

UK MINISTERS ACTING IN DEVOLVED AREAS

107 - The Common Fisheries Policy and Aquaculture (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 13 February 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 35
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	W/C 25/02/2019

Commentary

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

These Regulations make extensive detailed amendments to European Union legislation on Fisheries as retained EU law to enable it to operate effectively outside the EU. Legislative and non-legislative functions of EU entities are transferred to the UK fisheries administrations.

These functions are generally expressed so that Devolved Administrations can make their own regulations when the matter is devolved, while the Secretary of State can make regulations when matters are reserved. In certain cases, in areas of devolved competence when an UK-wide approach may be preferred, the Secretary of State can exercise the

function for the whole of the UK, with the consent of the Devolved Administrations.

The regulations are to be subject to the affirmative procedure at Westminster.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 February 2019 regarding the effect of these Regulations.

The statement states:

"Fisheries is a devolved subject area, and the National Assembly for Wales (the "Assembly") has broad legislative competence in this area in relation to Wales

This instrument confers both administrative and legislative functions on the Welsh Ministers without encumbrance. This instrument also confers functions on the Secretary of State to exercise functions in relation to Wales with the consent of Welsh Ministers and in certain cases without encumbrance.

*Functions transferred to the Secretary of State to be exercised concurrently with the Welsh Ministers may constitute functions of a Minister of the Crown for the purposes 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 these areas.** [our emphasis]*

*Functions transferred so that they are exercisable by the Secretary of State alone or with the consent of the Welsh Ministers constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006. **A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.**" [our emphasis]*

Standing Order 30C.3(ii) requires the written statement to "specify the impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence;" This statement (and in particular the sentences highlighted above) suggests rather than specifies.

Clarification was sought by the Committee on a similar point in relation to the Nutrition (Amendment etc.) (EU Exit) Regulations 2019. In her response of 7 February 2019 to the Committee's letter of 31 January 2019, the Minister referred to her response to queries raised in relation to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018. Here, the Minister states that:

“Welsh Government officials are in contact with the Wales Office about the unintended restrictions on the Assembly’s competence created by powers conferred in EU Exit SIs and other legislation, which engages paragraphs 8, 10 and 11 of Schedule 7B of the Government of Wales Act. Officials are examining the issue in detail and considering how it can best be resolved. The Welsh Government will keep the National Assembly, including the Constitutional and Legislative Affairs Committee, informed about the progress of these discussions.”

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

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.