

UK MINISTERS ACTING IN DEVOLVED AREAS

77 - The Nutrition (Amendment etc) (EU Exit) Regulations 2019

Laid in the UK Parliament: 16 January 2019

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	21/01/2019
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 13
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

Commentary

The Written Statement refers to Regulations which were laid before the UK Parliament on 16 January 2019. The Regulations were subsequently withdrawn and a new version of the Regulations were laid on 17 January. It is not clear why the Welsh Government Written Statement, laid on 18 January, refers to the Regulations that were withdrawn. A query has been raised with Welsh Government officials.

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1) and 23 of, and paragraph 21 of Schedule 7 to, of the European Union (Withdrawal) Act 2018.

The purpose of this instrument is to remedy deficiencies in UK legislation relating to nutrition, arising from the withdrawal of the UK from the European Union ("EU"), in the event that the UK leaves without a deal having been agreed. This instrument amends existing domestic, and retained EU, legislation as well as revoking some pieces of related EU

tertiary legislation which will no longer have any application to the UK after withdrawal.

The subject areas covered by this nutrition legislation are: nutrition and health claims made on food; the addition of vitamins, minerals and certain other substances to foods; composition and labelling of food supplements; the composition and labelling of food for specific groups; and the sale of products containing Kava-kava.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 18 January 2019 regarding the effect of these Regulations:

1. The statement does not make clear that the list of retained EU law which is being amended by the instrument, as provided in the statement, is not an exhaustive list. There is a series of retained EU law which are subject to minor and technical amendments by this instrument which have not been included in the list within the Welsh Government's statement.
2. Also, the following retained EU law has been included in the list of retained EU law which is being amended, when in reality they are being revoked by this instrument:
 - 2013/63/EU: Commission Implementing Decision (named Regulation (EC) 2013/63 in error in the Welsh Government's statement) adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council;
 - Regulation (EU) No 907/2013 setting the rules for applications concerning the use of generic descriptors (denominations);
 - Regulation (EU) No 489/2012 establishing implementing rules for the application of Article 16 of Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods (although in this instance, Legal Advisers do note that the description in the list makes clear that Regulation (EU) No 489/2012 is to be revoked).
3. Additionally, there is an error in the Welsh Government's statement, in the list of amended retained EU law. The first bullet point should read Regulation (EC) 1924/2006 (not 1924/2206).
4. While these Regulations contain provision which enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance, they also contain provision whereby the Welsh Ministers could provide consent to the Secretary of State to exercise functions in relation to Wales on their behalf.
5. Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's

competence to legislate in the future in the subject areas outlined in the summary to this report.

Save for the points mentioned above in paragraphs 1-5, the above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that 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.