

UK MINISTERS ACTING IN DEVOLVED AREAS

197 - The Agricultural Products, Food and Drink (Amendment Etc.) (EU Exit) Regulations 2020

Laid in the UK Parliament: 22 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 30
SICM under SO 30A (because amends primary legislation)	Not required

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	3 November 2020

Background

These Regulations are proposed to be made by the UK Government under sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

Currently, EU regulations provides for Geographical Indication (GI) schemes, covering: (i) agricultural products and foodstuffs, (ii) wines, (iii) spirit drinks, and (iv) aromatised wines.

There are 16 Welsh food products registered under the European scheme, including Welsh lamb and Welsh beef. The scheme provides legal protection from imitation for both regional and traditional specialties, whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

EU regulations have also governed the definition, description, presentation and labelling rules for spirit drinks, as well as the definition, description, presentation, labelling and oenological rules for wines and aromatised wines.

The amendments made by these Regulations will create working UK GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors. This will ensure the UK continues to protect the 86 product names from the UK that are registered as GIs under the EU schemes and continues to meet its World Trade Organisation obligations.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 23 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

New policy

To the extent that these Regulations enable Great Britain to continue to meet its obligations under the WTO Trade Related Aspects of Intellectual Property Rights agreement, there is no new policy.

Further, to the extent that these Regulations continue to provide legal protection from imitation for products recognised by the UK GI scheme (including 16 Welsh products), there is no new policy.

Beneath those two overarching policies, the Regulations could be seen as enacting new policy, in that they: (i) introduce a new appeals procedure (for example, an appeal against a decision of the Secretary of State to grant a UK GI application), and (ii) provide for a new UK GI logo.

Paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that the UK Government will not use its powers under section 8 of the European Union (Withdrawal) Act 2018 “to enact new policy in devolved areas”.

However, there is disagreement as to whether the subject matter of these Regulations is devolved.

Disagreement as to whether the subject of these Regulations is devolved

The Welsh Government and the UK Government are in disagreement as to whether Geographical Indication schemes are devolved. The Welsh Government's written statement says:

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra's position that GIs relate to reserved matters. However, following discussions, it was agreed that Welsh Ministers will have a meaningful role in the governance arrangements for the GI scheme.

We note that, whether GI schemes are devolved or not, the wider the territorial extent of the GI scheme, the more that Welsh products will be protected.

It appears that reassurance as to Wales having a meaningful role in the UK GI scheme has been secured via an (unenforceable) intergovernmental agreement.