

ENVIRONMENT - NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2018

1. Name of instrument and summary of proposal

The aim of The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2018 is to ensure that cross-cutting environmental legislation continues to function effectively after EU exit in the event of a presumed “no deal” scenario.

- Part 1 of the Regulations contains introductory provisions.
- Part 2 of the Regulations relates to legislation that applies in Scotland. It makes amendments to environmental primary legislation to modify references to the EU, EU legislation or Member State obligations to enable continuity of the relevant environmental legislation after exiting the EU. There are no substantive policy changes.
- Part 3 of the Regulations relates to changes to English regulations only.
- Part 4 of the Regulations relates mainly to reserved matters, but includes revocation of two decisions (Decision No 2179/98/EC and Decision No 1386/2013/EU) relating to devolved matters, namely the European Environment Action Plan (EEAP).

2. Explanation of law that the proposals amend

The Environmental Protection Act 1990 makes provision for a broad range of measures to protect the environment, in particular integrated pollution protection and control, air quality, waste on land and contaminated land.

The Environment Act 1995 set up the Environment Agency and the Scottish Environment Protection Agency, making provision for their powers and functions, including powers to grant licences and permits, charge to achieve cost recovery, and a requirement to carry out any Ministerial directions as regards their functions. The Act also currently provides for Ministerial directions to implement obligations under the EU Treaties, and restricts the revocation or amendment of such directions if it would result in non-compliance with EU obligations.

The Pollution Prevention and Control Act 1999 sets out the legislative framework for implementing Council Directive 1996/61 on integrated pollution prevention and control. It enables regulation of any activities capable of causing pollution of the air, water or land (whether or not covered by the Directive) and regulation to prevent or control emissions capable of causing such pollution.

Decision No 2179/98/EC and Decision No 1386/2013/EU relate to the European Environment Action Plan which focuses on environmental protection and safeguarding of the environment generally.

3. Summary of the proposals

The Acts in Part 2 of the Regulations presently refer to a number of obligations of the UK as an EU member state, and to EU legislation. They also refer to EU legislation that has been amended or replaced. All such references require to be amended to reflect the relevant law immediately before exit day, and to allow it to function properly after exit.

This notification covers proposals to fix the following deficiencies in Parts 2 and 4 of the instrument.

a. Part 2

- Deficiencies which include references to Member state obligations and EU obligations which are either inappropriate after exit, or will no longer work legally without amendment. Updating references to the current versions of relevant Directives is also necessary to ensure operability of the law after exit. In particular-
 - i. the Environment Protection Act 1990 is amended to ensure that it is clear that only obligations under retained EU law remain;
 - ii. the Environment Act 1995, is amended so that directions may be given to ensure any retained EU obligations can be met and so that the restriction on amendment/revocation continues to apply in respect of retained EU obligations. The amendments also ensure various references to EU Directives are up to date (including by reference to relevant domestic provisions) and will operate properly in relation to retained EU law; and
 - iii. the Pollution Prevention and Control Act 1999 is amended to provide that the Ministerial powers of Direction apply to retained EU law and international obligations; and, in relation to regulation-making powers, to set out the areas of retained EU law in which the regulation-making powers have been used in the past and will remain available to be exercised after exit. As the European Communities Act will be repealed, the restrictions contained in that Act are replicated here.

b. Part 4

- In relation to the decisions in Part 4, the SI revokes both Decisions 2179/98 and Decision 1386/2013.

4. Why are these changes necessary?

Whilst general provisions have been made to ensure effective incorporation of EU law into domestic law by the European Union (Withdrawal) Act 2018, these provisions cannot cover all circumstances. The provisions in Part 2 make technical amendments to ensure that the law is accurate, and continues to function after exit as it did before. It makes the changes necessary to achieve those objectives.

In relation to the Decisions in Part 4, on exit from the EU, both decisions will no longer be relevant to the UK, This is because Decision 2179/98 relates to the fifth EEAP, which has since been superseded and whilst Decision 1386/2013 adopts the seventh EEAP which runs until 2020, this will cease to be applicable to the UK on exit.

5. Scottish Government categorisation of significance of proposals

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

6. Impact on devolved areas

These changes do not impact on devolved powers, nor on our implementation of the relevant legislation, now or in future.

The amendments in Parts 2 and 4 of these Regulations, whether they impact on devolved or reserved matters, will have the same impact as across the rest of the UK and any impact is not specific to Scotland.

7. Stakeholder engagement/consultation

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. These measures are aimed solely at ensuring the continued operability of the EU-related provisions in the legislation, as retained EU law, and do not give rise to any changes in policy or practice. That being so, we have not undertaken any focussed engagement, nor a formal consultation.

8. Any other impact assessments?

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

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

The primary legislation subject to the amendments in Part 2 made provision, and has effect, across the UK. It is most effective to make the changes necessitated by leaving the EU in the same way and at the same level.

Officials have worked with Defra to ensure the drafting delivers for our interests, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

Regarding the Decisions in Part 4, it makes sense to fix the straight-forward deficiencies in those at a UK level, in the interests of coherence and efficiency.

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

The proposed changes are minor technical changes and adhere fully to the existing environmental principles. There are no changes relevant to animal welfare.

11. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no governance issues arising from these proposed changes in this SI.

12. Intended laying date

4 December 2018.

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

Yes.

14. Information about any time dependency associated with the proposal

Given the minor and technical nature of the changes, there is no time dependency associated with the proposals.

15. Any significant financial implications

The provisions make technical amendments to existing regimes, to preserve the way they function after exit. There are no significant financial implications associated with the proposals.

Lead Officials: Elspeth Macdonald/Katy Hindmarsh
Environmental Quality and Circular Economy Division/Environment and Land Use
Strategy Division
0131 244 9476