

UK MINISTERS ACTING IN DEVOLVED AREAS

The Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 29 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or 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

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

This instrument makes limited technical legal amendments to Protocol 1 to the EEA Agreement, a mechanism by which EU law is currently applied to and in the EEA EFTA states. On exit day, Protocol 1 will migrate onto the domestic statute book and become part of the new body of domestic law known as 'retained direct EU legislation' ("RDEUL").

To make sure that Protocol 1 functions properly after exit, this instrument makes a number of amendments to it to make clear that Protocol 1 only applies to the EU law, incorporated into the EEA Annexes, that forms part of RDEUL; that any obligation owed to or any right conferred on EU Member States, their public entities, undertakings or individuals, is also owed to or conferred on EEA EFTA states, their competent authorities,

public entities, undertakings or individuals; and that certain redundant provisions are removed.

The amendments to Protocol 1 clarify that Protocol 1, as it forms part of domestic law, only applies to the EU law, incorporated into the EEA Annexes, which forms part of RDEUL. This means that Protocol 1 will no longer impose obligations on or within EEA EFTA states, the Commission, EEA Surveillance Authority or Joint Committee given that RDEUL cannot enforce obligations on any third party outside of the UK.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 30 November 2018 regarding the effect of these Regulations:

Paragraph 10.2 of the Explanatory Memorandum states that as per the Intergovernmental Agreement on the European Union (Withdrawal) Act 2018 ("EUWA"), the Welsh Government was consulted with regard to these Regulations. Consent from the Welsh Government to the UK Government was given in a letter by Mark Drakeford AM dated 27 November 2018. Notwithstanding the requirement to consult, the Welsh Government's statement does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. In fact, the instrument appears to relate to non-devolved areas. Legal Advisors recommend that clarification is sought on which devolved powers are affected.

While the Welsh Government's statement indicates that there is no divergence between the Welsh Government and UK Government on the policy for the correction, the statement fails to highlight to what degree devolved areas are affected by this instrument, and the extent to which consent was needed from the Welsh Government. The statement only says that consent was given for reasons of efficiency, expediency and due to the technical nature of the amendments.

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.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.