

UK MINISTERS ACTING IN DEVOLVED AREAS

202- The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 2 November 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft 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
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
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 section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend the following EU and domestic legislation in order to reflect the change in legislative position following the Withdrawal Agreement and the Protocol of Ireland/Northern Ireland. They also amend EU legislation made since the EU Exit regulations listed below were made so that they will be operable:

EU legislation

- Regulation (EU) No 576/2013 on the non-commercial movement of pet animals;

- Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions;
- Regulation (EU) No 2019/294 laying down the list of territories and third countries authorised for imports into the Union of dogs, cats and ferrets and the model animal health certificate for such imports; and
- Commission Regulation (EC) No 535/2008 of 13 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.

Domestic legislation

- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019;
- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019;
- The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) 2019;
- The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019;
- The Animals (Legislative Functions) (EU Exit) Regulations 2019; and
- The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019

The Regulations contain provisions relating to seven policy areas: seed, plant and plant propagating material; aquatic animal health; Transmissible Spongiform Encephalopathies and Animal By-Products; livestock; zoonotic diseases; pet travel; and the use of alien and locally absent species in aquaculture. Retained EU law relating to these policy areas will continue to function at the end of the transition period in a similar way to how it did previously. These Regulations remove redundant provisions relating to EU law, enable the UK to stand by commitments it has made in the Withdrawal Agreement, and convert EU procedures to UK procedures, as appropriate.

The Regulations provide for legislative functions that are currently conferred by European Union legislation upon the European Commission and the Council of the European Union to be exercisable instead by appropriate authorities in Great Britain, so that they can be exercised at national level after the end of the transition period.

Statement by Welsh Government

Following a review of the Explanatory Memorandum to the Regulations, Legal Advisers make the following comments in relation to the Welsh Government's statement dated 4 November 2020 regarding the effect of these Regulations:

The Welsh Government's statement does not identify which legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by this instrument. It is noted that the statement provides that:

Functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers have the potential to engage the requirement to consult the UK Government under Schedule 7B to the Government of Wales Act 2006 should a future Senedd Bill seek to remove or modify those functions.

The concurrent functions contained in the Regulations have 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. However, we are in negotiations with the Secretary of State for Wales in relation to a section 109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

Legal Advisers recommend that clarification is sought on which devolved powers are affected; and that further information and updates be requested as to the progress of the negotiations with the Secretary of State for Wales in relation to the section 109 Order referred to above.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

As it is unclear from the Welsh Government's statement dated 4 November 2020 the impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether 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.