

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 187 - The Plant Health (Amendment etc) (EU Exit) Regulations 2020 *Laid in the UK Parliament: 15 October 2020*

#### Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 69
SICM under SO 30A (because amends primary legislation)	SICM(5)35

#### Scrutiny procedure

Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

#### Background

These Regulations are proposed to be made by the UK Government under section 8 of the European Union (Withdrawal) Act 2018.

#### Summary

The purpose of these Regulations 2020 is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

These Regulations also reflect the Ireland - Northern Ireland Protocol.

#### Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 19 October 2020 regarding the effect of these Regulations.

We note that the Regulations create concurrent functions exercisable by both the Welsh Ministers and UK Ministers. If the Senedd wishes to

remove the UK Minister element of a concurrent function, then the UK Government would have to consent to the removal. To that extent, the Regulations impact on the legislative competence of the Senedd.

However, we also note that the Welsh Government is in discussions with the UK Government regarding a section 109 order (i.e. an Order in Council made under section 109 of the Government of Wales Act 2006). Such an order would negate the impact on the legislative competence of the Senedd by removing the need for UK Government consent in relation to concurrent functions.

### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

We note that the policy of risk-based plant health controls that applies under EU law will continue, but that the operation of that policy within Great Britain (rather than within the European Union) will lead to a focus on risks in Great Britain (rather than risks in the European Union).

### **Consent motion under Standing Order 30A.10**

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 22 October 2020, on the basis that one of the amendments made by the Regulations is an amendment to primary legislation within the legislative competence of the Senedd (in this case, sections 2(1) and 3(1) of the Plant Health Act 1967).

In a [letter](#) to the Committee dated 22 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM.