

UK MINISTERS ACTING IN DEVOLVED AREAS

142 - The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 25 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 38
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	5 September 2019

Commentary

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

This instrument amends provisions of European Union ("EU") legislation relating to the EU Common Agricultural Policy and the Common Organisation of Agricultural Markets, including in particular a number of legislative functions which are currently carried out by the European Commission. Under the amendments, these functions will instead be carried out by public authorities in the United Kingdom ("UK"). This will enable these legislative functions to continue to be used at a national level after the UK leaves the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 29 July 2019 regarding the effect of these Regulations:

1. The Welsh Government has stated the following in its written statement:
 - “This instrument transfers functions of both an administrative and legislative nature to the Secretary of State, exercisable by them alone. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006 (“GoWA”). **A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government. [emphasis added]**
 - (Functions transferred to the Competition and Markets Authority) The conferral of an administrative function on the Competition and Markets Authority potentially engages paragraph 10 of Schedule 7B to GoWA. 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 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. 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.

6. Some of the amendments made by this instrument enable the Secretary of State to make regulations using a negative instrument. These powers include a power to make consequential, incidental, supplementary, transitional or savings provisions. Although the UK Government considers any such amendments are likely to be minor, it is possible that such provisions could enact provisions that carry significant weight or effect and would be more suited to the affirmative procedure.

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 attention to paragraphs 3 and 4 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.