

## POLICY NOTE

### THE ENVIRONMENT AND TRADE IN ANIMALS AND RELATED PRODUCTS (EU EXIT) (SCOTLAND) (MISCELLANEOUS AMENDMENT) REGULATIONS 2022

#### SSI 2022/138

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7, of 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, relating to the water environment, flood risk management, noise pollution control, air quality and animal health.

#### **Policy Objectives**

The Regulations make amendments to a number of pieces of primary and secondary legislation relating to the water environment, flood risk management, noise pollution control, air quality and animal health.

The amendments were identified as deficiencies which required to be corrected to ensure the continued functioning of various pieces of environmental protection legislation as a result of exiting the EU.

The majority of the amendments are making 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 environmental standards in EU Directives, and other inappropriate EU references. The purpose of these amendments is to ensure that environmental protection legislation continue to operate effectively, now that the UK has withdrawn from the European Union.

The amendment for animal health is to the Trade in Animals and Related Products (Scotland) Regulations 2012 (“the TARP Regulations”) to correct a drafting error in the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022.

#### **Explanation of the law being amended by the regulations**

The Regulations amend the following pieces of legislation:

##### Water

The Water Environment and Water Services (Scotland) Act 2003 (asp 3)

The Protection of Water against Agricultural Nitrate Pollution (Scotland) Regulations 1996 (SI 1996/1564)

The Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516)

The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013 (SSI 2013/325)

### Flood Risk Management

The Flood Risk Management (Scotland) Act 2009 (asp 6)  
The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (SSI 2010/426)

### Environmental Protection

The Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465)  
The Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204)

### Animal Health

The TARP Regulations (SSI 2012/177) set out requirements concerning the importation of animals and animal products from third countries. Schedule 5, paragraph 4 of the TARP Regulations sets out derogations from the requirement to pre-notify the arrival of certain goods from third countries into Scotland.

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

The Regulations address deficiencies in the pieces of legislation referred to above. For example, in both the Flood Risk Management (Scotland) Act 2009 and the Air Quality Standards (Scotland) Regulations 2010, the Scottish Ministers are required to comply with certain provisions of the relevant Directives implemented by the Scottish legislation. Without action to address these references to the provisions of the Directives and to provide for an amended interpretation of the Directives, the obligations on the Scottish Ministers under the Flood Risk Management (Scotland) Act 2009 and the Air Quality Standards (Scotland) Regulations 2010 would not operate effectively.

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

#### *The Water Environment and Water Services (Scotland) Act 2003*

These Regulations repeal a power in section 25 which allowed Scottish Ministers to make regulations to provide that the provisions of Part 1 of the Water Environment and Water Services (Scotland) Act 2003 were to have effect with modifications for the purpose of giving effect to any EU obligations of the United Kingdom. Following the withdrawal of the UK from the European Union, this power is now redundant.

#### *The Protection of Water against Agricultural Nitrate Pollution (Scotland) Regulations 1996*

A reporting requirement is imposed on the Scottish Ministers in relation to monitoring results and other information in a new regulation 8. Previously, this information had to be provided to the European Commission which published a summary of it.

#### *The Air Quality Standards (Scotland) Regulations 2010.*

A publication requirement is imposed on Scottish Ministers (under a new regulation 17(4)) where they consider that a limit value (set out in the 2010 Regulations) has been exceeded for a reason attributable to natural sources. Where a limit value is exceeded due to natural sources and the evidence of this was provided to the European Commission, then such an excess was not considered to be a breach of the 2010 Regulations. It was considered appropriate to have a new requirement on Scottish Ministers to publish the evidence following removal of the obligation to provide such evidence to the European Commission.

### *The TARP Regulations*

These Regulations amend paragraph 4(3B) of schedule 5 to the TARP Regulations as inserted by the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022. That provision removes the requirement to pre-notify the arrival of certain consignments into Scotland from the Republic of Ireland. It contained a drafting error which these Regulations now rectify, in satisfaction of an undertaking given to do so during Scottish Parliament scrutiny of the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022.

### **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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 do no more than is appropriate.” .

This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in environmental and animal health 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 and animal health legislation arising from this approach. These amendments are minor in nature and do not make any policy changes.

#### **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 Minister for Environment and Land Reform, Máiri McAllan, 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 Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 will ensure that domestic provisions relating to the environment and animal health 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 and animal health 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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022

**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, updating references which are no longer appropriate once the UK has left the EU, 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. Consultation on the content was, therefore, not considered necessary.

### **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 following withdrawal from the EU. The amendments are considered likely to have a positive impact as the changes provide clarity in the relevant law.

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 Minister for Environment 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

20 April 2022