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**EXITING THE EUROPEAN UNION
ENVIRONMENTAL PROTECTION
TOWN AND COUNTRY PLANNING
ELECTRICITY**

The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019

Made - - - - *5th March 2019*

Laid before the Scottish Parliament *7th March 2019*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018(a) and all other powers enabling them to do so.

Citation and Commencement

1. These Regulations may be cited as the Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 and come into force 7 days after exit day.

Amendment of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008

2.—(1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008(b) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the 2005 Act” insert—

““the 2015 Regulations” means the Control of Major Accident Hazards Regulations 2015(c),”

(b) in the definition of “the Directive”, at the end insert “, as Directive 2012/18/EU had effect immediately before exit day”.

(a) 2018 c.16.

(b) S.S.I. 2008/426; relevant amending instrument is S.S.I. 2015/181.

(c) S.I. 2015/483.

(3) In regulation 3(2)(b)(iii) (information and considerations: strategic development plans) for “Article 5 of the Directive” substitute “regulation 5 of the 2015 Regulations”.

(4) In regulation 10(2)(b)(iii) (information and considerations: local development plans) for “Article 5 of the Directive” substitute “regulation 5 of the 2015 Regulations”.

Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

3.—(1) The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(a) are amended as follows.

(2) In regulation 20A(1)(c), in inserted “Note 8”, from “consultations” to the end substitute “a requirement to provide information by virtue of regulation 20 of the 2015 Regulations, state that fact”.

(3) In schedule 5 (consultation by the planning authority)—

(a) in paragraph 4(b) at the end insert “, as Directive 2012/18/EU had effect immediately before exit day”,

(b) in paragraph (2) of the text under the heading “Interpretation of Schedule 5”, at the end insert “, as it had effect immediately before exit day”.

Amendment of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

4.—(1) The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015(b) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the 2013 Regulations” insert—

““the 2015 Regulations” means the Control of Major Accident Hazards Regulations 2015;”,

(ii) in the definition of “the Directive” at the end insert “, as Directive 2012/18/EU had effect immediately before exit day”,

(b) in paragraph (2), for “amended from time to time” substitute “as it had effect immediately before exit day”.

(3) In regulation 6(2)(e) (applications for hazardous substances consent), from “consultations” to the end substitute “a requirement to provide information by virtue of regulation 20 of the 2015 Regulations”.

(4) In regulation 9(3)(h) (neighbour notification by planning authorities), from “consultations” to the end substitute “a requirement to provide information by virtue of regulation 20 of the 2015 Regulations”.

(5) In regulation 14(4)(a)(iv) (consultation before determination of applications), from “consultations” to the end substitute “a requirement to provide information by virtue of regulation 20 of the 2015 Regulations”.

(6) In regulation 21(1)(b) (policies) after “Directive” insert “(with the reference in that Article to Article 5 of the Directive being read as a reference to regulation 5 of the 2015 Regulations)”.

(7) In regulation 22(4) (plans and programmes), in the definition of “relevant plan or programme”, in both sub-paragraphs (a) and (b), after “pursuant to” insert “any provision of retained EU law which implemented”.

(a) S.S.I. 2013/155; relevant amending instrument is S.S.I. 2015/181.

(b) S.S.I. 2015/181 to which there are amendments which are not relevant to these Regulations.

(8) In regulation 23(2)(a)(ii) (other planning approvals for projects), from “consultations” to the end substitute “a requirement to provide information by virtue of regulation 20 of the 2015 Regulations”.

(9) In regulation 57 (access to review procedure before a court), after “Directive” insert “as it had effect immediately before exit day.”.

(10) In regulation 60(2) (applications made before the commencement date) for “consultations between Member States in accordance with Article 14(3) of the Directive” substitute “a requirement to provide information by virtue of Article 14(3) of the Directive as it had effect immediately before exit day”.

(11) In Part 2 of schedule 1 (hazardous substances and controlled quantities), in paragraph 12(1) of the Notes to Parts 1 and 2, after “relating to aerosol dispensers” insert “, as that Directive had effect immediately before exit day”.

Amendment of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

5.—(1) The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) at the end of the definition of “the CCS Directive” insert “, as Directive 2009/31/EC had effect immediately before exit day”,
- (b) at the end of the definition of “the Directive” insert “, as it had effect immediately before exit day”,
- (c) after the definition of “site of special scientific interest” insert “and”,
- (d) omit the definition of “Union legislation” and “and” immediately preceding it.

(3) In regulation 4(3)(b) (environmental impact assessment), after “under” insert “any law that implemented”.

(4) In regulation 6(6) (EIA Development), for “, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive),” substitute “in exceptional cases”.

(5) In regulation 21(2)(b) (publication of EIA report), for “another” substitute “an”.

(6) In regulation 30(2)(b) (monitoring measures), for “Union legislation” substitute “retained EU law”.

(7) In regulation 41 (development in Scotland likely to have significant effects in an EEA State other than the United Kingdom)—

- (a) in the heading, omit “other than the United Kingdom”,
- (b) in paragraphs (1)(a) and (1)(b), in each place it appears, omit “other than the United Kingdom”,
- (c) in paragraph (3)(a), for “another” substitute “an”,
- (d) in paragraph (5)(a) for “in accordance with Article 6(1) of the Directive and” substitute “by the EEA State as authorities to be consulted and to”,
- (e) in paragraph (6)—
 - (i) omit “in accordance with Article 7(4) of the Directive”,
 - (ii) in sub-paragraph (b) omit “other”.

(8) In regulation 42 (projects in another EEA State likely to have significant transboundary effects)—

- (a) in the heading, for “another” substitute “an”,

(a) S.S.I. 2017/102 as amended by S.S.I. 2017/168.

- (b) in paragraph (1)—
 - (i) omit “other than the United Kingdom pursuant to Article 7(2) of the Directive”,
 - (ii) omit “, in accordance with Article 7(4) of the Directive”,
 - (iii) in sub-paragraph (b), from “to the competent authority” to the end substitute “representations to the competent authority in that EEA State”.

(9) In regulation 51 (access to review procedure before a court), at the end insert “(and for such purpose Article 11(1)(b) is to be read as if the reference to “a Member State” were a reference to “Scotland”).”.

(10) In regulation 60 (revocations and transitional provisions)—

- (a) in paragraph (2), omit “as they did immediately before 16 May 2017”,
- (b) in paragraph (6) at the end insert “, subject to the modifications specified in paragraph (6A)”,

(c) after paragraph (6) insert—

“(6A) The 2011 regulations are to be read as if—

- (a) in regulation 2(1) (interpretation)—
 - (i) at the end of the definition of “the CCS Directive” the words “, as Directive 2009/31/EC had effect immediately before exit day” were inserted,
 - (ii) at the end of the definition of “the Directive” the words “, as it had effect immediately before exit day” were inserted,
- (b) in regulation 5(4) (general provisions relating to screening), for “, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive),” there were substituted “in exceptional cases”,
- (c) in regulation 36 (development in Scotland likely to have significant effects in an EEA other than the United Kingdom)—
 - (i) in the heading, the words “other than the United Kingdom” were omitted,
 - (ii) in paragraphs (1)(a) and (b), the words “other than the United Kingdom” were omitted,
 - (iii) in paragraph (2)(a), for “another” there were substituted “an”,
 - (iv) in paragraph (4)(a), for the words “referred to in Article 6(1) of the Directive and” there were substituted “designated by the EEA State as authorities to be consulted and to”,
 - (v) in paragraph (5)—
 - (aa) the words “in accordance with Article 7(4) of the Directive” were omitted,
 - (bb) in sub-paragraph (b) the word “other” were omitted,
- (d) in regulation 37 (projects in another EEA State likely to have significant transboundary effects)—
 - (i) in the heading, for “another” there were substituted “an”,
 - (ii) in paragraph (1)—
 - (aa) the words “other than the United Kingdom pursuant to Article 7(2) of the Directive” were omitted,
 - (bb) the words “, in accordance with Article 7(4) of the Directive” were omitted,
 - (cc) in sub-paragraph (b), from “to the competent authority” to the end substitute “representations to the competent authority in that EEA State”,

- (e) in regulation 46 (access to review procedure before a court), after “Directive” there were inserted “(and for such purpose Article 11(1)(b) is to be read as if the reference to “a Member State” were a reference to “Scotland”).”;
- (f) in schedule 1 (descriptions of development for the purposes of the definition of “Schedule 1 development”)—
 - (i) in paragraph 21, after “pursuant to” there were inserted “Chapter 3 of Part 1 of the Energy Act 2008(a) and any law of any part of the United Kingdom that implemented”;
 - (ii) in paragraph 22, for “pursuant to the CCS Directive” there were substituted “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented the CCS Directive)”;
- (g) in schedule 2 (descriptions of development and applicable thresholds and criteria for the purposes of the definition of “Schedule 2 development”), in item 3(j) in column 1 of the table, for “pursuant to the CCS Directive” there were substituted “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented the CCS Directive)”;
- (h) in schedule 3 (selection criteria for screening schedule 2 development)—
 - (i) paragraph 2(c)(v) were read as if the references to “Member States” were references to “Scotland”;
 - (ii) in paragraph 2(c)(vi) for “Community legislation” there were substituted “retained EU law”.

(11) In schedule 1 (descriptions of development for the purposes of the definition of “schedule 1 development”)—

- (a) in paragraph 9—
 - (i) after “certain Directives” insert “, as that Directive had effect immediately before exit day,”;
 - (ii) after “of that Directive” insert “, as it had effect immediately before exit day”;
- (b) in paragraph 10 after Directive 2008/98/EC” insert “, as that Directive had effect immediately before exit day,”;
- (c) in paragraph 13 after “urban waste-water treatment” insert “, as that Directive had effect immediately before exit day”;
- (d) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented”;
- (e) in paragraph 23 for “pursuant to the CCS Directive” insert “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented the CCS Directive)”.

(12) In schedule 2 (descriptions of development and applicable thresholds and criteria for the purposes of the definition of “schedule 2 development”), in item 3(k) in column 1 of the table, for “pursuant to the CCS Directive” insert “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented the CCS Directive)”.

(13) In schedule 3 (selection criteria for screening schedule 2 development), in paragraph 2(c)(vi), for “Union legislation” substitute “retained EU law”.

(a) 2008 c.32.

- (14) In schedule 4 (information for inclusion in environmental impact assessment reports)—
- (a) in paragraph 5—
 - (i) for “or Member State level” substitute “level (as they had effect immediately before exit day) or United Kingdom”,
 - (ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”.
 - (b) in paragraph 8—
 - (i) for “legislation of the European Union such as” substitute “retained EU law such as any law that implemented”,
 - (ii) after “requirements of” insert “any law that implemented”.

Amendment of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

6.—(1) The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017(a) are amended as follows.

- (2) In regulation 2(1) (interpretation)—
 - (a) at the end of the definition of “the Directive” add “, as it had effect immediately before exit day”,
 - (b) after the definition of “supplementary information” insert “and”,
 - (c) omit the definition of “Union legislation” and “and” immediately following it.
- (3) In regulation 4(3)(b) (environmental impact assessment), after “under” insert “any law that implemented”.
- (4) In regulation 6(6) (EIA development), for “, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive),” substitute “in exceptional cases”.
- (5) In regulation 14(2)(b) (publication of EIA report), for “another” substitute “an”.
- (6) In regulation 22(2)(b) (monitoring measures)—
 - (a) for “Union legislation” substitute “retained EU law”,
 - (b) after “requirements of” insert “any law that implemented”.
- (7) In regulation 29 (development in Scotland likely to have significant effects in an EEA state other than the United Kingdom)—
 - (a) in the heading omit “other than the United Kingdom”,
 - (b) in paragraph (1)(a) and (b), in each place it occurs, omit “other than the United Kingdom”,
 - (c) in paragraph (3)(a) for “another” substitute “an”,
 - (d) in paragraph (5)(a) for “in accordance with Article 6(1) of the Directive and” substitute “by the EEA State as authorities to be consulted and to”,
 - (e) in paragraph (6)—
 - (i) omit “in accordance with Article 7(4) of the Directive”,
 - (ii) in sub-paragraph (b) for “the other” substitute “that”.
- (8) In regulation 30 (projects in another EEA state likely to have significant transboundary effects)—
 - (a) in the heading for “another” substitute “an”,
 - (b) in paragraph (1)—
 - (i) omit “other than the United Kingdom pursuant to Article 7(2) of the Directive”,

(a) S.S.I. 2017/101, as amended by S.S.I. 2017/168 and S.S.I. 2017/451.

- (ii) omit “, in accordance with Article 7(4) of the Directive”,
- (iii) in sub-paragraph (b), from “to the competent authority” to the end substitute “representations to the competent authority in that EEA State”.

(9) In regulation 35 (access to review procedure before a court), at the end insert “(and for such purpose Article 11(1)(b) is to be read as if the reference to “a Member State” were a reference to “Scotland”).”.

(10) In schedule 3 (selection criteria for screening schedule 2 development), in paragraph 2(c)(vi), for “Union legislation” substitute “retained EU law”.

(11) In schedule 4 (information for inclusion in environmental impact assessment reports)—

(a) in paragraph 5—

- (i) for “or Member State level” substitute “level (as they had effect immediately before exit day) or United Kingdom”,
- (ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”,

(b) in paragraph 8—

- (i) for “legislation of the European Union such as” substitute “retained EU law such as any law that implemented”,
- (ii) after “requirements of” insert “any law that implemented”.

KEVIN STEWART

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
5th March 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(d) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the fields of environmental protection, town and country planning, electricity works, and hazardous substances.

Regulation 2 amends the Town and Country Planning (Development Planning) (Scotland) Regulations 2008; Regulation 3 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013; Regulation 4 amends the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015; Regulation 5 amends the Town and Country Planning (Environmental Impact Assessment) Regulations 2017; and Regulation 6 amends the Electricity Works (Environmental Impact Assessment) Regulations 2017. The amendments made by these Regulations ensure that references to the relevant European Union Directives are amended to be references to the relevant Directive as it had effect immediately before exit day. References to specific Articles of the relevant Directives, “Member States”, “Union Legislation” and other references which will become redundant or will no longer apply are updated.

No Business and Regulatory Impact Assessment has been prepared in relation to these Regulations, as no impact upon business, charities or voluntary bodies is foreseen.

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