

UK MINISTERS ACTING IN DEVOLVED AREAS

219 - The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 31 December 2020

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made 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	Made Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	20 January 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	12 January 2021

Background

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, and paragraphs 5(3) and 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

The 2020 Regulations amend retained EU food and drink Regulations and domestic subordinate legislation concerning geographical indication ("GI") schemes, wine and organic products.

Primarily, the 2020 Regulations amends retained direct EU legislation to enable the UK to provide for interim protection of third country GIs and traditional wine terms agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified- referred to as "bridging arrangements".

The 2020 Regulations also include some other minor amendments which needed to enter in to force at the end of the transition period, including

on wine import certifications, US wine names of origin, the importing of organic food and feed, ongoing protection of US and Mexican product designations, the functionality of retained spirits drinks regulations and adding a new class of GI to support the UK-Japan trade agreement.

Statement by Welsh Government

The link to the Explanatory Memorandum to these Regulations contained in the statement is incorrect. The link mistakenly directs to the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020 – those Regulations were the subject of a SO30C Statement made on 23 November 2020.

With the exception of that error, Legal Advisers agree with the statement laid by the Welsh Government dated 12 March 2021 regarding the effect of these Regulations.

The 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence. Functions conferred on the Secretary of State without encumbrance will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006, which restricts the Senedd's legislative competence to remove or modify such functions without consulting the relevant UK government minister.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

The Welsh Government and the UK Government are in disagreement as to whether Geographical Indication schemes, wine, spirit drinks and organic food and feed are devolved. The Welsh Government's written statement says:

"The Welsh Government's position is that geographical indications schemes, wine, spirit drinks and organic food and feed are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent."

We note that, whether these matters are devolved or not, the wider the territorial extent, the more that Welsh products will be protected.

The Welsh Government's written statement confirms that Welsh Minister consent to make these corrections in relation to, and on behalf of, Wales

would have been given had it been sought for reasons of efficiency and expediency.

The Welsh Government's written statement also notes that the Welsh Government has written to the UK Government to inform them of their view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence.