

## POLICY NOTE

### THE ENVIRONMENT (EU EXIT) (AMENDMENT ETC.) (SCOTLAND) (NO. 2) REGULATIONS 2019

SSI 2019/436

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

#### **Purpose of the instrument.**

**The purpose of this instrument is to address deficiencies in Scottish legislation relating to the waste and the environment arising from the withdrawal of the United Kingdom from the European Union.**

#### **Policy Objectives**

1. The purpose of the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019 (the instrument) is to ensure the continued functioning of the legislation relating to the environment after the withdrawal of the United Kingdom from the European Union.
2. The instrument makes changes to address deficiencies in retained EU law relating to the environment, which, if left unaddressed, would result in its failure to operate effectively as a result of the withdrawal of the United Kingdom from the European Union. These changes take effect on exit day.

#### **Explanation of the law being amended by the regulations**

The instrument will amend the following:

- the Landfill Allowances Scheme (Scotland) Regulations 2005
- the National Waste Management Plan for Scotland Regulations 2007
- the Waste Batteries (Scotland) Regulations 2009
- the Waste Management Licensing (Scotland) Regulations 2011
- the Regulatory Reform (Scotland) Act 2014

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

3. The instrument corrects deficiencies in the Regulatory Reform (Scotland) Act 2014 (the 2014 Act) to enable its effective operation post EU exit. Section 16 of the 2014 Act allows provision to be made for or in connection with protecting and improving the environment, including implementing EU obligations. Section 18 of the 2014 Act enables the Scottish Ministers to make regulations relating to protecting or improving the environment for any of the purposes specified in Part 1 of schedule 2. Paragraph 3(3) of schedule 2 allows regulations to make provision to enable the Scottish Ministers to give directions for the purpose of implementing EU obligations. Paragraph 22 of schedule 2

allows regulations to enable the Scottish Ministers to make provision which corresponds or is similar to provision which could be made using section 2(2) of the European Communities Act 1972. These provisions in the 2014 Act will fail to operate effectively after the withdrawal of United Kingdom from the European Union.

4. The instrument fixes these deficiencies by enabling the Scottish Ministers to continue to exercise these various powers in relation to a closed list of EU instruments, which relate to the protecting and improving the environment. The list of EU instruments is included within a new paragraph 22(2) of schedule 2. In paragraph 22(1)(b) of schedule 2, the reference to section 2(2) of the European Communities Act 1972 is replaced with a general power to make provision within devolved competence in connection with the listed EU instruments, [but subject to restrictions that any provision cannot impose or increase taxation, have retrospective effect or confer a power to legislate. These amendments ensure that the Scottish Ministers retain their existing powers under the 2014 Act post EU exit and that the 2014 Act continues to operate effectively. This will allow the continued effective implementation of our existing EU obligations once the power under section 2(2) of the European Communities Act 1972 has been repealed.

5. The instrument makes technical and minor changes to address deficiencies in secondary legislation relating to waste, specifically –

- the Landfill Allowances Scheme (Scotland) Regulations 2005
- the National Waste Management Plan for Scotland Regulations 2007
- the Waste Batteries (Scotland) Regulations 2009, and
- the Waste Management Licensing (Scotland ) Regulations 2011.

These amendments are made to ensure that these instruments continue to operate effectively after EU exit.

6. The instrument updates the reference to the European Waste Catalogue in the Landfill Allowances Scheme (Scotland) Regulations 2005.

7. The National Waste Management Plan for Scotland Regulations 2007 are amended to include updated definitions of best available techniques and hazardous waste, and the objectives for the purposes of the national waste management plan are amended to reflect that the aims of the Waste Framework Directive apply Scotland-wide, rather than EU-wide.

8. The Waste Batteries (Scotland) Regulations 2009 are amended by updating the definitions of battery and waste battery.

9. The Waste Management Licensing (Scotland) Regulations 2011 are also amended to reflect that the aims of the Waste Framework Directive apply Scotland-wide, rather than EU-wide.

10. The instrument also revokes orders made under the Pollution Prevention and Control Act 1999 and the 2014 Act. These will no longer be necessary after EU exit as a consequence of updating and amendments made by the Environment (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/458), and by this instrument.

## **Statements required by European Union (Withdrawal) Act 2018**

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

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement “In my view the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019 do no more than is appropriate.”

This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in environment legislation that would occur due to the UK’s exit from the EU. The regulations do no more than is appropriate to address deficiencies in primary and secondary legislation due to the UK’s exit from the EU. These amendments are predominately technical in nature and do not make any policy changes.

### **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 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 Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019, and I have concluded they are a reasonable course of action.”

This is because the provisions fix deficiencies in the Regulatory Reform (Scotland) Act 2014 and in secondary legislation arising from the withdrawal of the UK from the EU. These changes are predominately technical in nature and do not make any changes 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 Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) 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.”

### **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 Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019 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 Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement “In my view the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019 have had due regard to the need 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)**

This is not applicable to the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019.

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

Medium (predominantly concerned with technical detail but which include some more significant provisions that may warrant subject committee scrutiny, more significant policy choice for Ministers but with limited implications)

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

This is not applicable to the Environment (EU Exit) (Amendment etc.) (Scotland) (No. 2) Regulations 2019 as the provisions in Part 2 fall within paragraph 1(2)(d) of schedule 7 of the European Union (Withdrawal) Act 2018.

**Further information**

**Consultation**

11. The amendments within the instrument serve to address deficiencies in retained EU law relating to the environment, which arise as a result of EU Exit. They are predominately technical in nature and do not make any policy changes. As such consultation was not considered necessary.

**Impact Assessments**

12. Full impact assessments have not been prepared for this instrument because the provisions ensure continued operability of retained EU law on the United Kingdom’s withdrawal from the EU. The amendments are considered likely to have a generally positive impact as the changes provide clarity on the relevant law. They do not alter the Scottish Government’s 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**

13. The Cabinet Secretary for 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

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