

UK MINISTERS ACTING IN DEVOLVED AREAS

002 - The Health Security (EU Exit) Regulations 2021

Laid in the UK Parliament: 7 June 2021

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	16 June 2021
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	22 June 2021

Background

The Health Security (EU Exit) Regulations 2021 (“the 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 (“the 2018 Act”), and section 31 of the European Union (Future Relationship) Act 2020 (“the 2020 Act”).

Summary

The Regulations address failures of retained EU law to operate effectively in a domestic context. They revoke and restate, with modifications, retained EU law on health security and establish a standalone regime to ensure the four UK nations continue to co-ordinate on data sharing, epidemiological surveillance and the collective approach to the prevention and control of serious cross-border threats to health. Whilst public health protection and health security is devolved in the UK, all four nations were previously required to comply with EU law on health security. The Regulations were laid before the UK Parliament on the 7th June.

The Regulations implement the health security arrangements agreed between the UK and the EU under the UK-EU Trade and Cooperation Agreement (“TCA”). The Regulations are also necessary to ensure the UK can best meet its international obligations under the International Health Regulations (2005) (an international treaty requiring all World Health Organization Member States to work together for global health security). Crucially, the Regulations will provide for more specific implementation of the health security arrangements agreed with the EU under the TCA. These arrangements support effective future working and information sharing between the UK and the EU in the event of a serious cross-border threat to health.

The functions previously exercised by the EU have been modified and transferred to a new UK Health Protection Committee and to the UK Health Security Agency, acting in cooperation with the public health agencies for the other parts of the UK.

The retained EU law being amended is:

- Regulation EC No. 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control;
- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC;
- Commission Implementing Decision (EU) 2017/253 of 13 February 2017 laying down procedures for the notification of alerts as part of the early warning and response system established in relation to serious cross-border threats to health and for the information exchange, consultation and coordination of responses to such threats pursuant to Decision 1082/2013; and
- Commission Implementing Decision (EU) 2018/945 of 22 June 2018 on the communicable diseases and related special health issues to be covered by epidemiological surveillance as well as relevant case definitions.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 14 July 2021 regarding the effect of these Regulations.

The Welsh Government states:

“The SI has no impact on the Senedd’s legislative competence.”

However, it is not clear whether this assertion is correct and we invite further explanation.

Where a function is conferred on a Minister of the Crown in an area which falls within the legislative competence of the Senedd, this may have the effect of restricting the Senedd's ability to legislate in that area in future. This is because an Act of the Senedd cannot remove or modify a function of a Minister of the Crown that relates to a "qualified devolved function" unless the appropriate UK Government Minister consents (see paragraph 11(1)(a) of Schedule 7B to the Government of Wales Act 2006).

The Explanatory Memorandum to the Regulations states:

"Section 29 (general implementation of agreements) of EUFRA is currently being relied on, in conjunction with operational guidance to the UK's public health agencies, to ensure the UK meets its TCA obligations for health security, including informing the EU and sharing with them information about serious cross-border health threats affecting the UK and at least one member State. This instrument relies on the power in section 31 of the EUFRA to provide more specific implementation and prescribe a UK-wide approach for addressing serious cross-border health threats.

.....

The TCA also makes provision for cooperation on scientific and technical matters between the ECDC and the UK body responsible for surveillance, epidemic intelligence and scientific advice on infectious disease...

These Regulations provide specific implementation of the health security provisions of the TCA...

.....

The Regulations provide for epidemiological surveillance to be undertaken and make arrangements for coordination and information sharing between the UK's four nations in the planning and response to serious cross border health threats. These also support the arrangements with the EU under the TCA. The Regulations accordingly:

- *Identify, for the purposes of the Regulations, the UK public health agencies responsible for health security in the respective parts of the UK.*

.....

- *Require UKG, the devolved administrations and the UK's public health agencies to consult each other with a view to coordinating their efforts to develop, strengthen and maintain their respective capacities for monitoring, early warning and assessment of, and response to, serious cross border health threats and to inform each other of any*

substantial revisions to preparedness and response planning.”

It would appear that the various TCA-related provisions described in the Explanatory Memorandum were made under section 31 of the 2020 Act, as that section makes specific provision for implementation of the TCA. For example, regulation 11 of the Regulations requires consultation between the UK authorities¹ on various matters, particularly under regulation 11(3) as follows:

“(3) Where a relevant Minister or a UK public health agency intends to adopt in the part of the United Kingdom for which it is responsible public health measures to combat a serious cross-border health threat, it must, before adopting those measures, inform and consult the other UK authorities on the nature, purpose and scope of the measures, unless the need to protect public health is so urgent that the immediate adoption of the measures is necessary.”

If these Regulations confer functions on a Minister of the Crown that relate to health security then, to the extent that those functions are:

- (i) “qualified devolved functions” for the purposes of Schedule 7B to the Government of Wales Act 2006, and
- (ii) conferred on a Minister of the Crown pursuant to section 31 of the 2020 Act,

the Senedd will not have competence to remove those functions without the consent of the UK Government. This is despite the fact that the function will operate in a devolved area. As such, we request the Welsh Government further considers and explains the potential impact on the Senedd’s legislative competence.

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 14 July 2021 the impact the Regulations may have on the Senedd’s legislative competence and, as such, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the

¹ Section 1 of the Regulations: ““UK authority” means in respect of a part of the United Kingdom— (a) the UK public health agency for that part; and (b) the relevant Minister for that part”, and “relevant Minister” means— (a) in England, the Secretary of State; (b) in Scotland, the Scottish Ministers; (c) in Wales, the Welsh Ministers; (d) in Northern Ireland, a Minister within the meaning of the Northern Ireland Act 1998(b) or a Northern Ireland department”.

Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.