

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 191 – The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

*Laid in the UK Parliament: 19 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 22
SICM under SO 30A (because amends primary legislation)	Not required
<b>Scrutiny procedure</b>	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 November 2020
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	3 November 2020

#### Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8, 8B and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### Summary

These Regulations amend retained European Union (“EU”) legislation relating to the Common Organisation of Agricultural Markets (“CMO”), domestic secondary legislation which implements EU legislation in respect of the CMO, and existing domestic secondary legislation which itself amends retained EU CMO legislation, to enable it to work effectively following the end of the transition period.

These Regulations amend the following legislation which applies to Wales:

#### Retained EU legislation

- Commission Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries

- Commission Regulation (EC) No 1295/2008 of 18 Dec 2008 on the importation of hops from third countries
- Commission Delegated Regulation (EU) No 2016/1237 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences

#### **Domestic secondary legislation**

- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019

The amendments will correct the retained EU legislation in accordance with the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the implementation of the Northern Ireland Protocol and to remove ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following the transition period.

#### **Statement by Welsh Government**

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 21 October 2020 regarding the effect of these Regulations:

1. The Welsh Government and the UK Government have opposing views on whether these Regulations contain provisions which are within the scope of the Senedd's legislative competence. As the UK Government consider that the subject is reserved, they have not sought the consent of the Welsh Government. The Welsh Government's position is that agriculture and the Common Agriculture Policy are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006.

*It is noted that the draft Explanatory Memorandum states that "Defra has worked collaboratively with the Devolved Administrations to create these instruments and has fully involved the Devolved Administrations in discussion on the measures in these instruments, in relation to both reserved and devolved matters."*

*The Welsh Government's statement explains that Welsh Ministers have written to the UK Government to inform them of the Welsh Government's view that it is "not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument."*

2. Other than referring to agriculture and the Common Agriculture Policy, which are not subject matters which are reserved under the Government of Wales Act 2006 and are therefore devolved, the Welsh Government's statement does not identify which specific legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by these Regulations. Legal Advisers recommend that clarification is sought on which devolved powers are affected.

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

As it is unclear from the Welsh Government's statement dated 21 October 2020 the impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether 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.