

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 194 - The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020

*Laid in the UK Parliament: 20 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 75
SICM under SO 30A (because amends primary legislation)	SICM(5)37

#### 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

#### Background

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### Summary

These Regulations:

- Amend a number of existing EU Exit instruments to ensure that they are still fit for purpose at the end of the Transition Period and make EU Exit related amendments to, or revoke, a small amount of recent EU legislation which will become retained direct EU law (and also make amendments to primary and subordinate domestic legislation for similar purposes).
- Include some technical amendments to EU Exit instruments that are needed in consequence of the Northern Ireland Protocol.

- Transfer some functions from the European Commission to the Secretary of State and the Devolved Administrations.

### **Statement by Welsh Government**

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 22 October 2020 regarding the effect of these Regulations:

- These Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 ("the 2006 Act"), the Senedd cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent. The Welsh Government's written statement says that the Welsh Government are in negotiations with the UK Government in relation to a section 109 Order to amend Schedule 7B of the 2006 Act so as to negate the potential restriction on the future competence of the Senedd.

### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

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.

### **Consent motion under Standing Order 30A.10**

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) before the Senedd on 27 October 2020, on the basis that the Regulations amend primary legislation within the legislative competence of the Senedd (in this case, section 62A of the Environmental Protection Act 1990).

In a letter to the Committee dated 27 October 2020, the Minister for Environment, Energy and Rural Affairs said that a SICM had been laid, but made no reference as to whether the Welsh Government would table a motion to debate the SICM in Plenary.