

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 005 - The Waste and Agriculture (Legislative Functions) Regulations 2022

*Laid in the UK Parliament: 13 January 2022*

#### Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

#### Scrutiny procedure

Outcome of sifting	N/A
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 pursuant to section 8 of and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### Summary

These Regulations are made in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations provide for legislative functions of the European Commission under various Waste Directives to be exercisable instead by a public authority in the United Kingdom. These Regulations will transfer functions concerning devolved policy matters to Welsh Ministers, the Secretary of State (SoS) in relation to England, Scottish Ministers in relation to Scotland and DAERA in Northern Ireland (subject to exceptions noted in the Northern Ireland Protocol).

For each of the powers being transferred there is no equivalent domestic power. A letter from the Counsel General dated 7 January 2022 confirms that the returning functions provided by the 2021 Regulations will not need to be exercised immediately, they will become part of EU retained law, and current controls will continue to apply until such time as they need to change.

The Regulations also correct an error in existing provision for legislative functions relating to agriculture. The 2021 Regulations insert an omitted definition of “appropriate authority” in to REUL Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy. The definition provides that the Welsh Ministers are the “appropriate authority” in relation to REUL Regulation 1306/2013 with the Secretary of State being able to act in limited, specified circumstances with the Welsh Ministers’ consent.

### **Statement by Welsh Government**

Legal Advisers agree with the statement laid by the Welsh Government dated 17 January 2022 regarding the effect of these Regulations.

However, Legal Advisers also note that the draft Regulations this written statement relates to is the Waste and Agriculture (Legislative Functions) **2022**, not 2021. Unlike all other written statements laid by the Welsh Government during the Sixth Senedd, this statement does not provide a link to the Regulations and accompanying Explanatory Memorandum, which sets out the provenance, purpose and effect of the amendments.

In a [letter addressed to the Legislation, Justice and Constitution Committee dated 8 November 2021](#), the First Minister provided that:

*I can confirm that the Welsh Government will write to your committee and other relevant committees to inform them of an intention to consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales, explaining the rationale for the intention to consent. Where time allows we will provide an opportunity for the Senedd to express a view before consent is formally given.*

However, paragraph 15 of the Written Statement provides that consent has been given for the UK Government to make these corrections to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. This Committee was not notified by the Welsh Government of its intention to consent to the UK Government’s SI, or the rationale for the intention to consent.

The [Counsel General wrote to this Committee on 7 January 2022](#), providing that he has given consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales, and that agreement has been given to these Regulations. With regards to the

First Minister's commitment set out in the letter dated 8 November, the Counsel General provides that:

*the First Minister has given a commitment that where time allows we will provide an opportunity for the Senedd to express a view before consent is formally given. Regrettably it was not possible to do so for this SI as although it has only just been laid, consent was given some weeks ago and before the commitment was implemented.*

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

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

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.