

UK MINISTERS ACTING IN DEVOLVED AREAS

The Animal Welfare (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 13 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	27 November 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	W/C 26 November 2018
Date sifting period ends in UK Parliament	28 November 2018
Written statement under SO 30C:	Paper 24
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(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (the Act).

These Regulations are made in order to address failures of retained direct EU legislation to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Legal Advisers make the following comment in relation to the Welsh Government's statement dated 16 November 2018 regarding the effect of these Regulations. The final paragraph of the Welsh Government's statement states that:

"Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The

amendments have been considered fully; and there is no divergence in policy”.

The Explanatory Memorandum to the Regulations note that the Regulations make a policy change in respect of the recognition of certificates of competence for slaughterers. Paragraph 10.1 states as follows:

“...this instrument makes mainly technical amendments...it does not change the substantive policy with the exception of the proposal to no longer recognise EU27 certificates of competence for slaughterers...”

Paragraph 2.17 describes this change in more detail:

“2.17 ... As well as these technical changes to ensure operability of the regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughterers by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate that an individual has been trained and successfully assessed as DExEU/EM/7-2018.2 4 reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 removes this recognition requirement...”

Paragraph 2.18 of the UK Government’s Explanatory Memorandum, notes that there could be enforcement issues if certificates continued to be recognised:

“2.18 Continued recognition of certificates issued in other Member States would open up potential enforcement issues as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU.”

The Welsh Government’s statement does not explain how many people in Wales will be affected by this provision, nor the reasoning for deciding that it was appropriate for the UK Government to provide for this policy change in a UK statutory instrument.

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 the Committee’s attention to the issue mentioned above (regarding the proposal to no longer recognise EU27 certificates of competence for slaughterers) in relation to paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks. Paragraph 8 states that, in

respect of the powers in clauses 7, 8 and 9 of the Act, “the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency”.

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