
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 178

**EXITING THE EUROPEAN UNION
ENVIRONMENTAL PROTECTION**

**The Environmental Assessment (EU Exit)
(Scotland) (Amendment) Regulations 2019**

Made - - - - 16th May 2019
Laid before the Scottish
Parliament - - - - 20th May 2019
Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾, paragraph 1(1) and (3) of schedule 2 and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018⁽²⁾, and all other powers enabling them to do so.

PART 1

Introduction

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019.

(2) They come into force—

- (a) as regards this Part and Part 2, on 30 June 2019, and
- (b) as regards Part 3, on exit day.

(3) These Regulations extend to Scotland only.

(1) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(1) to (3) and Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) 2018 c.16.

- (4) In these Regulations, “the Act” means the Environmental Assessment (Scotland) Act 2005(3).

PART 2

Amendment of the Act to update legislative references, made in exercise of powers conferred by section 2(2) of the European Communities Act 1972

Amendment of the Act to update references

- 2.—(1) The Act is amended in accordance with paragraphs (2) to (4).
- (2) In section 5(3)(b) (qualifying plans and programmes), for “Council [Directive 97/62/EC](#)” substitute “Council [Directive 2013/17/EU](#)(4)”.
- (3) In schedule 1 (projects)—
- (a) in paragraph 9—
 - (i) for “Annex IIA to [Directive 75/442/EEC](#)” substitute “Annex 1 of [Directive 2008/98/EC](#) of the European Parliament and of the Council(5)”, and
 - (ii) for “(that is to say, waste to which [Directive 91/689/EEC](#) applies)” substitute “as defined in Article 3.2 of that Directive”,
 - (b) in paragraph 10, for “Annex IIA to [Directive 75/442/EEC](#)” substitute “Annex 1 of [Directive 2008/98/EC](#) of the European Parliament and of the Council”,
 - (c) in paragraph 13, for “[Directive 91/271/EEC](#)” substitute “Council [Directive 91/271/EEC](#)(6)”, and
 - (d) in paragraph 44—
 - (i) for “Council [Directive 85/337/EEC](#)” substitute “[Directive 2011/92/EU](#) of the European Parliament and of the Council(7)”, and
 - (ii) omit “(as last amended by Council [Directive 2003/35/EC](#))”.
- (4) In schedule 3 (information for environmental reports), in paragraph 4—
- (a) after “birds” insert “, [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds(8)”, and
 - (b) for “Council [Directive 97/62/EC](#)” substitute “Council [Directive 2013/17/EU](#)(9)”.

(3) [2005 asp 15](#), as amended [S.I. 2011/1043](#).

(4) [OJ L 158, 10.6.2013, p.193](#).

(5) [OJ L 312, 22.11.2008, p.3](#), as last amended by Directive (EU) 2018/851 of the European Parliament and of the Council ([OJ L 150, 14.6.2018, p.109](#)).

(6) [OJ L 135, 30.5.1991, p.40](#), as last amended by Council [Directive 2013/64/EU](#) ([OJ L 353, 28.12.2013, p.8](#)).

(7) [OJ L 26, 28.1.2012, p.1](#), as last amended by [Directive 2014/52/EU](#) of the European Parliament and of the Council ([OJ L 124, 25.4.2014, p.1](#)).

(8) [OJ L 20, 26.1.2010, p.7](#), as last amended by Council [Directive 2013/17/EU](#) ([OJ L 158, 10.6.2013, p.193](#)).

(9) [OJ L 158, 10.6.2013, p.193](#).

PART 3

Amendment of the Act to address deficiencies arising from the withdrawal of the United Kingdom from the European Union

Amendment of the Act to address deficiencies

- 3.—(1) The Act is amended in accordance with paragraphs (2) to (7).
- (2) In section 5(3)(b) (qualifying plans and programmes)(**10**), after “pursuant to” insert “any retained EU law extending to Scotland which implemented”.
- (3) In section 13 (relationship with EU law requirements)—
- (a) in the heading, after “**with**” insert “**other retained**”,
 - (b) in subsection (1), after “requirement under” insert “other retained”, and
 - (c) in subsection (2), after “provision of” insert “other retained”.
- (4) In section 14(4) (preparation of environmental report), for “EU legislation” substitute “other retained EU law”.
- (5) In schedule 1 (projects)(**11**), in paragraph 44(1), after “that Directive” insert “, as those expressions were construed immediately before exit day”.
- (6) In schedule 2 (criteria for determining the likely significance of effects on the environment)—
- (a) in paragraph 1(e), for “EU legislation” substitute “retained EU law”, and
 - (b) in paragraph 2, omit “, Community”.
- (7) In schedule 3 (information for environmental reports)(**12**)—
- (a) in paragraph 4, after “pursuant to” insert “any retained EU law extending to Scotland which implemented”, and
 - (b) in paragraph 5, for “, Community or Member State” substitute “or national”.

St Andrew’s House,
Edinburgh
16th May 2019

ROSEANNA CUNNINGHAM
A member of the Scottish Government

(10) Section 5(3)(b) is amended by Part 2 of these Regulations.

(11) Schedule 1 is amended by Part 2 of these Regulations.

(12) Schedule 3 is amended by Part 2 of these Regulations.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Assessment (Scotland) Act 2005 (asp 15) (“the Act”). The provisions in Part 2 update references in the Act, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68) and come into force on 30 June 2019. The provisions in Part 3 are made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2, and paragraph 21 of schedule 7, of the European Union (Withdrawal) Act 2018 (c.16) and come into force on ‘exit day’ (as defined in that Act). The provisions in Part 3 address deficiencies arising from the withdrawal of the United Kingdom from the European Union.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.