

## POLICY NOTE

### THE TOWN AND COUNTRY PLANNING AND ELECTRICITY WORKS (MISCELLANEOUS AMENDMENTS) (EU EXIT) (SCOTLAND) REGULATIONS 2019

#### SSI 2019/80

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

<p><b>Purpose of the instrument.</b> The Regulations make technical amendments to EU derived Town and Country Planning and Electricity Works legislation to address deficiencies arising as a result of EU Exit.</p>
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#### Policy Objectives

The Regulations make amendments to a number of pieces of secondary legislation relating to environmental impact assessments undertaken within the Town and Country Planning and Energy Consenting regimes. Amendments are also made in relation to land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances. The amendments make technical and minor changes relevant to retained EU law and are part of readiness preparations in the event that the UK exits the EU without a deal.

This instrument does not introduce any policy changes.

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

The Regulations will amend the following pieces of legislation:

- The Town and Country Planning (Development Planning) (Scotland) Regulations 2008
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013
- The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015
- The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

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

The Regulations correct deficiencies in Town and Country Planning legislation arising as a consequence of the United Kingdom's exit from the EU in a "no deal" scenario. The regulations also correct deficiencies in legislation concerning the environmental impact of projects requiring regulatory approval under Sections 36 or 37 of the Electricity Act 1989.

### The Town and Country Planning (Development Planning) (Scotland) Regulations 2008

### The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

### The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 ('the 2015 regulations') implement the land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances ("Seveso III").

The Regulations make relevant amendments as required to the 2015 regulations in relation to definitions, references and expressions related to retained EU law. In particular, references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives). Related amendments are also made to relevant definitions, references and expressions used in The Town and Country Planning (Development Planning) (Scotland) Regulations 2008, and The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

### The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 implemented the EIA Directive<sup>1</sup> in relation Town and Country Planning in Scotland. They impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997 ("The Act"), development by planning authorities and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in schedule 1 requires an environmental impact assessment (EIA). Development in Column 1 of the table in schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table ("Schedule 2 development") requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the Regulations as "EIA development".

The Regulations make relevant amendments as required in relation to definitions, references and expressions related to retained EU law. In particular, references to Member States and

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<sup>1</sup> Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 2014/52/EU.

other EEA States are amended, and references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives).

#### The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

The Electricity Works Regulations implemented the EIA Directive in relation to regulatory approvals required before projects under Sections 36 or 37 of the Electricity Act 1989 may be taken forward in Scotland's environment (on land and in territorial waters).

The Electricity Works Regulations impose procedural requirements in relation to the consideration of applications for such regulatory approvals by the Scottish Ministers. All projects in schedule 1 require an environmental impact assessment (EIA). Projects in schedule 2 require an EIA if they are likely to have significant effects on the environment. Projects which require an EIA are referred to in the Regulations as "EIA Development".

The Regulations make relevant changes as required to amend the 2017 regulations in relation to certain definitions, references and expressions. In particular, references to Member States and other EEA States are amended, and references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives).

#### **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 Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement "In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 do no more than is appropriate". This is the case because the changes are minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal.

##### **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 Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is the case because the changes are minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal.

##### **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 Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement "In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) 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 Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) 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.”.

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 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 above heading is not applicable.

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

The regulations are considered to be minor and technical in nature, with no policy change therefore the significance of the change is categorised as ‘low’.

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

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “The instrument is subject to the negative procedure. The amendments within the instrument are considered to be minor and technical in nature and amend Regulations which are all themselves made subject to the negative procedure.”.

**Further information**

**Consultation**

The amendments within the instrument are considered to be minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal. Consultation on the content was, 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 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**

The Minister for Local Government, Housing and Planning, Kevin Stewart, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Local Government and Communities

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