

UK MINISTERS ACTING IN DEVOLVED AREAS

207 - The Greenhouse Gas Emissions Trading Scheme (Withdrawal Agreement) (EU Exit) Regulations 2020

Laid in the UK Parliament: 30 November 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	Not known
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Made negative
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 8B and 8C of the European Union (Withdrawal) Act 2018 (“the 2018 Act”). Sections 8B and 8C of the 2018 Act, as introduced by the European Union (Withdrawal Agreement) Act 2020, provide powers to implement Part 3 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (“the Withdrawal Agreement”) and the Revised Protocol to the Withdrawal Agreement on Ireland/Northern Ireland (“the NI Protocol”). The Regulations are not being made to address a deficiency in retained EU law but they relate to the withdrawal of the United Kingdom from the European Union.

Summary

As part of leaving the European Union, the UK is ceasing participation in the EU Emissions Trading System (EU ETS) at the end of the implementation period.

These Regulations implement Article 9 and Annex 4 of the NI Protocol. They provide a continuing basis for emissions from electricity generation in Northern Ireland (for the single wholesale electricity market in Ireland and Northern Ireland) to remain subject to the EU ETS. The Regulations also support a smooth exit from the EU ETS by ensuring an appropriate legislative basis for UK operators to conclude their participation in the scheme at the end of the 2020 scheme year, while still meeting their compliance obligations for that year, which fall due in 2021, as required by Article 96(2) of the Withdrawal Agreement.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 2 December 2020 regarding the effect of these Regulations:

- The statement confirms that:

"The 2020 Regulations amends domestic legislation which largely falls within the legislative competence of the Senedd and the Welsh Ministers' executive powers in relation to a carbon trading scheme set up by legislation."

However, 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. Legal advisers recommend that clarification is sought on which devolved powers are affected.

- The statement makes no reference to the fact that the Regulations are not being made to address a deficiency in retained EU law but that they relate to the withdrawal of the United Kingdom from the European Union. Legal advisers recommend that further information is requested regarding what significance, if any, this has, particularly in the context of the following wording from the Welsh Government's written statement:

"Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU, by amending or revoking provisions that would otherwise be inoperable."

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 2 December 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.