

2019 No. 55

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

**The Marine Environment (EU Exit) (Scotland) (Amendment)
Regulations 2019**

Made - - - - - *18th February 2019*

Laid before the Scottish Parliament *20th February 2019*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018^(a) and all other powers enabling them to do so.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the as the Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 and come into force on exit day.

PART 2

Amendments to primary legislation

Amendment of the Marine (Scotland) Act 2010

2.—(1) The Marine (Scotland) Act 2010^(b) is amended as follows.

(2) In section 79(5)^(c), for “obligations under EU or” substitute “retained EU obligations (within the meaning of schedule 1 of the Interpretation Act 1978^(d) or obligations under”.

(a) 2018 c.16.

(b) 2010 asp 5.

(c) Section 79 has been amended by S.I. 2017/1013.

(d) 1978 c.30; schedule 1 was relevantly amended by paragraph 22 of schedule 8 of the European Union (Withdrawal) Act 2018.

- (3) Section 105 is repealed.
- (4) In section 132(7)(a)—
 - (a) in paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”,
 - (b) in paragraph (b), for “a member State” substitute “the United Kingdom”.

PART 3

Amendments to subordinate legislation

Amendment of the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011

3.—(1) The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011(**b**) is amended as follows.

- (2) In article 3(1), for the definition of “waste” substitute—
 - ““waste” has the same meaning as in section 75(2) of the Environmental Protection Act 1990(**c**) as read with section 75A(**d**) of that Act;”.
- (3) For article 5(3) substitute—
 - “(3) Condition 2 is that the type and quantity of waste involved and the method of disposal or recovery are consistent with the objective that waste management is carried out without endangering human health, without harming the environment and, in particular:
 - (a) without risk to water, air, soil, plants or animals;
 - (b) without causing nuisance through noise or odour; and
 - (c) without adversely affecting the countryside or places of special interest.”.
- (4) For article 5(7)(c) substitute—
 - “(c) “non-hazardous waste” means any waste which is not special waste within the meaning of regulation 2 of the Special Waste Regulations 1996(**e**).”.
- (5) In article 24(2)—
 - (a) in paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”,
 - (b) in paragraph (b), for “a member State” substitute “the United Kingdom”.

Amendment of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011

4.—(1) The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011(**f**) is amended as follows.

- (2) In article 2(2), for the definition of “waste” substitute—
 - ““waste” has the same meaning as in section 75(2) of the Environmental Protection Act 1990(**g**) as read with section 75A(**h**) of that Act;”.

(a) Section 132 has been amended by S.S.I. 2012/215.
(b) S.S.I. 2011/57 amended by S.S.I. 2012/25, 2015/438 and 2017/1013.
(c) 1990 c.43; relevant amending instrument S.S.I. 2011/226.
(d) Section 75A is prospectively inserted by the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.
(e) S.I. 1996/972; regulation 2 is substituted by S.S.I. 2019/26 having effect on exit day.
(f) S.S.I. 2011/204 amended by S.S.I. 2012/25, 2015/438 and 2017/1013.
(g) 1990 c.43; relevant amending instrument S.S.I. 2011/226.
(h) Section 75A is prospectively inserted by the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(3) For article 4(3) substitute—

“(3) Condition 2 is that the type and quantity of waste involved and the method of disposal or recovery are consistent with the objective that waste management is carried out without endangering human health, without harming the environment and, in particular:

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing nuisance through noise or odour; and
- (c) without adversely affecting the countryside or places of special interest.”.

(4) For article 4(7)(c) substitute—

“(c) “non-hazardous waste” means any waste which is not special waste within the meaning of regulation 2 of the Special Waste Regulations 1996(a).”.

(5) In article 34(2)—

- (a) in paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”,
- (b) in paragraph (b), for “a member State” substitute “the United Kingdom”.

Amendment of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

5.—(1) The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017(b) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) after the definition of “multi-stage regulatory approval” insert—

““public” means one or more natural or legal persons and, in accordance with the law of any part of the United Kingdom or practice, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest);”,

(ii) omit the definition of “Union legislation”,

(b) for paragraph 2(2) substitute—

“(2) Unless the context otherwise requires, expressions not defined in paragraph (1) which are used in these Regulations and also in the Directive (whether or not also used in the 2010 Act) have the same meaning as in the Directive.”.

(3) In regulation 8—

(a) in paragraphs (1) and (5), omit “(but without prejudice to Article 7 of the Directive)”,

(b) in paragraph (4)(b), after “requirements of” insert “any law of any part of the United Kingdom that implemented”,

(c) after paragraph (5), insert—

“(6) For the purpose of paragraph (1), Article 2(4) of the Directive is to be read as if—

(a) in the first sub-paragraph—

(i) “Without prejudice to Article 7,” were omitted;

(ii) for “Member States” there were substituted “the Scottish Ministers”;

(a) S.I. 1996/972; regulation 2 is substituted by S.S.I. 2019/26 having effect on exit day.

(b) S.S.I. 2017/115 amended by S.S.I. 2017/168 and S.S.I. 2017/1013.

- (b) in the second sub-paragraph—
 - (i) for “Member States”, there were substituted “Scottish Ministers”;
 - (ii) point (c) were omitted;
 - (c) the third and fourth sub-paragraphs (each beginning “The Commission”) were omitted.
- (7) For the purpose of paragraph (5), Article 2(5) of the Directive is to be read as if—
- (a) in the first sub-paragraph—
 - (i) “Without prejudice to Article 7,” were omitted;
 - (ii) for “Member States” there were substituted “The Scottish Ministers”;
 - (b) the second sub-paragraph were omitted.”.
- (4) In regulations 16(2)(b) and 22(3)(b), for “another” substitute “an”.
- (5) In regulation 24(2)(b), for “Union legislation” substitute “retained EU law (within the meaning of schedule 1 of the Interpretation Act 1978)”.
- (6) In regulation 30—
- (a) in paragraph (1)(a), omit “other than the United Kingdom”,
 - (b) in paragraph (1)(b) omit—
 - (i) “other than the United Kingdom”,
 - (ii) “under Article 7 of the Directive”,
 - (c) in paragraph (3)(a), for “another” substitute “the”,
 - (d) in paragraph (6) —
 - (i) omit “, in accordance with Article 7 of the Directive,”,
 - (ii) for “the other EEA State” substitute “that EEA State”.
- (7) In regulation 31(1) omit—
- (a) “other than the United Kingdom pursuant to Article 7(2) of the Directive”,
 - (b) “, in accordance with Article 7(4) of the Directive”,
 - (c) “pursuant to Article 7(3)(b) of the Directive”.
- (8) In regulation 37—
- (a) renumber the existing paragraph as paragraph (1),
 - (b) after paragraph (1), insert—

“(2) For the purpose of paragraph (1), Article 11(1) of the Directive is to be read as if the reference to—

 - (a) “Member States” were a reference to “The Scottish Ministers”,
 - (b) “a Member State” were a reference to “Scotland”.”.
- (9) In schedule 1—
- (a) in paragraph 19, after “pursuant to” insert “chapter 3 of Part 1 of the Energy Act 2008(a) and any law of any part of the United Kingdom that implemented”,
 - (b) in paragraph 20, after “pursuant to” insert “chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented”.
- (10) In Schedule 3, in paragraph 2(c)(vi) for “Union legislation” substitute “retained EU law”.

(a) 2008 c.32; Chapter 3 was relevantly amended by the Marine and Coastal Access Act 2009 (c.23), the Energy Act 2011(c.16), the Energy Act 2016 (c.20) and S.I. 2011/2453 and 2017/524 and S.S.I. 2011/224.

(11) In Schedule 4—

(a) in paragraph 6—

(i) for “established at Union or Member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”,

(ii) omit the words from “including” to “birds”,

(b) in paragraph 9—

(i) for “legislation of the European Union such as” substitute “retained EU law such as any law that implemented”,

(ii) after “requirements of” insert “any law that implemented”.

ROSEANNA CUNNINGHAM
A member of the Scottish Government

St Andrew’s House,
Edinburgh
18th February 2019

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16). The Regulations make amendments to legislation relating to the marine environment, marine licensing and environmental impact assessments for marine works. The amendments address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Regulation 2 amends deficiencies arising from the withdrawal of the United Kingdom from the European Union which are contained within the Marine (Scotland) Act 2010 (asp 5).

Regulation 3 makes amendments to remedy deficiencies in the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011.

Regulation 4 makes amendments to remedy deficiencies in the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011.

Regulation 5 makes amendments to remedy deficiencies in the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

A Business and Regulatory Impact Assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

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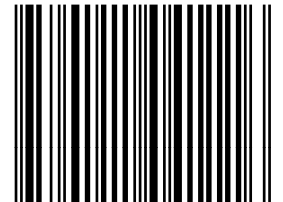
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