

UK MINISTERS ACTING IN DEVOLVED AREAS

218 - Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021

Laid in the UK Parliament: 9 March 2021

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	24 March 2021
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
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 the European Union (Withdrawal) Act 2018.

Summary

These Regulations are made in exercise of section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular the deficiencies referred to in paragraphs (a) to (c) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

The Regulations correct deficiencies in retained EU law in order to ensure that plant health controls operate effectively to protect biosecurity and support trade between Great Britain ("GB") and the relevant third countries.

Regulation (EU) 2016/2031 ("the Plant Health Regulation") and Regulation (EU) 2017/625 ("the Official Controls Regulation"), (together "the EU

Regulations”), respectively establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products.

The EU Regulations, and the additional EU legislation made under them, have been incorporated into domestic law (“retained EU law”) using powers under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). These Regulations address the remaining deficiencies of that retained EU law, and makes a small number of corrections to an earlier instrument (S.I. 2019/809) and to secondary legislation on the marketing of vegetable seed and seed potatoes, that have arisen as a result of the withdrawal of the UK from the European Union and the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the NI Protocol”).

The Regulations also correct an error in an earlier instrument relating to official controls (S.I. 2021/136), in respect of the importation of ware potatoes from Portugal, Poland, Romania and Spain. In addition, the Regulations modifies Commission Implementing Regulation (EU) 2019/66 (“Implementing Regulation 2019/66”) to introduce frequency rates of plant health checks on regulated plants, plant products and other objects imported into GB from the European Union, Switzerland and Liechtenstein. This will apply to plants, plant products and other objects deemed as a higher risk to GB biosecurity.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 10 March 2021 regarding the effect of these Regulations.

In particular, we note that these Regulations confer a function on the Welsh Ministers without encumbrance as a ‘Competent Authority’. They also confer functions on the National Plant Protection Organisation of Great Britain and of the United Kingdom. These functions may constitute functions of a reserved authority for the purposes of paragraph 8(1) of Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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