

UK MINISTERS ACTING IN DEVOLVED AREAS

138 - The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 26 June 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft 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 2
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft 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 the European Union (Withdrawal) Act 2018.

These Regulations make technical operability changes to existing EU legislation.

At present, third countries apply to the European Commission to be listed as a country that EU Member States can import from. The Commission also sets out the requirements that such third countries have to meet to be retained on the list. The power to amend such lists sits with the EU Commission in various Council Directives that will not become part of retained EU legislation on exit day. These Regulations will make these legislative powers, which are contained within EU Directives, operable upon the UK's withdrawal from the EU, and allows the UK to align with

the EU and approve third countries, for the purpose of animal and product imports.

These Regulations contain provision which enable the Secretary of State ('SoS') to exercise legislative/administrative functions in relation to the whole of the UK, in place of the European Commission.

The Explanatory Memorandum to these Regulations confirms that they support the UK's application to be listed as a third country by the EU for live animals and for animal products. It is noted in the EM that the UK's application was approved by the EU in April 2019 as having met the minimum requirements at that time (see paragraph 2.2 of the EM).

Part 2 of the Regulations transfers legislative functions to the SoS to make regulations in relation to the UK, but only if the consent of the Welsh Ministers and the other devolved administrations is obtained to the making of such legislation. The regulation making power permits UK lists of approved third countries to be amended, allowing countries to be added, varied, or removed from the list. Before making Regulations, the SoS must have regard to the views of the devolved administrations (including the Welsh Ministers). This provision will enable the Welsh Ministers to request that the SoS exercise its UK wide powers. The SoS will be required to give due consideration to any such request.

Functions transferred to the SoS may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the 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.

Legal Advisers agree with the statement laid by the Welsh Government dated 27 June 2019 regarding the effect of these Regulations. However, the statement raises some additional questions about the approach which are not explained clearly in the statement. It states that "there are no Border Inspection Posts in Wales", but does not explain whether, after Brexit, there should be, e.g. at Holyhead or Fishguard. This is particularly relevant if there are border posts e.g. at Liverpool, which may result in animals/animal products arriving through Liverpool rather than Holyhead. Further, the statement notes that "any animal or animal related products would likely be received into England in the first instance", but does not explain by what means and to what locations animals/animal products are likely to arrive e.g. whether by air to an English airport, or via Dover. Additionally, it states that "the change in requirements of a country would only be in response to bio-security risk, so an efficient and immediate response across the whole of the UK is required for such situations". The doesn't explain any safeguards that will be put in place to ensure this is done in a timely and comprehensive manner by the UK Government, to protect Welsh interests.

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