

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT HAZARDOUS SUBSTANCES AND
PACKAGING (LEGISLATIVE FUNCTIONS AND
AMENDMENT) (EU EXIT) REGULATIONS 2020

DRAFT OZONE-DEPLETING SUBSTANCES AND
FLUORINATED GREENHOUSE GASES
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020

Wednesday 18 November 2020

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The Committee consisted of the following Members:*Chair:* MR PHILIP HOLLOBONE

† Bailey, Shaun (*West Bromwich West*) (Con)
 † Brereton, Jack (*Stoke-on-Trent South*) (Con)
 Bryant, Chris (*Rhondda*) (Lab)
 Efford, Clive (*Eltham*) (Lab)
 † Everitt, Ben (*Milton Keynes North*) (Con)
 † Hughes, Eddie (*Walsall North*) (Con)
 † Hunt, Jane (*Loughborough*) (Con)
 † Jones, Fay (*Brecon and Radnorshire*) (Con)
 † Jones, Ruth (*Newport West*) (Lab)
 † Morris, James (*Lord Commissioner of Her Majesty's Treasury*)

† O'Brien, Neil (*Harborough*) (Con)
 Ribeiro-Addy, Bell (*Streatham*) (Lab)
 † Richards, Nicola (*West Bromwich East*) (Con)
 Spellar, John (*Warley*) (Lab)
 Thompson, Owen (*Midlothian*) (SNP)
 † Twist, Liz (*Blaydon*) (Lab)
 † Wakeford, Christian (*Bury South*) (Con)

Kevin Maddison; Ailish McAllister-Fisher, *Committee Clerks*

† **attended the Committee**

Eighth Delegated Legislation Committee

Wednesday 18 November 2020

[MR PHILIP HOLLOBONE *in the Chair*]

Draft Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020

2.30 pm

The Chair: Before we begin, I remind hon. Members about the social distancing requirements. Spaces available to Members are clearly marked, and our *Hansard* colleagues would be grateful if you sent any speaking notes to hansardnotes@parliament.uk.

The Lord Commissioner of Her Majesty's Treasury (James Morris): I beg to move,

That the Committee has considered the draft Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Ozone-depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020.

James Morris: It is a pleasure to serve under your chairmanship, Mr Hollobone. I will take each instrument in turn, starting with the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020. The statutory instrument is needed to make small but important changes to ensure that our domestic legislation reflects that the United Kingdom is no longer part of the European Union. The SI covers two different subject areas. The first is the regulation of hazardous substances in electrical or electronic equipment, or EEE. The second is the regulation of essential requirements for packaging—the requirements that producers need to fulfil if they place packaging on the market, such as manufacturing and composition requirements.

Hazardous substances in EEE are regulated by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012, the so-called RoHS regulations that implement the EU's RoHS directive. The SI that we are debating transfers to the Secretary of State powers that are currently held by the European Commission under the RoHS directive. After the end of the transition period, the powers will allow the Secretary of State to grant, review, renew or revoke exemptions to the restriction of hazardous substances in electrical and electronic equipment, as specified in the RoHS regulations. Exemptions allow the use of restricted hazardous substances above threshold limits for specific uses, such as solders in medical equipment. The Secretary of State will also be allowed to amend the list of restricted substances and maximum concentration values, and to prescribe detailed rules for complying with maximum concentration values.

Those powers will apply in England, Wales and Scotland, but not in Northern Ireland, because the RoHS directive will continue to apply in Northern Ireland after the end of the transition period, as it is listed in Annex 2 of the Northern Ireland protocol. The changes are important, as we are taking powers back from the European Commission to the UK. The SI will allow the Secretary of State to make important decisions on RoHS, and it also amends the RoHS regulations and the Packaging (Essential Requirements) Regulations 2015. It amends both sets of regulations separately for Great Britain and for Northern Ireland. The amendments to the RoHS regulations for Great Britain introduce key measures to ensure a smooth end to the transition period for business, placing manufactured goods on the GB market. They include transitional provisions for importer labelling in order to provide a 24-month period in which importer details can be provided on accompanying documentation, and a similar transitional provision for the application of the new UK marking, which will replace the European Union's CE marking.

This instrument ensures that, except for qualifying Northern Ireland goods, the automatic recognition in Great Britain of EEE meeting EU requirements will expire 12 months after the end of the transition period. It amends both the RoHS regulations and the essential requirements for packaging regulations, to make provision for access for qualifying Northern Ireland goods to the GB market. The instrument amends the RoHS regulations and the essential requirements for packaging regulations separately for Northern Ireland. The amendments that apply in Northern Ireland are more limited. They are to reflect the fact that the RoHS directive and the packaging directive will continue to apply in Northern Ireland—although not in the rest of the United Kingdom—by virtue of the Northern Ireland protocol. They will allow the UK to meet its obligations under the Northern Ireland protocol when it comes to packaging and RoHS.

We have ensured that the changes for Northern Ireland are as minimal as possible while also allowing the UK to fulfil its obligations under the Northern Ireland protocol. However, there are some unavoidable costs for businesses as a result of amendments to the RoHS regulations, including familiarisation and new labelling costs. No impact assessment was prepared for this instrument, as any costs to or benefits for businesses, charities and voluntary bodies were predicted to fall below the limit of £5 million in one year.

This instrument is reserved, as it covers specific technical standards and requirements on all businesses in relation to products, the subject matter of which is covered by EU law obligations until the end of the transition period. This is a reserved matter under all three devolution settlements.

This instrument makes small but important changes to ensure that regulations, processes and systems that deal with packaging and RoHS will continue to operate and be enforceable at the end of the transition period. It ensures that the UK fulfils its obligations on packaging and RoHS under the Northern Ireland protocol and, crucially, returns powers from the RoHS directive back to the UK to allow the UK to maintain its high product safety standards.

I now turn my attention to the second instrument for debate—the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020. This instrument enables the UK to meet the

requirements of the Northern Ireland protocol in relation to restricting the use of ozone-depleting substances, ODS, and fluorinated greenhouse gases, F gases, as required for transition period completion day. That will be done by making changes to existing legislation. The instrument also amends dates to prevent errors of law caused by those dates currently falling before the end of the transition period.

Ozone-depleting substances damage the ozone layer, while F gases are powerful greenhouse gases. The UK is a party to the United Nations Montreal protocol, which places controls on both ODS and F gases. The EU ODS regulation implements the Montreal protocol by restricting ozone-depleting chemicals to certain limited uses where there are no viable alternatives. Registration and quota limit requirements apply to those exempted uses. Imports and exports must also be licensed.

The EU F gas regulation cuts by 79% the use of hydrofluorocarbons, the most common type of F gas, by 2030 and implements other measures to reduce F gas emissions. The HFC phasedown is achieved through allocating quota to producers and importers. It underpins UK and EU compliance with international obligations to reduce HFC use under the Kigali amendment to the Montreal protocol.

The Northern Ireland protocol requires that the EU F gas and ODS regulations remain applicable to and in the United Kingdom in respect of Northern Ireland. This instrument makes necessary amendments to enable the UK to meet the requirements of the protocol. That means establishing quota systems for Great Britain that are separate from the EU systems. Northern Ireland will remain part of the EU systems. Producers or importers will require GB quota to place things on the GB market, with businesses seeking to sell into Northern Ireland needing EU quota.

This instrument introduces provisions to control the movement of F gases and ODS between Great Britain and Northern Ireland. The provisions define that the movement will be deemed as imports or exports for the purposes of F gas and ODS trade. Controlling such trade between Great Britain and Northern Ireland is vital to maintain the integrity of the GB F gas and ODS systems, meet the Northern Ireland protocol requirements and ensure that the UK remains compliant with its international obligations under the Montreal protocol.

This is not about stopping trade. The approach in the instrument has been developed to meet two key principles—first, that we continue to contribute to the UK ambition on climate change through complying with our obligations under the world-renowned Montreal protocol and, secondly, that we impose the most light-touch measures on movements of goods between Northern Ireland and Great Britain that we can, adhering to the Northern Ireland protocol, while still meeting our international obligations.

The previous EU exit SI—the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019—as amended by this instrument will transfer powers and functions previously held by European institutions, including the European Commission and the European Environment Agency, to appropriate authorities and regulators in England, Scotland and Wales. The Scottish and Welsh devolved Administrations will have the competence to establish and operate their own ODS

and F gas systems, if they choose to in the future. I am pleased to say that all the devolved Administrations have agreed to this instrument.

I also confirm that the Scottish and Welsh devolved Administrations have agreed in principle to the operation of GB-wide ODS and F gas systems. Compliance and enforcement arrangements will remain, as under the current EU regulations, with the Environment Agency and devolved Administration regulators undertaking the same sort of activity as they do at present. We do not expect enforcement costs to increase significantly as the number of companies being regulated will be similar.

The impacts of this instrument are well below the £5 million per annum threshold, which is why no formal impact assessment accompanies it. The Joint Committee on Statutory Instruments considered the instrument and cleared it without comment on 4 November.

The Chair: We have until 4 o'clock for the debate. I call Ruth Jones.

2.42 pm

Ruth Jones (Newport West) (Lab): Thank you, Mr Hollobone, and I start by wishing you a belated happy birthday. I welcome the hon. Member for Halesowen and Rowley Regis, and congratulate him on his promotion to Minister, if only for today.

It is good to be with colleagues this afternoon and to have the chance, once again, to scrutinise and unpick more delegated legislation from the Government. I have to say that the way things are happening now, it is beginning to feel like this is Government by statutory instrument and, although I have only been a member of this House for 18 months, I know that is not how things should be done.

We have two SIs before us and I shall speak to each in turn. First, the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 refer to legislative functions that are currently held and carried out by the European Union on the restriction of the use of certain hazardous substances in electrical and electronic equipment. The instrument seeks to transfer the functions currently exercised in Europe to the Secretary of State, in relation to England and Wales, and to Scotland, after the end of the transition period following our departure from the European Union, which, as you know, Mr Hollobone, is on 31 December 2020—or, to put it another way, in 44 days' time.

Her Majesty's Opposition will not seek a Division on the regulations; I know hon. Members will be disappointed to hear that. I just wish we were not discussing this important transfer of powers on 18 November 2020, to be ready for 44 days' time, but we have to do so, because we need to be ready for what comes next. We need to ensure that all the necessary steps are taken for what life will be like on 1 January next year and beyond.

For those hon. Members who have listened to me speak in Delegated Legislation Committees before, it will be no surprise that I am going to raise concerns about impact assessments, the language used in them and the language more generally. This statutory instrument makes an important transfer of powers, and the importance of those powers means that I am very concerned about the wording of the explanatory memorandum. I refer hon. Members to paragraph 12 of the explanatory memorandum. The first sentence of 12.1 says, "there will be an impact on business".

[Ruth Jones]

Paragraph 12.3 then says,

“an Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen”.

I would be grateful if the hon. Member for Halesowen and Rowley Regis squared this circle for us—and for the people who will be affected by the transfer of these powers. There is an impact on business, but there is no impact assessment because no impact is foreseen. Perhaps he could clarify that when he sums up.

I know that Ministers across Whitehall are stretched, and I pay tribute to all the hard-working civil servants in the Department for Environment, Food and Rural Affairs and across Government, but this simply is not good enough from Ministers. For many Opposition Members, it seems odd to identify a difference between “no impact” and “no significant impact”. We need clarity and coherence on this, please, this afternoon.

I have two specific questions for the hon. Gentleman. First, I want him to confirm that the power to amend the list of substances will not be used to weaken environmental protection. This is vital for us as a country and for how we tackle the climate emergency that people across—and outside—the House want us to tackle now.

Secondly, I note that the Department’s response states that it is “the Government’s intention” to carry out a general public consultation; we all know about good intentions, but they are different from delivering real results. Will the hon. Gentleman confirm that a public consultation—including seeking the views of environmental groups—will be carried out when the list of substances is amended? When will it start, and how long will it last? That is vital and we all need answers.

The second statutory instrument, the draft Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020, deals with a specific policy area that is one of the international obligation exemptions to the Government’s unfettered market access policy. There will be two separate systems in Great Britain and Northern Ireland that require the introduction of controls and checks on the movement of certain gases, substances and equipment across the Irish sea between Northern Ireland and Great Britain. With the potential practical impact on trade between NI and GB, these are issues that I suspect the House will consider with greater urgency in the coming weeks.

Her Majesty’s Opposition will not seek to divide the Committee on this SI either because we are recognise its technical nature and, most important, we are keenly focused on the integrity of the Union and on doing right by the people of Northern Ireland.

The regulations show once again how much we need to get done in the next 43 days. The Opposition are prepared to play our part in ensuring that this country—and by that, I mean Scotland, Wales, England and Northern Ireland—is ready for what happens next. We will hold Ministers to account every single day from now until 31 December and beyond.

2.48 pm

James Morris: I thank the hon. Lady for her remarks. She raised three issues in relation to the hazardous substances regulations. On her point about impact assessments, there is a definition of “minimal impact”, which leads to the conclusion that an impact assessment is not required. On her second question about whether the powers to implement the lists will lead to a diminution in environmental protection, my answer is simply no. On the third issue, about public consultation, I will write to her to give her the clarity she requires. I hope that that has addressed some of the questions that she raised.

I trust that the hon. Members understand and accept the need for the instruments. Failure to make these regulations would mean failing to meet the requirements of the Northern Ireland protocol. We would also be unable to control the flow of ozone-depleting substances and fluorinated greenhouse gases that cause so much harm to our planet. The UK would, as a result, be deemed non-compliant with our obligations under the Montreal protocol, where we have traditionally been at the forefront of driving environmental ambition. Domestically, we would jeopardise our legally binding targets under the Climate Change Act 2008 and, ultimately, the aim of achieving a net zero economy.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020.

**DRAFT OZONE-DEPLETING SUBSTANCES
AND FLUORINATED GREENHOUSE GASES
(AMENMENT ETC.) (EU EXIT)
REGULATIONS 2020**

Resolved,

That the Committee has considered the draft Ozone-depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020.—(*James Morris.*)

2.50 pm

Committee rose.