

UK MINISTERS ACTING IN DEVOLVED AREAS

109 - The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 12 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 39
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 affirmative Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations complement the State Aid (EU Exit) Regulations 2019 (the State Aid Framework SI) laid by the UK Government before the UK Parliament.

These Regulations ensure that the current agricultural, fisheries and CAP exemptions from the EU State aid regime remain operable. They correct deficient references to, for example, the European Commission, Member States and the internal market. For example, in Article 5 of Agricultural Block Exemption Regulation, references to European Commission Notices are being replaced with references to Competition and Markets Authority (CMA) statements of policy.

These Regulations transfer a number of minor European Commission functions to the CMA. For example, when the UK has exceeded its annual State aid budget, certain categories are then only exempted from State aid rules for a 6 month period. These Regulations give the CMA the power to extend this 6 month period.

These Regulations also make minor amendments to other CAP legislation in the area of State aid.

As with the State Aid Framework SI, there is disagreement between the Welsh Government and the UK Government as to whether State aid is devolved.

Further, as noted above, these Regulations transfer functions to the CMA, which is a reserved authority. Under the reserved powers model, the National Assembly for Wales would not be able to remove or modify those CMA functions without UK Government consent.

Given the significant effect of these Regulations, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to:

- (a) endorse the Welsh Government's argument that State aid is devolved in Wales, and
- (b) note that these Regulations are another example of subordinate legislation restricting the legislative competence of the National Assembly for Wales (albeit in a relatively narrow field).

The Committee may also wish to draw the matter to the attention of the Constitution Committee of that House.

Legal Advisers agree with the statement laid by the Welsh Government dated 15 February 2019 regarding the effect of these Regulations.

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 draw the Committee's attention to the following issues in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.

As noted in the Welsh Government's written statement:

"Despite the Welsh Government's position that State aid is a devolved matter and not a reserved matter under any heading of the Reserved

Matters Schedule in the Government of Wales Act 2006, the UK Government does not consider it as such, and therefore it has not requested Welsh Ministerial consent under the terms of the Intergovernmental Agreement. The Welsh Government has requested from the UK Government an explanation of its legal position but there has been no response.

However, the Welsh Government is content that the effect of the State Aid (EU Exit) Regulations 2019 and the State Aid (Agriculture and Fisheries) (EU Exit) Regulations 2019 combined achieve the Welsh Ministers' overarching policy objectives of securing and maintaining the confidence of EU partners, facilitating a dynamic alignment with EU State aid rules and enabling effective cross-UK alignment. This, in turn, will form an important cornerstone of our future relationship with the European Union. The Welsh Government will continue to work to ensure that a Memorandum of Understanding that will underpin the regulations provides for a meaningful role for Welsh Ministers in the administration of the UK wide State aid regime."