EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL AUTHORISATIONS (SCOTLAND) REGULATIONS 2018 (CONSEQUENTIAL MODIFICATIONS) ORDER 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provisions in consequence of the Environmental Authorisations (Scotland) Regulations 2018[1] ("EASR 2018"), which introduced a single integrated framework for environmental authorisations in Scotland in relation to radioactive substances. Since EASR 2018 repealed the previous regime in Scotland, as provided in the Radioactive Substances Act 1993 ("RSA 1993"), this Order is required to ensure EASR 2018 has the same extent as the RSA 1993 did. To achieve this, consequential amendments are required to Article 4 of the Civil Jurisdiction (Offshore Activities) Order 1987 ("1987 Order") and section 7 of the Continental Shelf Act 1964 ("1964 Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument is limited Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Scotland.

4.2 The territorial application of this instrument is Scotland.

5. European Convention on Human Rights

5.1 The Secretary of State for Scotland has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Authorisations (Scotland) Regulations 2018 (Consequential Modifications) Order 2021 are compatible with the Convention rights."

[1] SSI 2018/219. It came into force on 1 September 2018.

6. Legislative Context

6.1 This Order is made in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament.

6.2 This Order is made in consequence of EASR 2018, which was made under the Regulatory Reform (Scotland) Act 2014, to ensure those regulations have the same extent as the previous legislation in this area, the RSA 1993. In order to achieve this, consequential amendments are required to Article 4 of the 1987 Order and section 7 of the 1964 Act.

6.3 Article 4 of the 1987 Order extends the application of the 1993 Act beyond the territorial sea through its specific reference to the Radioactive Substances Act 1960 ("RSA 1960"). It outlines that for the purposes of RSA 1960 any installation in "the Scottish area", and any such waters within 500 metres of such an installation, shall be deemed to be situated in Scotland. Although reference to RSA 1960 was not previously replaced with a reference to the RSA 1993, by virtue of paragraph 2 of Schedule 5 to the RSA 1993, Article 4 of the 1987 Order can be read as referring to the RSA 1993. This Order will amend the heading and text of Article 4 of the 1987 Order so that it makes reference to EASR 2018.

6.4 The 1987 Order is made under section 23 of the Oil and Gas (Enterprise) Act 1982 along with sections 6 and 7 of the 1964 Act. Section 7 of the 1964 Act originally made reference to the RSA 1960. This was substituted for a reference to the RSA 1993 by paragraph 1 of Schedule 4 to that Act. Section 7 (as it applies in Scotland) now needs to refer to EASR 2018 so that the 1987 Order still makes provision for installations in the Scottish offshore area. This Order will amend section 7 of the 1964 Act, as it applies to Scotland, so that it makes reference to EASR 2018.

6.5 Together, the legislative amendments made through this Order will deem installations in the offshore area to be part of Scotland for the purposes of EASR 2018, in so far as they apply to radioactive substance activities.

7. Policy background

What is being done and why?

7.1 EASR 2018 introduced a single integrated framework for environmental activities authorisation in Scotland, currently in relation to radioactive substances only. It repealed RSA 1993 in Scotland, and provided a new regulatory framework for radioactive substances activities. These consequential amendments are required to ensure EASR 2018 has the same extent RSA 1993 did.

7.2 The amendments, as outlined in the previous section above, will deem installations in the offshore area to be part of Scotland, for the purposes of the EASR 2018 in so far as they apply to radioactive substance activities.

7.3 EASR 2018 also transposed provisions of the Euratom Basic Safety Standards Directive (BSSD), relating to new requirements for High Activity Sealed Sources (HASS). These measures are required to implement safety standards for protection against dangers that arise from exposure to radiation. Until this Order comes into force these elements of BSSD will not be fully implemented.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Order does not amend other legislation, so raises no issues relating to consolidation

10. Consultation outcome

10.1 As amendments in this Order are consequential, no consultation on the draft Order was considered necessary. Consultation was however carried out in 2017 on proposals for EASR 2018. The Scottish Government engaged with the Scottish Environment Protection Agency ("SEPA") during the development of EASR 2018. The Scottish Government and SEPA consulted extensively in 2017 on the changes from RSA 1993 to EASR 2018. For both the framework consultation and the draft regulations for EASR 2018 (with the supporting documentation) consultees were broadly supportive.

11. Guidance

11.1 No guidance will be available on the use of these powers as the amendments will have no intended policy effect beyond retaining the status quo for radioactive substances regulation. The move from RSA 1993 to EASR 2018 did bring some changes, but relevant guidance has already been provided by SEPA.[2]

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is expected.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order is consequential upon EASR 2018. No formal monitoring or review is considered necessary.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement: "There is no need for review or monitoring as the Order does not regulate businesses."

[2] Environmental Authorisations (Scotland) Regulations 2018 | Scottish Environment Protection Agency (SEPA). Available online.

15. Contact

15.1 Arthur Halfhide at the Office of the Secretary of State for Scotland (telephone: 07557896644 or email: Arthur.halfhide@ukgovscotland.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.