

UK MINISTERS ACTING IN DEVOLVED AREAS

150 - The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

Laid in the UK Parliament: 5 August 2019

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	9 September 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	5 September 2019
Date sifting period ends in UK Parliament	19 September 2019
Written statement under SO 30C:	Paper 52
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	Recommended for upgrade
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 under section 8 of the European Union (Withdrawal) Act 2018.

These Regulations aim to ensure that the current operation of border inspection posts in the United Kingdom is maintained in order to continue free flow of trade after exit day.

Directly applicable EU legislation contains references to Council Directives. These references require modification so as to provide clarity for the continuation of the existing legal framework, when Council Directives will cease to apply to the UK. These Regulations modify references to Council Directives so that the references are no longer dependent on Council Directives applying in the UK.

In addition, the Regulations enable the Welsh Ministers to exercise certain functions in relation to border inspection posts in Wales. These functions will be exercisable concurrently with UK Ministers.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 15 August 2019 regarding the effect of these Regulations.

- The Regulations create functions that can be exercised by the Welsh Ministers and UK Ministers on a concurrent basis. Under Schedule 7B to the Government of Wales Act 2006 (the 2006 Act), the Assembly cannot remove or modify such concurrent functions (in so far as they are exercised by UK Ministers) without UK Government consent.
- While this impacts negatively on the Assembly's legislative powers (albeit in a relatively minor field), the Welsh Government's written statement says that Welsh Government officials and UK Government officials are in discussions, with a view to limiting that negative impact by amending Schedule 7B to the 2006 Act (by an order under section 109 of the 2006 Act).
- The Committee may wish to seek further information from the Welsh Government as to how Schedule 7B to the 2006 Act may be amended.

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 do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.