

ENVIRONMENT - NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

1. Name of the instrument and summary of proposal

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies.

This instrument corrects a number of minor errors in other EU exit instruments, which correct deficiencies in waste related legislation, some of which were identified by the Joint Committee on Statutory Instruments (JCSI). In relation to Scotland, the instrument amends:

- the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“Waste (EU Exit) Regulations”); and
- the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (“the Waste (EU Exit) (No. 2) Regulations”).

2. Explanation of law that the proposals amend and summary of proposals

A summary of the corrections and amendments is provided below.

Regulation 4 of this instrument makes amendments to the Waste (EU Exit) (No. 2) Regulations. The Waste (EU Exit) (No. 2) Regulations correct deficiencies in waste related domestic subordinate legislation. Those amendments are as follows:

- Regulation 4(2) alters an amendment to regulation 33 of the End-of-life Vehicle Regulations 2003/2635, which was originally made in the Waste (EU Exit) (No. 2) Regulations. Regulation 33 relates to certificates of destruction issued in EEA States or Gibraltar. The new amendment amends regulation 33 so that the references to “another EEA State” will read “an EEA State”.
- Regulation 4(3) of this instrument corrects the Waste (EU Exit) (No. 2) Regulations by omitting regulation 13(3). Regulation 13(3) amends regulation 3(1) of the Batteries and Accumulators (Placing on the Market) Regulations 2008 by inserting a reference to “regulation 2A”. However, regulation 13(3) was included in error and is to be omitted.
- Similarly, regulation 4(3) of this instrument corrects the Waste (EU Exit) (No. 2) Regulations by omitting regulation 14(2)(b). Regulation 14(2)(b) purports to amend the definition of “the Waste Directive” in regulation 2 of the Waste Batteries and Accumulators Regulations 2009. However, there is no such definition. Regulation 14(2)(b) was included in error and is to be omitted.
- Regulation 4(5) of the instrument amends regulation 18(25)(c) of the Waste (EU Exit) (No. 2) Regulations. Regulation 18(25)(c) inserts a new Part 4 into Schedule 1 to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. The new amendment removes paragraph 26(c)(vi) from the newly inserted Part 4 of Schedule 1.

Paragraph 26(c)(vi) is unnecessary in light of new paragraphs 26(c)(iv) and 26(c)(v).

Regulation 5 of this instrument amends the Waste (EU Exit) Regulations. The Waste (EU Exit) Regulations correct deficiencies in waste related domestic primary legislation, and directly applicable EU Regulations and Decisions. Regulation 17(3) of the Waste (EU Exit) Regulations inserts new Articles 1A to 1F into Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries. Regulation 5 of this instrument replaces the new Article 1B(8)(b)(i), which modifies Article 16 of the Waste Framework Directive, to ensure that the principles of self-sufficiency and proximity will continue to apply at a UK level.

3. Why are these changes necessary?

The instrument makes minor amendments to correct minor errors in other EU exit instruments, which correct deficiencies in waste related retained EU law. It represents no changes of policy, nor will it produce any impact on businesses or the public.

4. Scottish Government categorisation of significance of proposals

Category A. The provisions are making small, minor technical changes to preserve the functioning of the legislation.

5. Impact on devolved areas

These changes do not impact on devolved powers, nor on our implementation of the relevant legislation, now or in future.

6. Stakeholder engagement/consultation

We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on stakeholders, businesses or the public.

7. Any other impact assessments?

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

8. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Officials have worked with Defra to ensure the drafting delivers for our interests, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

9. Do the proposed changes adhere to the environment and animal principles?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union

are relevant to these proposals. The legislation modified by this instrument is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

10. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

This instrument corrects minor errors in other EU exit instruments, which correct deficiencies in waste related retained EU law. There are no governance issues associated with the proposed amendments.

11. Intended UK laying date

This instrument is subject to the negative procedure and has been laid for sifting at Westminster on 23 May. Defra have agreed that no EU Exit SIs subject to the negative procedure will be made, until after they have been through the consent process agreed with the Scottish Parliament.

12. Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers' proposal to consent?

Yes.

13. Information about any time dependency associated with the proposal

Given the minor and technical nature of the changes, there is no time dependency associated with the proposals.

14. Any significant financial implications

There are no financial implications associated with the proposals.

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