

POLICY NOTE

THE REGULATORY REFORM (SPECIFICATION OF EU INSTRUMENTS) (SCOTLAND) ORDER 2019

SSI 2019/304

The above instrument is made in exercise of the powers conferred by paragraph 30 of schedule 2 of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”). The instrument is not subject to parliamentary procedure.

Purpose of the instrument

The purpose of this instrument is to specify various EU instruments as EU obligations relating to protecting and improving the environment for the purposes of paragraph 22(1)(b) of the 2014 Act, so that Ministers can make regulations making provision which corresponds or is similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 (“the 1972 Act”) in connection with the specified EU instruments.

Policy Objectives

Much of Scotland’s environmental legislation is made using the powers of section 2(2) of the 1972 Act. In the event that the UK leaves the European Union, those powers will no longer be available to Scottish Ministers to update or amend our legislation implementing a range of EU environmental instruments.

Section 18 of the 2014 Act contains a power for the Scottish Ministers, by regulations, to make provision for a specified range of purposes, one of which is making provision which corresponds or is similar to any provision made or capable of being made under section 2(2) of the 1972 Act in connection with an EU obligation relating to protecting and improving the environment. Paragraph 30 of schedule 2 provides that Scottish Ministers may by order specify an EU instrument as one that is or contains an EU obligation relating to protecting and improving the environment.

The Order specifies that the listed EU instruments contain EU obligations relating to protecting and improving the environment, so that this power can be used to make provision equivalent to that under s2(2) in respect of those instruments. The power in the 2014 Act contains some deficiencies in terms of EU Exit. These deficiencies will be addressed by means of a separate instrument.

Consultation

We have consulted our stakeholders generally on our intention to continue to implement EU law after EU Exit. This instrument supports that general approach, in that it facilitates the continued implementation of existing EU obligations; but it does not extend to keeping pace with future EU legislation. The making of the Order is a procedural matter which is not subject to any specific consultation requirements.

Impact Assessments

This instrument secures similar powers for Scottish Ministers as those currently available under the 1972 Act, with the aim of allowing the continued effective implementation of our existing

EU obligations. It does not change current policy or practice, therefore no impact assessments have been carried out.

Financial Effects

The Cabinet Secretary for the Environment, Climate Change 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
23 September 2019