

UK MINISTERS ACTING IN DEVOLVED AREAS

140 - The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019

Laid in the UK Parliament: 11 July 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 36
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	4 September 2019
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	23 July 2019

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

The Freedom of Establishment and Free Movement of Services (EU Exit) Regulations 2019 ('this Instrument') disapplies provisions on freedom of establishment and the free movement of services which continue as directly effective rights in domestic law, by virtue of section 4 of the European Union (Withdrawal) Act 2018. 'Directly effective rights' is the term used to reference provisions of EU law which are sufficiently clear, precise and unconditional to confer rights directly on individuals, which can be relied on in national law without the need for implementing measures.

As a consequence of its membership of the EU, the UK is bound by EU bilateral and multilateral agreements, including: the Agreement on the

European Economic Area (the EEA Agreement); the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (FMOPA); and the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara ('the Ankara Agreement') and subsequent Protocols. In 2009, the UK ratified the Treaty on the Functioning of the European Union (TFEU).

This Instrument concerns directly effective rights derived from Article 49 TFEU (freedom of establishment), Article 56 TFEU (free movement of services) and Article 57 TFEU (definition of 'services'). Collectively these rights of establishment and free movement of services ensure that nationals from EU Member State territories can be self-employed, own and manage a company, and provide services on a temporary basis under the same conditions as the State's own nationals, and receive services, without facing certain restrictions in the EU Single Market. Freedom of establishment and free movement of services form part of the EU Single Market, which comprises the free movement of goods, persons, services and capital.

This Instrument also concerns directly effective rights of freedom of establishment and free movement of services deriving from the EEA Agreement, FMOPA, and the Ankara Agreement and the Additional Protocol.

Section 4 of the European Union (Withdrawal) Act 2018 provides that the rights which flow into domestic law by virtue of section 2 (1) of the European Communities Act 1972 will continue to be recognised and available in domestic law. This includes the substance of directly effective rights in relation to free movement of services and establishment. If the UK does not exit the EU under the terms of a Withdrawal Agreement (i.e. a 'no deal' scenario), elements of reciprocity contained within directly effective rights of establishment and free movement of services, as derived from Articles in the TFEU, the EEA Agreement, FMOPA, the Ankara Agreement and the Additional Protocol, would cease to function effectively in the UK.

To address any inoperability and to ensure UK law continues to function effectively, with legal clarity, and that the UK is compliant with its World Trade Organisation (WTO) obligations, including the General Agreement on Trade in Services, these rights need to be disapplied.

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

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

