POLICY NOTE

THE ENVIRONMENTAL LIABILITY ETC. (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/276

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

The main aim of this instrument is to address deficiencies in Scottish legislation arising from the withdrawal of the United Kingdom from the European Union. In addition, the instrument also updates out of date references, implements a new reporting requirement and amends a drafting error in the Sulphur Content of Liquid Fuels (Scotland) Regulations 2014.

Policy Objectives

The primary purpose of the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (the Regulations) is to ensure the continued functioning of the Environmental Liability (Scotland) Regulations 2009 after the withdrawal of United Kingdom from the European Union.

The instrument makes technical and minor changes to address failures of retained EU law, specifically to the Environmental Liability (Scotland) Regulations 2009, to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
The instrument also updates cross references within the Environmental Liability (Scotland) Regulations 2009 and specific paragraphs of those regulations are set out more clearly, to ensure clarity.

The instrument also introduce a new reporting requirement on the competent authorities, with the exception of the Scottish Ministers, under the Environmental Liability (Scotland) Regulations 2009. The reporting requirement places an obligation on the competent authorities to notify the Scottish Ministers when they become aware of environmental damage. This is accordance with a recent amendment to Directive/2004/35 of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage, which requires Member States to report on the implementation of the directive every five years, starting by 20 April 2022. The information that has to be reported is limited in each case

The instrument also makes minor amendments to the Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 to correct drafting errors in those regulations and fulfils a commitment to the Scottish Parliament to do so.

The Regulations will amend the following:

- The Environmental Liability (Scotland) Regulations 2009
- The Sulphur Content of Liquid Fuels (Scotland) Regulations 2014

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

The Environmental Liability (Scotland) Regulations 2009 are reliant on cross references to a number of EU Directives. The regulations add two glosses to Environmental Liability (Scotland) Regulations 2009.

The first gloss operates so that where the Environmental Liability (Scotland) Regulations 2009 refers to a EU instrument, any references within that instrument to the European Union or area to which it applies, is taken to include the United Kingdom and that reference Member State is taken to include the United Kingdom.

The activities covered by the Environmental Liability (Scotland) Regulations 2009 are defined by reference to a number of EU instruments. The second gloss provides any reference to an activity being allowed under a Directive includes, after exit, that activity being allowed under any retained EU law which transposed that Directive.

The regulations also make a number of minor and technical fixes to deficiencies resulting from the EU exit.

Without action to address these deficiencies the Environmental Liability (Scotland) Regulations 2009 would not operate effectively in relation to environmental liability after EU Exit.

Statements required by European Union (Withdrawal) Act 2018
(relevant to deficiencies, covers regs)

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, has made the following statement "In my view the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate".

Part 4 of the Regulations makes amendments to the Environmental Liability (Scotland) Regulations 2009 under the European Union (Withdrawal) Act 2018. The Scottish Ministers consider that Part 4 of the Regulations is necessary to amend deficiencies in the Environmental Liability (Scotland) Regulations 2009 to ensure that the legislation continues to operate effectively after EU exit in order to provide clarity and legal certainty for regulators, business and members of the public. the Regulations do no more than is appropriate to address deficiencies in the Environmental Liability (Scotland) Regulations 2009 arising from this approach.
This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in environment legislation to ensure that the legislation continues to operate

effectively after EU exit in order to provide clarity and legal certainty for regulators, regulated business and members of the public. The regulations do no more than is appropriate to address deficiencies in devolved environment legislation arising from this approach.

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 Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham 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."

The amendments made by the Regulations will ensure that domestic provisions relating to the environment function appropriately after the UK's exit from the EU. The amendments will provide clarity and legal certainty for stakeholders, and ensure that current standards of environmental protection are maintained.

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 Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement "In my view the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) 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 Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement "In my view the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) 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.".

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

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

The Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham has made the following statement "In my view the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need 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)

This is not applicable to the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019.

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

Low (i.e instruments that are minor and technical, continuity of law with no policy change etc).

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

It is considered that the instrument ought to be subject to negative procedure as the changes made by it to prevent, remedy or mitigate deficiencies arising from the withdrawal of the UK from the EU are minor and technical in nature, and are not intended to make any significant change to the policy outcomes delivered by the legislation that it amends. The regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

The amendments within the instrument serve primarily to address deficiencies in the Environmental Liability (Scotland) Regulations 2009 arising as a result of EU Exit. In addition to this, further changes being undertaken are minor and routine. As such consultation was not considered necessary;

Impact Assessments

Full impact assessments have not been prepared for this instrument. The changes are considered likely to have a generally positive impact as they ensure appropriate reporting mechanisms are in place to ensure compliance with Directive/2004/35 of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage. 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 Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, Local Government or on business.

Scottish Government
Environment and Forestry Directorate

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