

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: 5 December 2018*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	18 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	7 January 2018
Written statement under SO 30C:	Paper 49
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

#### **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.

These Regulations make a range of amendments to legislation in the field of plant variety rights ("**PVR**") as a result of the UK's departure from the European Union. PVR are a form of intellectual property designed specifically to protect new varieties of plants.

The 1991 Convention of the International Union for the Protection of New Varieties of Plants (the "**UPOV Convention**") provides the international basis for PVR protection. The UK and the EU are both signatories to the UPOV Convention in their own right.

The Plant Varieties Act 1997 implements the UK's obligations under the UPOV Convention and provides for protection of PVR in the UK. Council

Regulation EC 2100/94 on Community PVR and its implementing regulations set out a unitary system of PVR protection in the EU. That Regulation also establishes the Community Plant Variety Office (the “**CPVO**”) to implement the EU system.

The CPVO will have no function in the UK following EU Exit, nor will any PVR granted by the CPVO be recognised in the UK. These Regulations are therefore being made to ensure continued PVR protection in the UK for PVR granted by the CPVO before 29 January 2019.

The effect of the Regulations will be to protect existing EU PVR as if they had been granted under the Plant Varieties Act 1997. The amendments made by these Regulations include revoking a series of retained EU law in this field, making provision for existing EU PVR which have effect in the UK, transitional provisions for existing applications for EU PVR and making amendments to the Plant Varieties Act 1997 and domestic secondary legislation to address deficiencies arising from EU Exit.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 10 December 2018 regarding the effect of these Regulations:

1. These Regulations revoke Commission Regulation (EC) No 572/2008 amending Regulation (EC) No 1238/95 as regards the level of the annual fee and the fees relating to technical examination, payable to the CPVO, and the manner of payment, which is not referred to in the Welsh Government’s statement;
2. The Welsh Government’s statement refers to these Regulations revoking Implementing Regulation (EU) 2017/1454 which specified the technical format for reporting by Member States. However that Regulation is not revoked by these Regulations;
3. The Welsh Government’s statement refers to these Regulations revoking Implementing Regulation (EU) 2016/145 which adopted the format of the document serving as evidence for the permit issued by the competent authorities of the Member States. However that Regulation is not revoked by these Regulations;
4. The Welsh Government’s statement refers to these Regulations revoking Commission Delegated Regulation (EU) 2018/968 which specified the methodology for risk assessments for invasive alien species. However that Regulation is not revoked by these Regulations; and
5. We note the Welsh Government’s comments that these Regulations confer functions on the Controller of PVR, and that such functions would engage paragraph 10 of Schedule 7B to the Government of Wales Act 2006.

The Assembly has legislative competence on the subject of intellectual property relating to plant varieties and seeds. However, should the Assembly wish to legislate to modify or remove a function of the

Controller of PVR, which is a public authority for the purposes of paragraph 10 of Schedule 7B to the Government of Wales Act 2006, it will need consent from the UK government to do so.

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.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

However given that these Regulations amend the Plant Varieties Act 1997, we would welcome clarification from the Welsh Government regarding the reason for it not laying a statutory instrument consent memorandum for these Regulations.