

# Net Zero, Energy and Transport Committee

17<sup>th</sup> Meeting, 2022 (Session 6), Tuesday 17  
May 2022

Subordinate legislation – The Environment and  
Trade in Animals and Related Products (EU Exit)  
(Scotland) (Miscellaneous Amendment)  
Regulations 2022 (SSI 2022/138)

Note by the Clerk

## Introduction

1. This paper supports the Committee's consideration of [The Environment and Trade in Animals and Related Products \(EU Exit\) \(Scotland\) \(Miscellaneous Amendment\) Regulations 2022 \(SSI 2022/138\)](#).
2. This instrument has been made using powers under the European Union (Withdrawal) Act (EUWA) 2018. The process for consideration of instruments laid under the EUWA is set out in a [protocol](#) agreed by the Scottish Parliament and Scottish Government. The parliamentary process for an instrument made under the EUWA is slightly different to that for other instruments; further information is provided in Annexe A.
3. Consideration for EUWA SSIs is split into two parts—
  - First, the Committee must agree whether it is content that the parliamentary procedure designated to the instrument by the Scottish Government is appropriate (agenda item 4).
  - Second, if the Committee agrees with the parliamentary procedure, it considers the policy of the instrument in the usual way (agenda item 5).

## **Agenda item 4: Consideration of parliamentary procedure**

4. The Scottish Government has designated the negative procedure for this SSI.

5. The instrument was considered by the Delegated Powers and Law Reform Committee (DPLR Committee) on [its meeting on 10 May 2022](#). [Read the official report for the meeting on 10 May 2022](#).
6. The DPLRC was content that the appropriate scrutiny procedure and categorisation have been applied to the instrument.
7. **The Committee is invited to agree whether the negative procedure given to the instrument by the Scottish Government is appropriate.**

## Agenda item 5: Policy consideration

**Title of Instrument:** [The Environment and Trade in Animals and Related Products \(EU Exit\) \(Scotland\) \(Miscellaneous Amendment\) Regulations 2022 \(SSI 2022/138\)](#).

**Type of Instrument:** Negative

**Laid Date:** 22 April 2022

**Circulated to Members:** 29 April 2022

**Meeting Date:** 17 May 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 30 May 2022

8. The SSI comes into force on 1 June 2022.
9. The European Union (Withdrawal) Act converted and preserved EU law at the end of the transition period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit.
10. The policy note accompanying the SSI states that the Regulations make amendments to various pieces of primary and secondary legislation in relation to the following mainly environmental matters:
  - the water environment,
  - flood risk management,
  - noise pollution control,

- air quality, and
- animal health.

11. The Policy Note explains that these amendments principally correct references and make minor and technical amendments, thus ensuring environmental protection legislation continues to operate effectively in a domestic context, now that the UK has withdrawn from the European Union. For example, a number of references to EU Directives are replaced with equivalent provisions in retained EU law.
12. The policy note which accompanies the SSI is provided in Annexe B. The Explanatory Note is available at Annexe C.

## **DPLR Committee consideration**

13. The DPLR Committee considered this instrument at its meeting on 10 May 2022 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. The Convener noted and welcomed that the instrument corrects a previously identified drafting error.

## **Parliamentary procedure – negative instruments**

14. The negative parliamentary procedure is set out in Chapter 10 of the Parliament’s Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
15. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends “that nothing further is to be done under the instrument”. Any motion for annulment would be debated by the lead committee and a report made to Parliament.

## **For decision**

16. **The Committee is invited to note the instrument. If no motion to annul is laid by the time the Committee formally considers the instrument, the question put to the Committee will be whether to agree to make no recommendation in relation to the instrument.**

## ANNEXE A

### Scottish statutory instruments made under the EUWA

Scottish Ministers have discretion about whether instruments made under Schedule 2 of the EUWA should be subject to the affirmative or negative procedure, unless the instrument makes provision falling within one of the categories which requires the mandatory affirmative procedure to be used.

A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the EUWA. The protocol enables committees to consider the procedure applied and recommend a change where they consider the matter is of such significance that it requires active parliamentary approval (or conversely is not so significant that it requires parliamentary time to be allocated to its approval).

The lead committee has the opportunity, therefore, in advance of its consideration of the instrument, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. Thus, the lead committee can recommend that an instrument laid under the negative procedure should be revoked and laid as an affirmative instrument and vice versa. The protocol states this “enables committees to recommend a change where they consider that the matter is of such significance that it requires active Parliamentary approval (or conversely is not so significant that it requires Parliamentary time to be allocated to its approval)”.

The DPLRC will consider the parliamentary procedure allocated to the instrument and make a recommendation to the lead committee where it agrees the procedure should be changed.

Where a lead committee agrees with the parliamentary procedure, the instrument is thereafter considered and disposed of in the same way as a ‘domestic’ SSI. Where a lead committee recommends the parliamentary procedure should be changed, it must report to the Parliament. The Scottish Government is expected to meet that recommendation as soon as possible. A change of procedure does not, however, affect the timetable for parliamentary consideration and the SSI should be considered under the procedure recommended by the lead committee.

The protocol also sets out an approach which categorises SSIs – high, medium or low – to assist committees’ prioritisation in terms of scrutiny and gives the DPLRC a role in highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation.

# ANNEXE B

## POLICY NOTE

### THE ENVIRONMENT AND TRADE IN ANIMALS AND RELATED PRODUCTS (EU EXIT) (SCOTLAND) (MISCELLANEOUS AMENDMENT) REGULATIONS 2022

SSI 2022/138

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

#### **Purpose of the instrument**

These Regulations address deficiencies in Scottish legislation arising as a result of EU Exit, relating to the water environment, flood risk management, noise pollution control, air quality and animal health.

#### **Policy Objectives**

The Regulations make amendments to a number of pieces of primary and secondary legislation relating to the water environment, flood risk management, noise pollution control, air quality and animal health.

The amendments were identified as deficiencies which required to be corrected to ensure the continued functioning of various pieces of environmental protection legislation as a result of exiting the EU.

The majority of the amendments are making minor changes to address failures of retained EU law to operate effectively. Environmental legislation is deeply entwined with EU law and these amendments address, for example, references to environmental standards in EU Directives, and other inappropriate EU references. The purpose of these amendments is to ensure that environmental protection legislation continue to operate effectively, now that the UK has withdrawn from the European Union.

The amendment for animal health is to the Trade in Animals and Related Products (Scotland) Regulations 2012 (“the TARP Regulations”) to correct a drafting error in the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022.

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

The Regulations amend the following pieces of legislation:

## Water

The Water Environment and Water Services (Scotland) Act 2003 (asp 3)

The Protection of Water against Agricultural Nitrate Pollution (Scotland) Regulations 1996 (SI 1996/1564)

The Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516)

The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013 (SSI 2013/325)

## Flood Risk Management

The Flood Risk Management (Scotland) Act 2009 (asp 6)

The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 (SSI 2010/426)

## Environmental Protection

The Environmental Noise (Scotland) Regulations 2006 (SSI 2006/465)

The Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204)

## Animal Health

The TARP Regulations (SSI 2012/177) set out requirements concerning the importation of animals and animal products from third countries. Schedule 5, paragraph 4 of the TARP Regulations sets out derogations from the requirement to pre-notify the arrival of certain goods from third countries into Scotland.

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

The Regulations address deficiencies in the pieces of legislation referred to above. For example, in both the Flood Risk Management (Scotland) Act 2009 and the Air Quality Standards (Scotland) Regulations 2010, the Scottish Ministers are required to comply with certain provisions of the relevant Directives implemented by the Scottish legislation. Without action to address these references to the provisions of the Directives and to provide for an amended interpretation of the Directives, the obligations on the Scottish Ministers under the Flood Risk Management (Scotland) Act 2009 and the Air Quality Standards (Scotland) Regulations 2010 would not operate effectively.

Some of the more significant amendments contained in the Regulations are as follows:

### *The Water Environment and Water Services (Scotland) Act 2003*

These Regulations repeal a power in section 25 which allowed Scottish Ministers to make regulations to provide that the provisions of Part 1 of the Water Environment and Water Services (Scotland) Act 2003 were to have effect with modifications for the purpose of giving effect to any EU obligations of the United Kingdom. Following the withdrawal of the UK from the European Union, this power is now redundant.

### *The Protection of Water against Agricultural Nitrate Pollution (Scotland) Regulations 1996*

A reporting requirement is imposed on the Scottish Ministers in relation to monitoring

results and other information in a new regulation 8. Previously, this information had to be provided to the European Commission which published a summary of it.

*The Air Quality Standards (Scotland) Regulations 2010.*

A publication requirement is imposed on Scottish Ministers (under a new regulation 17(4) where they consider that a limit value (set out in the 2010 Regulations) has been exceeded for a reason attributable to natural sources. Where a limit value is exceeded due to natural sources and the evidence of this was provided to the European Commission, then such an excess was not considered to be a breach of the 2010 Regulations. It was considered appropriate to have a new requirement on Scottish Ministers to publish the evidence following removal of the obligation to provide such evidence to the European Commission.

*The TARP Regulations*

These Regulations amend paragraph 4(3B) of schedule 5 to the TARP Regulations as inserted by the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022. That provision removes the requirement to pre-notify the arrival of certain consignments into Scotland from the Republic of Ireland. It contained a drafting error which these Regulations now rectify, in satisfaction of an undertaking given to do so during Scottish Parliament scrutiny of the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022.

**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 Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 do no more than is appropriate.” .

This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in environmental and animal health 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 and animal health legislation arising from this approach. These amendments are minor in nature and do not make any policy changes.

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 Environment and Land Reform, Máiri McAllan, 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 Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 will ensure that domestic provisions relating to the environment and animal health 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 and animal health 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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 Minister for Environment and Land Reform, Máiri McAllan, has made the following statement “In my view the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 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 Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022

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, updating references which are no longer appropriate once the UK has left the EU, 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 Scottish legislation arising as a result of EU Exit. 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 minor and technical to ensure operability of existing legislation following withdrawal from the EU. The amendments are considered likely to have a positive impact as the changes provide clarity in the relevant law.

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 Environment 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  
20 April 2022

## Annexe C

### Explanatory Note

These Regulations are made in exercise of the powers in paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7, of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(d) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of water, flood risk management and environmental protection. Part 2 amends legislation concerning water. Part 3 amends legislation concerning flood risk management. Part 4 amends legislation concerning environmental protection, in particular in relation to environmental noise and air quality. Part 5 amends legislation relating to animals.

No Business and Regulatory Impact Assessment has been prepared in relation to these Regulations, as no impact upon business, charities or voluntary bodies is foreseen.