

UK MINISTERS ACTING IN DEVOLVED AREAS

011 – [The Animals, Food, Plant Health, Plant Propagating Material and Seeds \(Miscellaneous Amendments etc.\) Regulations 2022](#)

Laid in the UK Parliament: 18 July 2022

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed 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	19 July 2022
Date sifting period ends in UK Parliament	13 September 2022
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Not known
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 under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Welsh Government has consented to the UK Government making these Regulations in a devolved area.

Summary

These Regulations correct a number of deficiencies in, among other things, devolved retained EU law, in order to make that law work in a domestic context.

Many of the deficiencies being corrected are relatively minor. For example:

- References to “Member States” are changed to references to “competent authority”. For example, instead of giving “Member States” a choice as to when to take milk samples, these Regulations give “competent authorities” a choice as to when to take milk samples. The Welsh Ministers are the competent authority in Wales.
- References to “Community experts” are changed to “experts appointed by the competent authority”.
- References to “the Community” are change to references to “Great Britain”.

However, other changes appear to be more significant, in particular changes to two EC Decisions relating to the import of animal products and fishery products from the USA.

Currently, such imports must be accompanied by a health certificate in accordance with a model form that is set out in legislation. However, as a result of these Regulations, such imports will, instead, have to be accompanied by a health certificate **in the form published by the appropriate authority from time to time.**

The Welsh Ministers are the appropriate authority in Wales. This gives the Welsh Ministers (and other appropriate authorities in Great Britain) discretion as to the form of health certificates that must accompany imports of animal products and fishery products from the USA, rather than requiring such imports to be accompanied by a health certificate in accordance with a model form that is set out in legislation.

Statement by Welsh Government

Legal Advisers make the following comments in relation to [the Welsh Government's written statement dated 15 July 2022](#):

- The written statement does not summarise the purpose of the Regulations, as required by SO 30C.3(i). There is no description of what the Regulations do.
- The written statement does not explain why the Welsh Ministers have consented to the UK Government making these Regulations in a devolved area, as required by SO 30C.3(iii).
- The written statement refers to the amendment of Schedule 7B to the Government of Wales Act 2006 so as to remove the requirement for UK Government consent “*if the Welsh Ministers **modify or remove** a Secretary of State function*”. However, Schedule 7B was amended only as regards **removing** a Secretary

of State function; the amendment of Schedule 7B did not capture the **modification** of such functions.

- That quote from the written statement also appears to conflate the Welsh Ministers and the Senedd – Schedule 7B is relevant only to Senedd Acts, and not the executive functions of the Welsh Ministers.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

As regards the use of these powers in devolved areas, the Intergovernmental Agreement says that the powers will not be used to enact “new policy” in devolved areas. It is unclear to what extent these Regulations enact new policy. Some might say that changing the form of health certificate amounts to new policy. Others might say that the policy is simply for imports to be accompanied by health certificates, and that policy is not changing. In other words, it is difficult to define what is “new policy”.

The Intergovernmental Agreement also says that the primary purpose of using these powers will be “administrative efficiency”. However, the Welsh Government’s written statement says nothing about the administrative efficiency achieved by these Regulations. Without further information as to how the new health certificates will work, it is impossible to know whether the Regulations will achieve administrative efficiency.

Legal Advisers
Legislation, Justice and Constitution Committee
25 July 2022