

UK MINISTERS ACTING IN DEVOLVED AREAS

154 - The Common Fisheries Policy and Animals (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 7 October 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made 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 18
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Made 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	22 October 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.

The Common Fisheries Policy (CFP) imposes a common approach to the sustainable management of fisheries across the European Union (EU) and its waters. Existing CFP legislation will be converted into retained EU law on EU Exit. These Regulations are required to ensure that fisheries management in the UK can continue to operate efficiently after exit. Given the UK wide approach they seem to create a mini common framework in this area. These Regulations make three categories of amendments:

1. amendments required as a result of new EU CFP legislation which has come into force since 29 March 2019, including amendments to the EU legislation itself to ensure it will operate effectively when it becomes retained EU law on exit day, and amendments to existing

statutory instruments made under the European Union (Withdrawal) Act 2018 (the 2018 Act);

2. amendments to legislation previously de-prioritised due to its non-essential nature that can be amended during the extension period before the new exit day; and
3. minor corrections such as typographical errors to the existing statutory instruments referenced in paragraph 1.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 10 October 2019 regarding the effect of these Regulations.

1. 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.
2. While this impacts negatively on the Assembly's legislative powers, 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).
3. The Committee raised this point in relation to another written statement (relating to The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019) and is still waiting for further information from the Welsh Government as to how Schedule 7B to the 2006 Act may be amended.
4. These Regulations were made on 7 October 2019 and are subject to the urgent 'made affirmative' procedure. UK Government considers it important to urgently have these Regulations in place before exit day so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after EU Exit.

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.