

## UK MINISTERS ACTING IN DEVOLVED AREAS

### **74 - The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendments etc) (EU Exit) Regulations 2018**

*Laid in the UK Parliament: XX December 2018*

#### **Sifting**

|                                                                                        |              |
|----------------------------------------------------------------------------------------|--------------|
| Subject to sifting in UK Parliament?                                                   | No           |
| Procedure:                                                                             | 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   | Not known    |
| Date sifting period ends in UK Parliament                                              | N/A          |
| Written statement under SO 30C:                                                        | Paper 60     |
| SICM under SO 30A (because amends primary legislation)                                 | Not required |

#### **Scrutiny procedure**

|                                                                                      |             |
|--------------------------------------------------------------------------------------|-------------|
| Outcome of sifting                                                                   | N/A         |
| Procedure                                                                            | 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 under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations address deficiencies in retained EU law relating to restrictions on the use of ozone depleting substances (ODS) and fluorinated greenhouse gases (F-gases) to ensure the legislation continues to operate effectively at the point at which the UK leaves the EU, if there is no withdrawal agreement.

This instrument transfers powers and functions from the European Institutions (including the European Commission and European Environment Agency) to the Secretary of State, devolved Ministers and appropriate UK regulatory bodies, so that the requirements set out in

certain EU Regulations relating to ODS and F-gases can continue to operate in the UK after EU exit, if there is no withdrawal agreement.

This has the intended objective of maintaining the same environmental outcomes and minimising disruption to businesses, by retaining the requirements of certain EU Regulations relating to ODS and F-gases in UK law while correcting operability deficiencies. It will also maintain the contribution that the EU Regulations are making to meeting UK domestic carbon budgets under the UK Climate Change Act 2008.

By consenting to the UK Government making these Regulations in Welsh devolved areas, it appears that the Welsh Government is allowing the Assembly's legislative competence to be restricted in future.

As the statement laid by the Welsh Government on 21 December 2018 states:

"Functions transferred to the Secretary of State constitute functions of the Minister of the Crown for the purposes of paragraph 11 of Schedule 7B to GoWA 2006. Paragraph 11 of Schedule 7B restricts the Assembly's competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister, where the function is a qualified devolved function which includes a function which is to any extent exercisable jointly/concurrently. This means that any future Assembly Bill seeking to modify (remove or change) these functions could trigger a requirement for UKG consent to the modification."

Given that, Members may wish to consider writing to the Secondary Legislation Scrutiny Committee of the House of Lords to make observations.

Legal Advisers agree with the statement laid by the Welsh Government on 21 December 2018 regarding the effect of these Regulations.

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.