

UK MINISTERS ACTING IN DEVOLVED AREAS

118 - The Food and Farming (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 14 February 2019

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	25 February 2019
Date sifting period ends in UK Parliament	5 March 2019
Written statement under SO 30C:	Paper 60
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 amendments to EU legislation concerning genetically modified organisms, wine, spirit drink and direct payments. The amendments consist mostly of technical changes which maintain the operability of the relevant legislation in the context of the UK having left the European Union and thus being a 'third country' in respect of the EU. These Regulations also make amendments to retained EU law on Geographical Indicator (GI) schemes. GIs are a form of intellectual property protection for the names of agricultural, food and drink products, the qualities or characteristics of which are attributable to the region or locality where they are produced and/or the traditional methods by which they are produced. Examples include Welsh Lamb, Scotch Whiskey, Irish Cream and Kentish Ale.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 19 February 2019 regarding the effect of these Regulations:

1. Standing Order 30C.3(ii) states that the written statement must "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence".
2. The Welsh Government has stated the following in its written statement:

"This instrument transfers functions to the Secretary of State. Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government."

3. The Welsh Government, in its written statement, has indicated that there has been disagreement with the UK Government as to whether GI schemes are devolved or reserved.
4. As the UK Government considers this matter to be reserved, from its perspective it is not subject to the terms of the Intergovernmental Agreement. However, the Welsh Government considers the matter to be devolved.
5. The Welsh Government has sought joint decision making functions within this instrument in relation to GIs, but the UK Government has maintained its view that the matter is reserved.
6. The Welsh Government has indicated that it has not been possible to resolve these matters within the timeframe required to ensure a functioning statute book.
7. The Secretary of State has given written assurances to the Minister for Environment, Energy and Rural Affairs that all Devolved Administrations will be involved in the operation of a new UK-wide GI scheme. A Memorandum of Understanding is set to underpin this instrument, and the Welsh Government states that it is seeking to ensure that the Welsh Ministers will provide a meaningful role in the administration of the scheme.
8. The Welsh Government has therefore given consent on the basis that this will be addressed in due course and it has been clarified that this consent is without prejudice to its position on legislative competence.
9. Standing Order 30C.3(iii) states that "where the Welsh Ministers consented to UK Ministers making the relevant statutory instruments, explain the reasons why consent was given".
10. The Welsh Government's written statement has clearly explained that consent was given for corrections to be made by the UK Government on matters relating to wine, spirits, genetically modified organisms and direct payments to farmers for reasons of efficiency, expediency and due to the technical nature of the amendments.

11. However, the Welsh Government's written statement does not clearly explain why consent was given in relation to GI schemes and there is a lack of clarification on whether the matter is devolved or reserved.

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 draw attention to paragraphs 3 and 4 of the above commentary on the statement by the Welsh Government in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.