, but the CSR has been curtailed to just one year and the consultation has not even started yet. Can the Minister assure us that we will have some details of the framework before the end of the transition period? Will that framework ensure that regional leaders and devolved Administrations are consulted and included in decision making?

We should remember that the structural funds received from the European Union were always allocated based on where they were most needed according to relative deprivation. Will a future state aid regime reflect that? Given the controversy around allocations from the towns fund, how can the Government assure us that the appropriate safeguards will be in place to prevent cronyism arising from Ministers' own "qualitative analysis"? Finally, I would like to hear from the Minister the ways in which the Government intend to allocate state aid funding other than via the shared prosperity fund.

9.44am

Paul Scully: I am grateful to the Committee for its consideration of the regulations and the valuable contribution of the hon. Member for Newcastle upon Tyne Central to this important debate.

I have talked about the fact that the EU state aid rules were created to meet the needs of the EU, but, with us leaving the EU and the single market, as we have heard from my hon. Friend the Member for Thirsk and Malton, whether for the Japan deal or for our future deals, we want to have a system, controls and regulations that fit the UK economy and our objectives, which can be enforced and administered by the UK as an independent sovereign nation.

The hon. Member for Newcastle upon Tyne Central talked about certainty for businesses and I totally agree with her. This is a specific, technical statutory instrument that does not look at our future subsidy control regime beyond the WTO. Clearly, we will want to build on that and work out where we need to go with businesses. It is important that we involve businesses to develop any future additions, should we choose to build on the WTO. In terms of the certainty that businesses require

now, we will publish guidance as soon as possible on the international commitments that will apply in the UK on 1 January 2021. That will cover WTO rules and subsidies and any commitments that we have made in the free trade agreement to date.

Our approach will have implications for businesses and all public authorities that grant subsidies with taxpayers' money, including the devolved Administrations. It will take time to listen closely to those voices and design a system beyond 1 January that promotes a competitive and dynamic economy throughout the whole UK.

Chi Onwurah: Can the Minister give more clarity about the timescale he envisages to develop the state aid regime, given that we will have left the European Union and the existing state aid regime will no longer be applicable?

Paul Scully: Clearly the timescale will involve two things: our negotiations with the EU and other countries in terms of free trade agreements, and our discussions with businesses and government at every level, including the devolved Administrations, to ensure that we get it absolutely right.

We can be sure that on 1 January 2021 we will be leaving with the subsidy control, as outlined by the WTO. The guidance for businesses at that point will be

there for them to see. We need to ensure that with anything to do with the transition—whether it is changes to company administration, organisation supply chains or subsidy control of state aid—it is important that businesses look at gov.uk/transition website. Whether we have a deal with the EU or not, companies will have changes to make. It is important that they are on top of that, especially small businesses that do not necessarily have available the big resources to work on those matters at such extraordinary times, as they work on a day-to-day basis.

The objective today is to revoke the retained EU state aid law, rather than looking forward beyond that—that is appropriate and necessary—and to ensure that consequential amendments to other retained EU law and UK domestic legislation that refers to state aid rules continue to operate appropriately for businesses and Government after the end of the transition period.

In conclusion, I confirm that we are revoking the retained rules that have been preserved through the withdrawal Act. The regulations will provide the legal certainty for businesses and aid-granting authorities. I therefore hope that the Committee will approve the regulations.

Question put and agreed to.

9.49 am

Committee rose.

