

UK MINISTERS ACTING IN DEVOLVED AREAS

117 - The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 February 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	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
Written statement under SO 30C:	Paper 58
SICM under SO 30A (because amends primary legislation)	Not required

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 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend domestic regulations, retained and directly applicable EU regulations and directly applicable EU decisions, which implement different European regulations and directives related to:

- spirits;
- food labelling;
- wines and aromatised wines;
- genetically modified organisms; and
- animal health.

(The Regulations also amend England only legislation in respect of natural mineral waters). The amendments made by these Regulations are made to ensure that the existing policy regimes can continue to operate effectively after the UK leaves the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement (the Statement) dated 19 February 2019 regarding the effect of these Regulations.

Standing Order 30C.3(ii) states that the Welsh Government's written statement must "specify any impact the statutory instrument may have on the Assembly's competence and/or the Welsh Ministers' executive competence".

The Statement states that:

This instrument also contains provisions which transfer functions to the Secretary of State in relation to Wales...

Functions transferred to the Secretary of State to be exercised concurrently with the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

Functions transferred so that they are exercisable by the Secretary of State alone or by the Secretary of State with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

We note that the Welsh Government has been in discussions with the UK Government regarding geographical indication schemes ("GI schemes"), as there is disagreement between the two governments as to whether this matter is devolved or reserved. As the UK Government considers these matters to be reserved, from its perspective they are not subject to the terms of the Intergovernmental Agreement. The Welsh Government has sought joint decision making functions within this instrument in respect of GI schemes, but the UK government has maintained its view that these matters are reserved.

The Statement includes references to time pressures:

We accept that the UK Government has been acting in good faith under the Intergovernmental Agreement and it has not been possible to resolve this matter within the timeframe required to ensure a functioning statute book.

The Statement also refers to correspondence between the parties:

However, in an exchange of letters between the Minister for Environment, Energy and Rural Affairs and the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of the new scheme. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that

will underpin the instrument provides for a meaningful role for Welsh Ministers in the administration of the scheme. Consent has therefore been given on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to our position on legislative competence.

Standing Order 30C.3(iii) states that the Welsh Government's written statement must "where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given". The reasoning for consenting to the provisions relating to food, drink, genetically modified organisms and the import of and trade in animal products is provided clearly in the statement. However, in relation to GI schemes, the reasoning as to why the Welsh Ministers have consented to the making of these provisions is much less clear, particularly given that the Welsh Government and UK Government disagree as to whether these matters are devolved.

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

Legal Advisers draw attention to the above commentary on the Welsh Government's Statement in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks