

UK MINISTERS ACTING IN DEVOLVED AREAS

171 - The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulation 2020

Laid in the UK Parliament: 5 October 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 36
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	NA
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

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 (“the EUWA”).

These Regulations cover the policy area of the Common Organisation of Agricultural Markets (“CMO”), which is the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the Common Agricultural Policy (“CAP”). The EUWA converts and preserves EU law relating to the CMO at the end of the transition period into domestic law (“retained EU law”). This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to a previous EU Exit SI. The Welsh Government’s statement dated 7 October 2020 states that the UK Government’s approach when amending retained EU law has been to ensure that

legislation remains as close to the current system as possible, and that the changes made by these Regulations are largely technical in nature.

These Regulations make a number of changes:

- they revoke CMO rules relating to transnational producer groups, which will no longer be relevant in the UK at the end of the transition period;
- they ensure that CMO rules relating to domestic producer organisations continue to function, preventing ambiguity or disruption for stakeholders in this sector; and
- they make provision for wines to ensure arrangements for the protection and cancellation of Protected Designations of Origin and Protected Geographical Indications continue to function at the end of the transition period.

Legal Services have reviewed the Welsh Government's statement dated 7 October 2020 and the Explanatory Memorandum to the Regulations.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 7 October 2020 regarding the effect of these Regulations:

1. Welsh Government officials are of the view that the 2020 Regulations contain provisions which are within the scope of the Senedd's legislative competence, and as such the related functions should not be solely conferred on the Secretary of State. DEFRA takes the view that amendments in the Regulations relate to reserved matters. On this basis, the Regulations transfer various functions to the Secretary of State. In the Explanatory Memorandum to the Regulations, it is noted that:

"Defra has engaged the Devolved Administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying. Defra has engaged with the Devolved Administrations during the drafting of this instrument."

The Welsh Ministers have written to the UK Government to inform it of their view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for these Regulations.

2. Other than referring to agriculture and the CAP, which are not subject matters which are reserved under the Government of Wales Act 2006 and are therefore devolved, the Welsh Government's statement does not identify which specific legislative powers of the Senedd or

executive powers of the Welsh Ministers are affected by this instrument. Legal Advisers recommend that clarification is sought on which devolved powers are affected.

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

Legal Advisers draw the Committee's attention to the following issues in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks ("the Memorandum"):

- The Welsh Government's position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes that the subject matter of these Regulations is reserved. The UK Government has not therefore requested Welsh Ministerial consent.
- The Welsh Government's view is that the functions which are dealt with by these Regulations directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Memorandum, the consent of Welsh Ministers should have been sought prior to laying the Regulations.

As it is unclear from the Welsh Government's statement dated 7 October 2020 what specific impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to make any further assessment as to whether any significant issues arise under paragraph 8 of the Memorandum in relation to these Regulations.