

POLICY NOTE

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/84

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

Purpose of the instrument

To amend the Wildlife and Countryside Act 1981 to ensure that it continues to operate effectively in Scotland following the UK’s withdrawal from the EU.

Policy Objectives

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU. In relation to the conservation of habitats and species, the UK Government, the Scottish Government and the other devolved administrations plan to retain the current protections and standards set out in EU legislation and EU-derived domestic legislation, to ensure that, following the United Kingdom’s exit from the European Union, these continue to operate in the same or an equivalent way. This will ensure that the UK will continue to meet its international commitments, particularly under the Convention on the Conservation of European Wildlife and Natural Habitats (“the Bern Convention”).

Upon exit day, a technical amendment is required to ensure that the Wildlife and Countryside Act 1981 remains operable.

Explanation of the law being amended by the regulations

The Wildlife and Countryside Act 1981 (“the 1981 Act”) implements the Bern Convention and Council Directive 79/409/EEC on the conservation of wild birds (“the Birds Directive”) in Great Britain. It creates a number of offences to protect any wild bird, their eggs and nests as well as certain animals and vascular plants. In Scotland, it also contains provisions to prevent the spread of invasive non-native species.

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

The Instrument is necessary to amend the definition of a wild bird provided in the 1981 Act. At present, this definition is for any bird species which is ordinarily resident in or is a visitor to any member State of the European Union or the European territory of any member State. The Instrument will amend the 1981 Act to add the United Kingdom to the definition.

This instrument does not reflect a change in policy and has been brought forward in exercise of powers in the 2018 Act in order to address failures of retained EU law to operate effectively after the UK’s exit from the EU.

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 Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 does no more than is appropriate. This is the case because the amendments are being made only to ensure, following a United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not introduce policy change”.

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 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. These are to ensure following a United Kingdom exit from the European Union, the continued and effective operation of environmental legislation in order to protect Scotland’s environment.”.

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 Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 does 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 Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) 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.”.

Where the regulations create a criminal offence, an explanation of why there are good reasons for creating the offence and providing for a penalty in respect of it

This instrument creates no new criminal offences.

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 Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) 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 heading is not applicable.

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

Low – the amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

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

This instrument does not amount to a change in policy and is being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU. There has been no formal public consultation regarding this instrument. We have engaged with DEFRA and other UK administrations on the content of equivalent UK Statutory Instruments, where similar technical amendments are being made. Changes are considered essential to ensure legislative operability on day one of the UK’s exit from the EU.

Impact Assessments

Full impact assessments have not been prepared for this instrument because it is aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact of 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

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