

UK MINISTERS ACTING IN DEVOLVED AREAS

85 - The European Structural and Investment Funds Common Provisions and Common Provisions Rules etc. (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 28 January 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	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, and paragraph 21(a)(ii) and (b) of Schedule 7, to the European Union (Withdrawal) Act 2018.

Various EU Regulations establish funds designed to reduce social and economic disparities across the EU. The funds relevant to this instrument are:-

- (i) the European Regional Development Fund (ERDF), the European Social Fund (ESF) and European Territorial Cooperation (ETC). These are collectively known as "Structural Funds"; and
- (ii) the Cohesion Fund (CF).

In the event of a non-negotiated withdrawal from the EU, the EU Regulations governing the Structural Funds and the Cohesion Fund will no longer operate.

The policy intention of both the UK Government and of the Welsh Government is that projects already funded will continue, where necessary, with domestic funding.

Regulations 3 and 4 of this instrument revoke and/or disapply the relevant EU Regulations. Regulation 6 gives to the Secretary of State and to the Welsh Ministers powers to provide financial assistance to continue to support those projects from domestic funds.

This instrument will not protect Structural Funds projects or Cohesion Funds projects started after exit day.

Legal Advisers make the following comments in relation to the Welsh Government's statement of 31 January 2019 regarding the effect of these Regulations:

The Statement identifies EU instruments which are being amended or revoked. The list of instruments is correct, save as follows-

- (i) The Statement references two instruments which are not included in the scope of these Regulations. They are:
 - a. Commission Delegated Regulation (EU) 2015/616 of 13 February 2015; and
 - b. Commission Implementing Regulation (EU) 2016/207 of 20 January 2015.
- (ii) Conversely, the Statement omits to reference several instruments which do fall within the scope these Regulations. Those instruments are listed at paragraphs 14, 15, 16 and 17 of Schedule 1 to the Regulations and at paragraphs 2, 4, 8, 9 and 10 of Schedule 2 to the Regulations.
- (iii) The Statement refers to 2014/266/EU: Commission Implementing Decision of 16 June 2014. We believe this is a typographical error and should refer to '2014/366/EU'.

Standing Order 30A.4 requires the Welsh Government to summarise the objective of the Regulations (SO 30A.4(1)) and to specify the extent to which the Regulations make (or would make) relevant provision (SO 30A.4(ii)). The Statement indicates that the 'SI intends to' and then sets out the policy intention. The effect is set out by reference to the UK Government's Explanatory Memorandum. Reliance on the UK Government's published material does not meet the requirement of SO

30A.4(ii). The Welsh Government must specify its own conclusions in response to the requirements of the Standing Order.

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.