

POLICY NOTE

THE ENVIRONMENT (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2019

SSI 2019/26

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument. These Regulations address deficiencies in Scottish legislation arising as a result of EU Exit, primarily around licensing and enforcement powers for SEPA and environmental standards. The Regulations also correct a number of cross references to EU legislation which require to be amended as a result of EU Exit.

Policy Objectives

The Regulations make amendments to a number of pieces of primary and secondary legislation relating to industrial pollution control, waste, water, environmental protection and the water industry. The Regulations revoke one water instrument.

The continued functioning of environmental licensing and enforcement and environmental standards has been identified as a high risk area for exiting the EU with no deal and these amendments are part of readiness preparations for that scenario.

The majority of the amendments are making technical and minor changes to address failures of retained EU law to operate effectively. Environmental legislation is deeply entwined with EU law and these amendments address, for example, references to licensing requirements and environmental standards in EU Directives, functions conferred on EU bodies that will be inappropriate after exit day, and other inappropriate EU references. The purpose of these amendments is to ensure that environmental licensing and enforcement powers continue to operate, and that environmental standards continue to apply, after the withdrawal of the United Kingdom from the European Union.

Explanation of the law being amended by the regulations

The Regulations will amend the following:

Environmental Protection

- Environmental Protection Act 1990
- The Pollution Prevention and Control (Scotland) Regulations 2012
- The Sulphur Content of Liquid Fuels (Scotland) Regulations 2014
- The Environmental Authorisations (Scotland) Regulations 2018

Waste

The Special Waste Regulations 1996
The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000
The Landfill (Scotland) Regulations 2003
The End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003
The Waste Management Licensing (Scotland) Regulations 2011

Water Environment

The Water Environment and Water Services (Scotland) Act 2003
The Water Environment (Controlled Activities)(Scotland) Regulations 2011
The Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013
The Water Environment and Water Services (Scotland) Act 2003 (Modification of Part 1) Regulations 2015 (This instrument is to be revoked)
The Bathing Waters (Scotland) Regulations 2008

Water Industry

Urban Waste Water Treatment (Scotland) Regulations 1994

Reasons for and effect of the proposed change or changes on retained EU law

The Regulations address deficiencies relating to licensing requirements and environmental standards in EU Directives. For example, waste legislation contains definitions relating to “batteries” which refer to definitions used in the Batteries Directive 2006/66/EC. The Directive excludes batteries used in equipment connected with the protection of Member State’s security interests. Without action to address these references, the operation of waste legislation would not operate consistently in relation to waste batteries after EU exit.

Some of the significant amendments contained in the Regulations are as follows:

Pollution Prevention and Control (Scotland) Regulations 2012 : SEPA sets permit conditions requiring compliance with standards established by BAT (Best Available Techniques) conclusions published by the European Commission under the Industrial Emissions Directive. The Scottish Ministers are to gain powers to amend and publish domestic BAT Conclusions under UK exit SIs. The draft amendments add a new definition of BAT Conclusions, which refers to those domestic BAT Conclusions. The amendments ensure that SEPA has an appropriate and legally enforceable basis for setting permit conditions after exit. Similar amendments are being made to the industrial emissions regimes in the other parts of the UK.

Special Waste Regulations 1996: The draft amendments add a new statutory procedure to the Special Waste Regulations which would allow the Scottish Ministers, following advice from SEPA, to make determinations that a particular type or batch of waste is (or is not)

hazardous. Scottish Ministers could make such a determination on an administrative basis under the Waste Framework Directive at present, although they have never needed to do so. The amendments ensure that this can continue once the Directive has no legal effect and create a statutory procedure which is similar to that applying in the other parts of the UK.

Water Environment (Controlled Activities) (Scotland) Regulations 2011: The Regulations delete a “mutual recognition clause” relating to the recognition of the technical standards of other EEA states. This has been removed as it favours EEA states over non-EEA states.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 do no more than is appropriate.”

This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in environmental legislation to ensure that the legislation continues to operate effectively after EU exit in order to provide clarity and legal certainty for regulators, regulated business and members of the public. The Regulations do no more than is appropriate to address deficiencies in devolved environment legislation arising from this approach.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action.”

The amendments made by the Regulations will ensure that domestic provisions relating to the environment function appropriately after the UK’s exit from the EU. The amendments will provide clarity and legal certainty for stakeholders, and ensure that current standards of environmental protection are maintained.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This is not applicable to the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low (i.e instruments that are minor and technical, continuity of law with no policy change etc.)

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

It is considered that the instrument ought to be subject to negative procedure as the changes made by it to prevent, remedy or mitigate deficiencies arising from the withdrawal of the UK from the EU are minor and technical in nature, and are not intended to make any significant change to the policy outcomes delivered by the legislation that it amends. The regulations do not include provisions which fall within paragraph 1 (2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

The amendments within the instrument serve primarily to address deficiencies in Scottish legislation arising as a result of EU Exit and correct a number of cross references to EU legislation which require to be amended as a result of EU Exit. Consultation on the content was, therefore, not considered necessary.

We consider that the removal of the ‘mutual recognition clause’ relating to technical standards amounts to the removal of a “reciprocal arrangement” with other member states, and that therefore under the EU Withdrawal Act 2018, we have consulted with the Secretary of State before making the amendment.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the changes are minor and technical to ensure operability of existing legislation and to not introduce any new requirements.

The amendments do not alter Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Environment and Forestry Directorate

31 January 2019