

UK MINISTERS ACTING IN DEVOLVED AREAS

170 - The Agriculture (Payments) (Amendments etc.) (EU Exit) Regulations 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 34
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 sections 8(1) and 8C(1) and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 and section 6(1) of the Direct Payments to Farmers (Legislative Continuity) Act 2020.

The Regulations amend a number of EU regulations and domestic legislation (EU Exit Regulations) that apply to Wales. The Regulations also revoke four EU Exit Regulations. The legislation amended or revoked is set out in the Statement by Welsh Government, and the UK Government's Explanatory Memorandum, at paragraphs 2.3 and 2.4.

The purpose of these Regulations is to correct deficiencies in retained EU law relating to the Common Agricultural Policy (CAP). If retained EU law relating to CAP was not amended, it would contain inoperable rules that would prevent the UK Government and the devolved administrations from being able to deliver agricultural and market support schemes

currently run under the CAP to the agricultural sector after the Implementation Period completion day (IP completion day) on 31 December 2020.

The amendments are required in order to take into account change in the legislative position, since the original EU Exit Regulations were made, following the Withdrawal Agreement and the Direct Payment to Farmers (Legislative Continuity) Act 2020 (“the Direct Payment Act”). Amendments have also been made to the EU Regulations since the EU Exit Regulations were made. Notable changes are made by these Regulations in relation to the following:

1. Direct Payments. These Regulations make changes to clarify the position of specified EU Regulations which were incorporated into domestic law with effect from exit day insofar as relating to direct payments and incorporated with effect from the IP Completion date for remaining purposes. These Regulations amend or revoke a number of earlier EU Exit SIs, to reflect that those SIs will not apply in relation to direct payments following the Withdrawal Agreement and the Direct Payment Act and regulations made under it.
2. Rural Development. These Regulations amend previous EU Exit SIs in relation to rural development, which were made before the Withdrawal Agreement was signed. These need to be updated to reflect the new position, and a small number of amendments are being made to ensure that the rural development rules continue to function effectively after IP completion day.
3. Public Intervention (PI) and Private Storage Aid (PSA). These Regulations make amendments to earlier EU Exit SIs that set the rules for PI and PSA schemes included in the Common Organisation of Agricultural Markets (“CMO”) regime, to ensure that relevant authorities may mirror the current system of administering PI and PSA as closely as possible after IP completion day, to ensure producers and operators do not experience any change in how the schemes are run.
4. Producer groups, organisations etc. These Regulations amend retained EU law concerning producer groups, producer organisations, notifications in the fruit and vegetables and processed fruit and vegetables sectors, and notifications of agricultural market information to domestic authorities.

These Regulations make limited amendments to previous EU Exit Regulations where retained EU law is affected by the Northern Ireland Protocol, and make amendments to previous EU Exit Regulations to ensure UK paying agencies are able to continue to comply with EU rules for the purposes of Article 138 of the Withdrawal Agreement.

A small number of minor drafting amendments are made by these Regulations to update drafting and correct errors and oversights in earlier EU Exit SIs, including missed cross-references that needed amending and substituting a reference to Pounds Sterling for a reference to Euro.

Legal Advisers agree with the statement laid by the Welsh Government dated 7 October 2020 regarding the effect of these Regulations. The effect of the concurrent and joint functions contained in these Regulations has the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006, and as such represent a potential restriction on the future competence of the Senedd. The Statement by Welsh Government provides that it is negotiating with the Office for the Secretary of State for Wales in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

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.