

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL AUTHORISATIONS (SCOTLAND) REGULATIONS 2018
(TRANSITIONAL AND SAVINGS PROVISIONS) ORDER 2021

2021 No. 1309 (S. 2)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order makes transitional and savings provisions in relation to the Environmental Authorisations (Scotland) Regulations 2018¹ (“EASR 2018”). The Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021 (“the Consequential Modifications Order”) makes consequential amendments that extend the application of EASR 2018 to installations in the Scottish offshore area, which ensures EASR 2018 has the same extent as the Radioactive Substances Act 1993 (“RSA 1993”) did. The transitional and savings provisions made by this Order allow existing licences and applications relating to radioactive substances activities for installations in the Scottish offshore area that have been granted or made under RSA 1993 after 1st September 2018 to continue to have effect under EASR 2018 once it is extended by the Consequential Modifications Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order will breach the 21-day rule as it will be laid on 24th November 2021 and will come into force on 25th November 2021. This is due to the fact that the Order must come into force on the same day as the Consequential Modifications Order to ensure that all existing licences and applications relating to radioactive substances activities that were granted or made under the Radioactive Substances Act 1993 after 1st September 2018 continue to have effect under EASR 2018 when it is extended to the Scottish offshore area by the Consequential Modifications Order. If this Order comes into force after the Consequential Modifications Order, those existing licences and applications will no longer have effect when EASR 2018 is extended to the Scottish offshore area and any person continuing to carry on such an activity would be committing a criminal offence under EASR 2018.
- 3.2 The Consequential Modifications Order has been debated in and approved by Parliament. It will be made on 24th November 2021 and in accordance with article 1(1) of that Order is due to come into force the day after the day it is made. This Order applies to an activity in the Scottish area which, as a result of the coming into force of the Consequential Modifications Order, is a radioactive substances activity and it is necessary that article 3 of this Order therefore refers to the Consequential Modifications Order. If the 21-day rule is observed, this Order would be incomplete in one aspect as it would not include the Statutory Instrument reference number for the

¹ S.S.I. 2018/219. It came into force on 1st September 2018.

Consequential Modifications Order in the footnote for article 3. Advance reference numbers can be issued for cross-reference purposes, but only within 48 hours of an SI being made.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Scotland.
- 4.2 The territorial application of this instrument is Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1), 113(4) and 114(3) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions that are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament. Section 114(3) of the 1998 Act provides for subordinate legislation made under section 104 that has retrospective effect. Reliance on section 114(3) is necessary for the transitional provisions contained in article 5(3) of this Order.
- 6.2 The Consequential Modifications Order makes amendments to article 4 of the Civil Jurisdiction (Offshore Activities) Order 1987 and section 7 of the Continental Shelf Act 1964. The effect of the amendments made by the Consequential Modifications Order is to deem installations in the Scottish offshore area to be part of Scotland for the purposes of EASR 2018, in so far as they apply to radioactive substance activities. Once the Consequential Modifications Order enters into force, installations in the Scottish offshore area undertaking radioactive substances activities will require authorisation under EASR 2018.
- 6.3 Schedule 5 of EASR 2018 contains transitional and savings provisions that apply to licences and applications for registration, for variation or cancellation of a registration, for authorisation, for transfer of an authorisation or for variation or revocation of an authorisation that were granted or made under RSA 1993 before EASR 2018 came into force on 1st September 2018. Once the Consequential Modifications Order comes into force and extends EASR 2018 to the Scottish offshore area, those transitional provisions will allow licences or relevant applications in respect of installations in the Scottish offshore area that were granted or made under RSA 1993 before 1st September 2018 to be treated as if made under EASR 2018. As the RSA 1993 continued to apply to installations in the Scottish offshore area after 1st September 2018, there is a need to ensure that existing licences and relevant applications in respect of installations in the Scottish offshore that have been granted or made under RSA 1993 on or after 1st September 2018 can be treated as if made under EASR 2018, once it is extended by the Consequential Modifications Order.
- 6.4 This Order makes transitional and savings provisions in relation to an activity in the Scottish offshore area which, as a result of the coming into force of the Consequential Modifications Order, is a radioactive substances activity. Article 4 of this Order

makes provision for existing licences granted under RSA 1993 in the period between 1st September 2018 and the coming into force of this Order on 25th November 2021, which are deemed permits under EASR 2018. Article 5 of this Order makes provision, including savings provision in relation to RSA 1993 and the Radioactive Substances (Appeals) Regulations 1990, to allow the Scottish Environment Protection Agency (“SEPA”) to conclude applications for registration, variation or cancellation of a registration, authorisation, transfer of an authorisation or variation or revocation of an authorisation made under RSA 1993 Act prior to the coming into force of the Consequential Modifications Order. Registrations or authorisations made or granted by SEPA (following such an application) are also deemed permits under EASR 2018.

7. Policy background

What is being done and why?

- 7.1 EASR 2018 introduced a single integrated framework for environmental activities authorisation in Scotland, currently in relation to radioactive substances only. It repealed RSA 1993 in Scotland, and provided a new regulatory framework for radioactive substances activities. The Consequential Modifications Order will ensure EASR 2018 is extended to installations in the Scottish offshore area so that EASR 2018 has the same extent as RSA 1993 did.
- 7.2 The transitional and savings provisions made by this Order, as outlined in the section above, will ensure all existing licences and relevant applications granted or made under RSA 1993 after 1st September 2018 in respect of installations in the Scottish offshore area continue to have effect under EASR 2018. The existing transitional and savings provisions in EASR 2018 will only apply to licences and applications granted or made under RSA 1993 before 1st September 2018. Failure to make transitional and savings provision for licences and applications granted or made under RSA 1993 after 1st September 2018 will mean they no longer have effect when EASR 2018 is extended by the Consequential Modifications Order to the Scottish offshore area.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 The Order does not amend other legislation, so raises no issues relating to consolidation.

10. Consultation outcome

- 10.1 As amendments in this Order are transitional and savings, no consultation on the draft Order was considered necessary. Consultation was however carried out in 2017 on proposals for EASR 2018 and that consultation covered the arrangements which would apply to ensure transition from the RSA 1993 to EASR 2018. The Scottish Government engaged with SEPA during the development of EASR 2018. The Scottish Government and SEPA consulted extensively in 2017 on the changes from RSA 1993 to EASR 2018. For both the framework consultation and the draft regulations for EASR 2018 (with the supporting documentation) consultees were broadly supportive.

11. Guidance

- 11.1 The move from RSA 1993 to EASR 2018 did bring some changes, but relevant guidance on environmental authorisations has already been provided for those activities already covered by EASR 2018². That guidance will now apply to activity in the Scottish offshore area which, as a result of the coming into force of the Consequential Modifications Order, is a radioactive substances activity.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Order makes transitional and savings provisions in relation to EASR 2018. No formal monitoring or review is considered necessary.

15. Contact

- 15.1 Arthur Halfhide at the Office of the Secretary of State for Scotland (telephone: 07557896644 or email: arthur.halfhide@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

² <https://www.sepa.org.uk/regulations/radioactive-substances/>