



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The State Aid (Revocation etc.) (EU Exit) Regulations 2020**

DATE **15 October 2020**

BY **Jeremy Miles AM, Counsel General and Minister for European Transition**

The State Aid (Revocation etc.) (EU Exit) Regulations 2020

In accordance with Standing Order 30C, Welsh Ministers notify the Senedd when they have given consent to UK Ministers making regulations in relation to EU Exit which impact on devolved competence.

In the case of the State Aid (Revocation etc.) (EU Exit) Regulations 2020, Welsh Ministers have not been asked to give consent, because the UK Government asserts that state aid is a reserved matter. The Welsh Government does not agree as there is no reference in Article 7(A) of the Government of Wales Act to this subject.

I have therefore considered whether we should give consent to these regulations and decided we should not.

The 2020 Regulations:

- Revoke EU State aid regulations and decisions insofar as they form part of domestic law;
- Amend retained EU law;
- Amend references to revoked EU State aid regulations in UK legislation.

In more detail, the regulations revoke the following legislation:

- **Rights under the Treaty on the Functioning of the EU (TFEU)**

The Regulations revoke any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, at the end of the Transition period —

- (a) Would otherwise continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from—
 - (i) Article 107(1) or 108(3) of the TFEU;

- (ii) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or Article 108(3) of the TFEU;
- (iii) Article 61(1) or 62(1) of the EEA agreement; or
- (iv) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement;

- **Rights under the European Economic Area (EEA) Agreement**

The Regulations revoke Annex 15 of the EEA agreement, insofar as it would otherwise form part of domestic law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018..

- **EU Regulations**

The Regulations revoke the following Regulations:

- (a) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
- (b) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- (c) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- (d) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector;
- (e) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;
- (f) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (g) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;
- (h) Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;
- (i) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid; and

- (j) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

- **EU Decisions**

The Regulations also revoke the following EU decisions

- (a) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
- (b) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest; and
- (c) any other EU decision which forms part of domestic law on and after Implementation Period (IP) completion day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018 and is made under—
 - (i) the procedural regulation or predecessor regulation¹; or
 - (ii) [Article 108(2) of the TFEU] [or Article 88 of the EEC Treaty].

The 2020 Regulations also make a number of consequential amendments to UK legislation in other devolved areas for which consent should have been sought under the Intergovernmental Agreement, notably

:

- Water Industry (Determination of Turnover for Penalties) Order 2005
- Community Infrastructure Levy Regulations 2010
- Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

Consent for these amendments has not been sought by UK Government.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

¹ “procedural regulation” means Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union. “predecessor legislation” means:

- a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (as it had effect immediately before IP completion day); and
- b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (as it had effect immediately before IP completion day).

<https://www.legislation.gov.uk/ukdsi/2020/9780348212570/contents>

The effect of these Regulations would be to remove the current state aid rules which provide a framework which ensures trade is not distorted by unregulated public subsidy of individual enterprises but does not put any alternative subsidy regime in its place.

We have therefore informed the UK Government that its failure to request our consent is in contravention of the Inter-governmental Agreement and that we withhold our consent.