

POLICY NOTE

THE ENVIRONMENTAL ASSESSMENT (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

S.S.I. 2019/178

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1(1) and (3) of schedule 2 and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument. The Regulations make some minor and technical changes to the Environmental Assessment (Scotland) Act 2005 to update cross-references to other legislation and to fix deficiencies arising from the withdrawal of the UK from the EU.

Policy Objectives

The Regulations make technical amendments to the Environmental Assessment (Scotland) Act 2005. The amendments ensure legislative references within the Act are up to date and that deficiencies arising from the withdrawal of the UK from the EU are addressed.

This instrument does not introduce any policy changes.

Explanation of the law being amended by the regulations

The Regulations amend the Environmental Assessment (Scotland) Act 2005. The Act makes provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates, and for connected purposes.

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

The Regulations make some minor and technical amendments to ensure that references are up to date and to fix deficiencies arising from the withdrawal of the UK from the EU. In particular, references to EU legislation (including Directives), the Community and member States are adjusted to refer instead to the corresponding retained EU law. These amendments are not intended to introduce any policy changes.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion the Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the changes either update references within the 2005 Act or addresses those deficiencies that would occur due to the UK’s exit from the EU. These amendments are minor and technical in nature.”

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 Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view there are good reasons for the provisions in the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019, and I have concluded this is a reasonable course of action. This is because the provisions in Part 3 of the Regulations fix deficiencies in the Environmental Assessment (Scotland) Act 2005 arising from the withdrawal of the UK from the EU, and those in Part 2 update references in that Act before that withdrawal takes place. In particular, references to EU legislation (including Directives), the Community and member States are updated. These changes are minor and technical and do not lead to a change in policy.”.

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 Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019 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. Rather, the Regulations only update references in the Environmental Assessment (Scotland) Act 2005 and fixes deficiencies in that Act arising from the withdrawal of the UK from the EU.”.

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 Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view, in preparing the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019, the Scottish Ministers 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 Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view, in preparing the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019, the Scottish Ministers have had due regard 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)

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “The Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019 have no effect on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence).”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

The regulations are considered to be of low significance because the changes are minor and technical in nature with no policy change.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

The Cabinet Secretary for the Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view, it is appropriate that the Environmental Assessment (EU Exit) (Scotland) (Amendment) Regulations 2019 are subject to the negative procedure as the amendments made by the instrument are considered to be minor and technical in nature.”.

Further information

Consultation

The amendments within the instrument are considered to be minor and technical in nature and are part of readiness preparations for the UK’s exit from the EU. Consultation on the content is, therefore, not considered necessary.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the changes are considered to be minor and technical in nature and are not intended to introduce any new policy requirements. 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

No BRIA is necessary as the instrument has no financial implications for the Scottish Government, local government or on business.