

UK MINISTERS ACTING IN DEVOLVED AREAS

205 - The Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 2 November 2020

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 16 November 2020
Date sifting period ends in UK Parliament	19 November 2020
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or 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

Background

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 Withdrawal Act").

Summary

The Withdrawal Act preserves EU-derived domestic law and incorporates directly applicable EU law into domestic law at the end of the Transition Period ("retained EU law"). If retained EU law was not amended, it would not operate correctly. The purpose of this instrument is to ensure that legislation relating to animal and aquatic health, invasive alien species, plant propagating material and seeds remains operable following the Withdrawal Agreement, the Protocol on Ireland / Northern Ireland ("the Protocol"), and recent updates to EU law.

The regulations and directly applicable EU law amended by this instrument concern the following policy areas: Equine identification; TSE

and animal by-products; Livestock identification; Aquatic Animal Health; Exotic animal diseases; Plant varieties and marketing of seed and other plant material; Pet travel; Animal breeding; and Seal Products. The law amended includes earlier EU Exit SIs, which were made in 2018 and 2019 in preparation for leaving the EU.

The full list of the legislation amended by these Regulations is set out in the Welsh Government's Statement (subject to comments made below), and is contained in Annex 2 of the UK Government's Explanatory Memorandum.

Statement by Welsh Government

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 11 November regarding the effect of these Regulations:

1. Legal Advisers note that the last but one paragraph of the Welsh Government's written statement provides a link to the incorrect regulations. The link provided in the written statement is for the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020, and not these Regulations.
2. Legal Advisers note that two references made in the UK Government's Explanatory Memorandum to legislation which are amended by these Regulations, are not referred to in the Welsh Government's written statement. It is unclear why the following legislation is not referenced:
 - Commission Implementing Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions provided for in Regulation (EU) No 576/2013 of the European Parliament and the Council; and
 - The Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527).
3. The Welsh Government's statement does not identify which legislative powers of the Senedd or executive powers of the Welsh Ministers are affected by this instrument. It is noted that the statement provides that:

"Functions transferred so that they are exercisable by the Secretary of State subject to the consent of the Welsh Ministers have the

potential to engage the requirement to consult the UK Government under Schedule 7B to the Government of Wales Act 2006 should a future Senedd Bill seek to remove or modify those functions. The concurrent functions contained in the Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and, as such, represent a potential restriction on the future competence of the Senedd.”

Legal Advisers recommend that clarification is sought on which devolved powers are affected; and that further information and updates be requested as to the progress of the negotiations with the Secretary of State for Wales in relation to the section 109 Order referred to above.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

As it is unclear from the Welsh Government’s statement dated 11 November 2020 the impact the Regulations may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence, Legal Advisers have been unable to assess whether 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.