

UK MINISTERS ACTING IN DEVOLVED AREAS

213 - The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No.2) Regulations 2020

Laid in the UK Parliament: 21 December 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	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	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), (2)(f) and (6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The purpose of these Regulations is to make further amendments to existing retained direct EU legislation governing official controls, including imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary (“SPS”) checks.

These Regulations complete the body of official controls amendments and supplement the provision set out in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, which came into force at 11:00 p.m. on 31 December 2020.

These Regulations also rectify legal deficiencies arising from the withdrawal of the United Kingdom from the European Union which, if not amended, would prevent the existing, established and harmonised system of official controls from being able to operate effectively (or at all) after the end of the implementation period.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 5 January 2021 regarding the effect of these Regulations:

These Regulations transfer non-legislative and legislative functions to the Welsh Ministers as the "appropriate authority" in relation to Wales, a number of which are transferred without encumbrance.

Other functions conferred on the Welsh Ministers as "appropriate authority" in relation to Wales are also exercisable by the Secretary of State concurrently, with the consent of the Welsh Ministers. Only functions exercisable in devolved areas (as determined by reference to the legislative competence of the Senedd) are conferred on the Welsh Ministers.

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 Bill of the Senedd seek to remove or modify those functions.

On this point, Legal Advisers wish to draw attention to the Welsh Government's commentary in the Written Statement:

"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. Assurances have been provided by 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."

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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