

UK MINISTERS ACTING IN DEVOLVED AREAS

The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 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	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 24
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

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

The Common Market Organisation (“CMO”) is the framework for the market measures provided for under the Common Agriculture Policy (“CAP”), providing the framework for the market support schemes set up in the various agricultural sectors. The CMOs were set up as a means of meeting the objectives of the CAP and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers and facilitate trade.

These Regulations address operability issues created by the United Kingdom leaving the EU relating to reserved policy areas in the CMO to ensure that the CMO can continue to operate effectively after EU exit.

These Regulations also make amendments to various existing EU legislation which forms part of UK law relating to the CMO, and provide operability fixes to the following policy areas:

- recognition of producer organisations,
- written contracts in the dairy sector,
- rules of appeal surrounding protection of geographical indicators,
- facilitating and regulating the import of certain meats,
- wines and other foodstuffs, and
- the granting of export refunds for processed agricultural goods.
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Legal Advisers make the following comments in relation to the Welsh Government's statement dated 1 March 2019 regarding the effect of these Regulations:

1. The Welsh Government has stated the following in its written statement:
 - *"This instrument transfers functions to the Secretary of State. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GOWA 2006. **A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UKG. [emphasis added]***
 - *(Functions transferred to the Competition and Markets Authority (CMA)) This engages paragraph 10 of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). This provides that a provision of an Act of the Assembly cannot remove or modify, or confer power by subordinate legislation to remove or modify, any function of a public authority other than a devolved Welsh authority, unless the appropriate (UK) Minister consents to the provision. **A future Assembly Bill seeking to remove or modify these functions would require the consent of the appropriate Minister of the Crown. [emphasis added]**"*
2. Standing Order 30C.3(ii) states that the written statement must "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence". Legal Advisers' view is that the sentences from highlighted above from the Welsh Government's statement 'suggest' rather than 'specify'.
3. The Welsh Government, in its written statement, has indicated that there has been disagreement with the UK Government as to whether CMO and CAP are devolved or reserved.
4. As the UK Government considers these matters to be reserved, from its perspective the matters are not subject to the terms of the

Intergovernmental Agreement and as such it has not sought Welsh Ministerial consent. The Welsh Government considers the matters to be devolved.

5. The Welsh Government has requested an explanation of the UK Government's legal position but has received no response.
6. Despite the disagreement on whether the matters are devolved or reserved, the Welsh Government has stated that it is content that the effect of these Regulations achieves the Welsh Ministers' overarching policy objectives of securing and maintaining the effective functioning of agricultural markets in the UK.

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

Legal Advisers draw attention to paragraphs 3, 4 and 5 of the above commentary on the statement by the Welsh Government in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.