

UK MINISTERS ACTING IN DEVOLVED AREAS

178 - The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020

Laid in the UK Parliament: 29 September 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 83
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	14 October 2020
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	13 October 2020

Background

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

Summary

The State Aid (EU Exit) Regulations 2019 (“the draft 2019 Regulations”) would have, if made, transferred the state aid enforcement functions of the European Commission to the UK Competition and Markets Authority and made corrections to deficient retained law to give effect to the continued application of State aid law in the UK in event of no deal with the EU.

The Explanatory Memorandum to these Regulations provides that:

“Following the UK’s conclusion of the Withdrawal Agreement, the draft 2019 regulations were withdrawn in February 2020 without

being made as this approach is no longer appropriate. This Government's policy is that at the end of the transition period the UK will have its own domestic subsidy control regime... Therefore, retained EU law on State aid will have no practical application in the UK after the end of the transition period and will become redundant."

These Regulations disapply EU law relating to State aid that is currently retained in UK law by the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"), thereby ensuring that EU State aid law does not form part of UK domestic law after the end of the transition period.

In a letter to the Committee's Chair dated 25 January 2019, the Counsel General made the following statement regarding the draft 2019 Regulations:

"The Welsh Government's position is that State aid is a devolved matter and not a reserved matter under any heading of the Reserved Matters Schedule in the Government of Wales Act 2006. However, the UK Government do not consider it as such (as was noted in the Intergovernmental Agreement) and therefore they have not requested Welsh Ministerial consent). The Welsh Government has requested from the UK Government, an explanation of their legal position but there has been no response."

Given the significant effect of these Regulations, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 15 October 2020 regarding the effect of these Regulations.

Legal Advisers note the following errors in the Welsh Government's statement:

1. The statement erroneously refers to these Regulations as "The State Aid (Revocation etc.) (EU Exit) Regulations 2020", however the correct title is "The State Aid (Revocations and Amendments) (EU Exit) Regulations 2020"
2. The statement erroneously refers to "Article 7(A) of the Government of Wales Act", the correct reference should be "Schedule 7A to the Government of Wales Act 2006" [*emphasis added*].

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

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

1. The Welsh Government and UK Government have opposing views on whether State aid is devolved. As the UK Government consider that the matter is reserved, they have not sought the consent of the Welsh Government.

However, the Welsh Government consider State aid to be devolved, and as such contend that their consent should be sought as these Regulations impact on devolved competence. Failing to request Welsh Government consent in relation to regulations which impact on an area of devolved policy may be considered a contravention of the Intergovernmental Agreement.