

ENVIRONMENT - NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019

1. Name of the instrument and summary of proposal

The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (the Regulations) make a number of miscellaneous amendments and revocations to ensure environmental legislation continues to function after EU Exit.

The first part of the Regulations make minor amendments to provisions of other Regulations made under section 8(1) of the European Union (Withdrawal) 2018 Act. The amendments which extend to Scottish devolved areas relate to the Convention on the International Trade in Endangered Species (CITES); mercury and pesticides.

The second part of the Regulations amend retained direct EU legislation relating to CITES and pesticides.

The final part of the Regulations revokes retained direct EU legislation. The legislation which impacts on devolved interests relates to pesticides and eco-management and audit.

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

A summary of the law in each area, and the proposed corrections, is provided below.

a. CITES

Commission Regulation (EC) No 865/2006 and Commission Implementing Decision (EU) No 792/2012 are part of a set of regulations which implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Article 44j of Commission Regulation (EC) No 865/2006 provides authority for the regulator (Management Authority) to issue a certificate authorising cross-border movement of musical instruments.

Regulation 2 amends The Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018. The amendments replace an erroneous reference to "Union" with "United Kingdom" in the forms in Annex V of Commission Implementing Decision (EU) No 792/2012. The amendment will ensure that CITES legislation continues to operate effectively, ensuring certificates can be issued for movement of CITES specimens within the UK.

Regulation 9 amends Article 44j of Commission Regulation (EC) No 865/2006 which details the text to be included in a musical instrument certificate. The amendments replace references to "the State in which the certificate was issued" with "the United Kingdom". The amendment will ensure that CITES legislation continues to operate effectively and that musical instrument certificates can be issued.

b. Mercury

Regulation (EU) 2017/852 (the Mercury Regulation) regulates the imports and exports of mercury between the EU and non-Member States, restricts the use of dental amalgam, sets requirements for the storage, disposal and reporting of mercury and mercury wastes, and restricts the creation of new mercury-added products or new manufacturing processes involving mercury.

Regulation 4 removes wording from Regulation 12(5) of The Control of Mercury (Amendment) (EU Exit) Regulations 2019, which in turn amended the second subparagraph of Article 8(4) of the Mercury Regulation. The wording that is being removed is superfluous duplication as the first part of Regulation 12(5) already achieves this identical effect by replacing the second sub-paragraph of article 8(4) in its entirety. The superfluous wording sought to amend, rather than replace, the second sub-paragraph of Article 8(4). This amendment has no effect on the operation of the Mercury Regulation as amended.

c. Pesticides (Regulations 6, 7, 10, 11 and 12)

Regulation 6

Regulation 6 amends The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019. These Regulations address deficiencies in retained direct EU legislation relating to pesticides, in particular Regulation (EC) No 396/2005 which sets EU Maximum Residue Levels (MRLs) for pesticides in food and feed and measures to ensure their compliance. This enables trade in treated produce by providing a basis for confirming whether pesticides have been used correctly. It does this through the setting of MRLs for the relevant active substances that are approved to be included in the formulation of pesticides for use on food and feed.

Regulation 6 makes two technical amendments to the transitional provisions in Schedule 1 to the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 as a result of the recent changes to Regulation (EC) No 396/2005.

Regulation 7

Regulation 7 amends The Plant Protection Product (Miscellaneous Amendments) (EU Exit) Regulations 2019 which also addresses deficiencies in retained direct EU legislation relating to pesticides, in particular Regulation (EC) No 1107/2009.

Regulation (EC) No 1107/2009, and its underpinning EU Regulations, regulate the placing of plant protection products on the market, including the approval of active substances, authorisation of plant protection products, and management of associated risks.

Article 46 of Regulation (EC) No 1107/2009 allows a Member State, where that Member State withdraws or amends an authorisation for a plant protection product or does not renew it, to grant a grace period for the disposal, storage, placing on the market and use of existing stocks of that product. Regulation 7(2) omits regulation 5(2) of the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, which provided revised drafting for Article 46 of 1107/2009. This article had originally been redrafted with the intention of providing more clarity however

it inadvertently tightens the effect of the provision on grace periods which would make it difficult for current practice to continue. This instrument therefore corrects the unintended error by reverting to the form of wording that is currently in Regulation (EC) No 1107/2009.

The remainder of the amendments in Regulation 7 amend the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, principally as a result of amendments made to Regulation (EC) No 1107/2009 and Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659. These amendments are technical in nature.

Regulation 10

Regulation 10 amends Article 46 of Regulation (EC) No 1107/2009 to complement the changes made by Regulation 7. This revision to revert to the original form of wording in Article 46 of Regulation (EC) No 1107/2009 means that Article 46 itself has to be amended to correct deficiencies caused by exit from the EU.

Regulation 11

Regulation 11 amends Commission Regulation (EU) No 546/2011 implementing Regulation (EC) No 1107/2009. This amendment is to the Annex of Commission Regulation 546/2011, which sets uniform principles for EU Member States to follow in the evaluation and authorisation of plant protection products under Regulation (EC) No 1107/2009. In that Annex, point 2.6.2(v) of Part 1C sets limits of determination for the sensitivity of methods proposed for the analysis of residue of pesticide related substances in treated plants, plant products, food stuffs, feeding stuffs or products of animal origin as part of that evaluation process.

The amendment in Regulation 11 is minor in nature and to fix an error made in the original EU exit SI, the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019.

Regulation 12

Regulation 12 amends Commission Implementing Regulation (EU) No 844/2012 which establishes the procedure for renewing approval of active substances. The retained direct EU legislation listed in paragraphs 2 to 7 and 15 to 17 of the Schedule to this instrument contains individual decisions of the European Commission as to the approval (or otherwise) of active substances under Regulation (EC) No 1107/2009.

Regulation 12 amends provisions which are inserted into Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659, in order to ensure the operability of those provisions following EU Exit.

Revocations

Part of the Schedule to the Regulations amends annexes to Regulation (EC) No 396/2005 and revokes individual decisions of the European Commission as to the setting of MRLs.

Commission Regulation (EU) 2019/50 amending Annexes II, III, IV and V to Regulation (EC) No 396/2005 as regards maximum residue levels for chlorantraniliprole, clomazone, cyclaniliprole, fenazaquin, fenpicoxamid, fluoxastrobin, lambda-cyhalothrin, mepiquat, onion oil, thiacloprid and valifenalate in or on certain products will be revoked. After EU Exit, these will be given effect by the new statutory register, which is introduced by The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019. The purpose of this is to give effect to national decisions on MRLs in an efficient and timely way.

Commission Regulation (EU) 2019/88 amending Annex II to Regulation (EC) No 396/2005 of the as regards maximum residue levels for acetamiprid in certain products will be revoked to prevent the otherwise automatic incorporation into domestic law. The EU Regulation applies from 13 August 2019, except in relation to olives for oil production, table olives, barley and oats which applies from 13 February 2019.

d. EMAS

The Regulations revoke various EU decisions which relate to Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (“the EMAS Regulation”). These are:

- Commission Regulation 2018/2026;
- Commission Decision (EU) 2019/61;
- Commission Decision (EU) 2019/62; and
- Commission Decision (EU) 2019/63.

These decisions are revoked as they are consequential on the revocation of the EMAS Regulation which was revoked by the Environment (Amendment etc.) (EU Exit) Regulations 2019. After EU Exit, the UK will no longer be allowed to authorise participation in EMAS. The Regulations will prevent the automatic incorporation of these decisions into domestic law on exit, to avoid confusion for businesses. Businesses which are currently registered with the EU EMAS can continue to do so through EMAS Global and another EU-27 competent bodies.

3. Why are these changes necessary?

The Regulations are being made in order to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable or unable to function following EU Exit. The Regulations also prevent the otherwise automatic incorporation of EU legislation into domestic law, where to do so would be inappropriate.

4. Scottish Government categorisation of significance of proposals

Category A. The provisions are making small, minor technical changes to ensure environmental legislation continues to function after EU Exit.

5. Impact on devolved areas

CITES

In relation to the proposed amendments to CITES, as previously advised to the Committee, the import and export of endangered species is reserved by the Scotland

Act 1998 (Schedule 5, Part II, section C5). The Scottish Ministers consider that there are devolved elements within the CITES regime, which the proposed Regulations will touch upon.

In the view of Scottish Ministers, the domestic implementation of CITES is a reserved matter only so far as it concerns the prohibition and regulation of the import and export of endangered species. The prohibition and regulation of transactions which do not involve export or import measures are not, in the Scottish Ministers' view, reserved matters.

The UK Government does not agree with that analysis and considers the whole of CITES to be a reserved matter. However, Scottish Ministers are content with the proposed Regulations on the basis that they properly reflect how responsibility for CITES presently operates in practice as regards Scotland.

EMAS

The EMAS Regulation involves a complex mix of reserved and devolved competence. Product standards are reserved by the Scotland Act (Schedule 5, Part II, section c8) but Scottish Ministers consider the subject matter of the EMAS Regulation, the development of a voluntary environmental registration scheme, is within devolved competence. Whilst the EMAS Regulation was revoked by the Environment (Amendment etc.) (EU Exit) Regulations 2019, these Regulations make consequential revocations which fall within devolved competence.

6. Stakeholder engagement/consultation

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation and we are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the law as it stands at present and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments.

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

Scottish Ministers consider that consenting to the Regulations is the most effective and transparent way to make changes to address deficiencies which require a UK-wide approach. Officials have worked with UKG to ensure the drafting delivers for our interests and respects devolved competence in Scotland, noting that there are some areas where the extent of reserved and devolved competence remains a matter of debate.

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 the Regulations 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?

Scottish Ministers will shortly consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on environmental governance arrangements once the future relationship is clear.

We have been engaged in framework discussions in many of the policy areas covered by this SI with all the administrations of the UK and the relevant regulators. These framework discussions are progressing. The Scottish Government's position is that these arrangements should be based on staying closely aligned with the existing EU regimes and maintaining existing standards of protection for human health and the environment.

Any particular governance requirements needed in the context of the specific policy areas in this submission have been set out in the notifications for policy specific SIs already sent to the Scottish Parliament and as detailed in section one.

11. Intended UK laying date

The Regulations are subject to the negative procedure and will be laid for sifting at Westminster on 8 February 2019.

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

Yes. Defra have agreed that EU Exit SIs subject to the negative procedure will not be made until after they have been through the consent process agreed with the Scottish Parliament.

13. Information about any time dependency associated with the proposal

There are no time dependencies associated with the proposals in the Regulations.

14. Any significant financial implications

There are no financial implications associated with the proposals in the Regulations.

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