

Genetically Modified Organisms and Control of Major Accident Hazards

The Health and Safety (Amendment) (EU Exit) Regulations 2018

Notification to the Scottish Parliament

Name of the instrument and summary of proposal

The Health and Safety (Amendment) (EU Exit) Regulations 2018 address minor technical deficiencies arising from the withdrawal of Scotland as part of the United Kingdom from the European Union. The Regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

The regulations contain amendments to two existing sets of UK Regulations for genetically modified organisms and the control of major accident hazards that include devolved responsibilities:

- Genetically Modified Organisms (Contained Use) Regulations 2014; and
- Control of Major Accident Hazards Regulations 2015.

Explanation of law that the proposals amend

The Genetically Modified Organisms (Contained Use) Regulations 2014 are GB regulations that implement Directive 2009/41/EC. The regulations lay down containment measures for the contained use (i.e. in research laboratories/institutes) of GMOs with a view to protecting human health and the environment. They cover both reserved (health and safety) and devolved (environment) responsibilities.

The Control of Major Accident Hazards (COMAH) Regulations 2015

transpose the majority of the Seveso III Directive (2012/18/EU). The exceptions are the requirements of the Directive relating to land-use planning and an Article relating to heavy fuel oils, which are implemented by other domestic legislation. The regulations impose requirements with respect to the control of major accident hazards involving dangerous substances and apply to establishments where these substances are, or are likely to be, present in quantities exceeding set thresholds. The regulations also require specified information to be made available to other Member States where they could be impacted by a major accident hazard. The regulations cover a mixture of reserved and devolved policy areas. At a basic level, workplace health and safety is reserved, whilst the protection of human health and the environment are devolved and the regulations touch on all these issues.

Summary of the proposals

This notification covers proposals to fix the following deficiencies:

The Genetically Modified Organisms (Contained Use) Regulations 2014 are amended to remove a redundant reference in Article 3(2)(b)(iii) which was time

limited and no longer applies. Also removed is the requirement to notify European Economic Area States which could be affected by accidental release of a GMO and a requirement to send certain information to the EU in the event of accidental release. In both cases these will no longer be applicable once the UK has left the EU. However, the UK will still retain an international obligation to notify affected/potentially affected States in these circumstances as signatory to the Cartagena Protocol on Biosafety. Implementation of this international obligation is set out in other EU and related domestic legislation.

The Control of Major Accident Hazards Regulations 2015 are amended in relation to the provision of information, in relation to the possibility of a major accident with trans-boundary consequences, to the public and countries that may be affected. These provisions presently refer to Member States, which means that they will be deficient post-exit. The references to Member States have been replaced with the word "country", thus preserving the duty to provide information to the public and potentially affected countries, whilst removing the deficient EU references. Similarly, requirements to provide information to the European Commission have been replaced with requirements to provide international organisations with information. The requirement to include the arrangements for the provision of information to the emergency services of other Member States in external emergency plans will become a requirement in relation to other countries. A new definition of 'international organisation' is also inserted by the Regulations for consistency under the domestic regime.

The UK will remain under international obligations to share certain information due to being a party to the United Nations Economic Commission for Europe (UNECE) Transboundary Effects of Industrial Accidents Convention (TEIA) and a discretionary power has been added to allow the fulfilment of these obligations.

Why is the change necessary?

These changes are necessary to allow the continuation of the effective function of these regulations.

Scottish Government categorisation of significance of proposals

Category A. The provisions are making small, minor technical changes to preserve the functioning of the regulations.

Impact on devolved areas

There is no impact on devolved powers exercised under the regulations, or on future devolved discretion over future changes to the regulations.

Stakeholder engagement/consultation

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the regulations as they are at present and we have not undertaken any focussed engagement on this basis. We have not undertaken any formal consultation.

Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?

The guiding principles on the environment as set out in Article 191(2) in Title XX of the Treaty on the Functioning of the European Union are relevant to these proposals.

The amendments to the Genetically Modified Organisms (Contained Use) Regulations 2014 do not introduce any policy changes and are therefore in line with the guiding principles on the environment as the 2014 Regulations were made in adherence to these principles.

The amendments to the Control of Major Accident Hazards Regulations 2015 do not introduce any policy changes and are therefore in line with the guiding principles on the environment as the 2015 Regulations were made in adherence to these principles.

Any other impact assessments?

We have discussed with the UK Government and on the basis that this does not infer any policy changes, they have assessed there is not a requirement to undertake an impact assessment on this SI.

Future Governance

Regarding reporting requirements for the Genetically Modified Organisms (Contained Use) Regulations 2014, the UK and the EU, as a whole, are signatories to the Cartagena Protocol on Biosafety. We will therefore continue to have international obligations to notify, and be notified by, other States in the event of any accidental release of GMOs as applicable. Application procedures for GMO contained use in England, Scotland and Wales are set out in an Agency Agreement and a Memorandum of Understanding which work well and are regularly reviewed.

As regards reporting and publishing of environmental information under the Control of Major Accident Hazards Regulations 2015, in the short term we will continue to report and publish everything that we currently do under EU requirements.

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on medium and long term governance arrangements once the future relationship is clear. This will include proposals for future monitoring and enforcement.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The provisions were made at the UK level to reflect overlapping reserved and devolved responsibilities, and it is most effective to make the changes to address deficiencies at the same level.

Intended laying date

Late November 2018

Does the Scottish Parliament have 28 days to scrutinise Scottish Minister's proposal to consent?

Yes

Information about any time dependency associated with the proposal

As the provisions are making small, minor technical changes to preserve the functioning of the regulations, there is no time dependency associated with the proposals.

Any significant financial implications

As the provisions are making small, minor technical changes to preserve the functioning of the regulations, there are no significant financial implications associated with the proposals.

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