

UK MINISTERS ACTING IN DEVOLVED AREAS

148 - The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 24 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 50
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	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 of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. It is proposed that they be made under the affirmative procedure.

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.

The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“the principal Regulations”) (SI 2019/828) addressed operability issues created by the United Kingdom leaving the EU relating to policy areas in the CMO to ensure that the CMO can continue to operate effectively after EU exit.

The principal Regulations also made amendments to existing EU legislation that forms part of UK law relating to the CMO, and provided 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.

The present Regulations amend the principal Regulations in the manner described in the Welsh Government statement that is annexed to this Report.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 7 August 2019 regarding the effect of the present Regulations.

1. The Welsh Government’s written statement refers to the present Regulations as ‘the 2019 Regulations’ although the Regulations being amended (2019/828) were also made in 2019.
2. A copy of the statement is annexed to this report. It sets out the purpose of the amendments, the impact on devolved competence and the reason why consent was not given.
3. The principal Regulations changed references to Member States in Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products. In most cases, references to the Secretary of State were substituted. Chapter III of Title II of Part II of Regulation 1308/2013 deals with producer organisations and associations and interbranch organisations. The principal Regulations substituted ‘the Secretary of State’ for ‘Member States’ throughout that Chapter except in paragraph 3 of Article 163 where it substituted ‘the appropriate authority’, which would have been the Welsh Ministers in relation to Wales. Nevertheless, it appears, in the context of all the other changes made by the principal Regulations to Regulation 1308/2013, that this was a drafting error that is now being rectified.

4. It does not appear to constitute a change of policy. Rather, it is an accurate reflection of the earlier policy, to which the Welsh Ministers also did not consent, for reasons explained in the written statement of 1 March 2019 in relation to the principal Regulations.
5. The Welsh Government states that European legislation being amended relates to agriculture, which is clearly devolved. The UK Government, in its Explanatory Memorandum to the present Regulations, states that: “This instrument relates to the reserved policy areas of regulation of international trade, import and export controls, and regulation of anti-competitive practices and agreements.” An examination of Chapter III suggests that, for the purposes of the devolution settlement, the recognition of producer organisations does indeed relate to the devolved subject of agriculture, and that any connection to the reservations identified by the UK Government is ‘loose or consequential’. It would not, therefore, relate to those reserved matters.
6. The principal Regulations, as amended by the present Regulations, therefore have the effect of imposing a common framework in breach of the Intergovernmental Agreement between the UK and Welsh Governments. The Welsh Ministers have written to the UK Government to express their concerns, and it would be appropriate for the Assembly to take a keen interest in the response that they receive.

The above summary and the content of the Welsh Government’s statement confirm the effect of the Regulations.