

2022 No. 138

EXITING THE EUROPEAN UNION

AGRICULTURE

ANIMALS

ENVIRONMENTAL PROTECTION

FLOOD RISK MANAGEMENT

WATER

**The Environment and Trade in Animals and Related Products
(EU Exit) (Scotland) (Miscellaneous Amendment) Regulations
2022**

<i>Made</i>	- - - -	<i>20th April 2022</i>
<i>Laid before the Scottish Parliament</i>		<i>22nd April 2022</i>
<i>Coming into force</i>	- -	<i>1st June 2022</i>

The Scottish Ministers make the following Regulations 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(a), and all other powers enabling them to do so.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 and come into force on 1 June 2022.

(a) 2018 c. 16; paragraph 21(b) of schedule 7 was amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1), section 41(4) and schedule 5, paragraph 53(2)(b).

PART 2

Amendments to legislation concerning water

Amendment of the Water Environment and Water Services (Scotland) Act 2003

2. Section 25 (power to give effect to EU obligations etc.) of the Water Environment and Water Services (Scotland) Act 2003(a) is repealed.

Amendment of the Protection of Water Against Agricultural Nitrate Pollution (Scotland) Regulations 1996

3.—(1) The Protection of Water Against Agricultural Nitrate Pollution (Scotland) Regulations 1996(b) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation), omit “; and other expressions used in the 1991 Directive have the same meaning as in that Directive”.

(3) In regulation 4 (monitoring)—

(a) in paragraph (1)(a)—

(i) in head (i), omit—

(aa) “laid down in Article 5(4) of the 1975 Directive or at other sampling stations”,
and

(bb) “or at both,”,

(ii) in head (ii), for “1980 Directive” substitute “Public Water Supplies (Scotland) Regulations 2014(c), the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017(d), and the Private Water Supplies (Scotland) Regulations 2006(e)”.

(b) in paragraph (2), for “in pursuance of the 1991 Directive” substitute “for the purposes of paragraph (1)”.

(4) Omit regulation 6(1) (action programmes).

(5) For regulation 8 (information required in connection with implementation of the Directive), substitute—

“Reporting requirements

8.—(1) The Scottish Ministers must prepare a report on the implementation of these Regulations for each relevant period.

(2) A report under paragraph (1) must contain—

(a) details of any steps taken to promote good agricultural practice,

(b) maps of the current designated nitrate vulnerable zones in Scotland, accompanied by a summary of the most recent review of the designated nitrate vulnerable zones conducted under regulation 3(2) since the end of the previous reporting period,

(c) a summary of the monitoring results obtained by SEPA under regulation 4,

(d) a summary of the most recent review of the action programme, and

(e) a statement about the predicted impact of the action programme on future water quality.

(a) 2003 asp 3. Section 25 was amended by S.I. 2011/1043.

(b) S.I. 1996/1564.

(c) S.S.I. 2014/364, as amended by S.S.I. 2015/100, S.S.I. 2015/346, S.S.I. 2017/281, 2017/282 and 2019/336.

(d) S.S.I. 2017/282, as amended by S.S.I. 2017/321.

(e) S.S.I. 2006/209, as amended by S.S.I. 2010/95, S.S.I. 2014/364, S.S.I. 2015/346 and 2017/282.

(3) A report under paragraph (1) must be published in such manner as the Scottish Ministers consider appropriate by 31 December in the calendar year following the end of each relevant period.

(4) SEPA must provide to the Scottish Ministers such information as they may by notice require to enable them to prepare a report under paragraph (1).

(5) A notice under paragraph (4) may specify the form and manner in which, the period within which, or the times at which such information is to be provided.

(6) In this regulation, “relevant period” means the period of 4 years beginning with 1 January 2020 and each successive 4 years.”.

(6) In schedule 2, omit the heading “Freshwaters, coastal waters and marine waters” and the paragraph below it.

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

4.—(1) Part 1 of the schedule (register) of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004^(a) is amended in accordance with paragraphs (2) to (4).

(2) In paragraph 2, in each of sub-paragraphs (b), (c)(i) and (c)(ii), after “under” insert “any retained EU law which implemented”.

(3) In paragraph 3, after “under” insert “any retained EU law which implemented”.

(4) In paragraph 5, omit “(including EU legislation)”^(b).

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

5. In regulation 7(b) (environmental objectives: application of regulations 4 to 6) of the Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013^(c), for “EU environmental legislation” substitute “retained EU law relating to the environment”.

PART 3

Amendments to legislation concerning flood risk management

Amendment of the Flood Risk Management (Scotland) Act 2009

6.—(1) The Flood Risk Management (Scotland) Act 2009^(d) is amended in accordance with paragraphs (2) to (8).

(2) In section 6 (“the Directive”), after “Act,” insert “subject to section 6A,”,

(3) After section 6, insert—

“6A. Interpretation of the Directive

(1) The Directive is to be interpreted in accordance with this section.

(2) When interpreting the Directive for the purposes this Act—

(a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the Scottish Ministers,

(a) S.S.I. 2004/516, as amended by S.I. 2011/1043 and S.S.I. 2013/323, 2018/391 and 2019/175.

(b) Paragraph 5 was amended by S.I. 2011/1043.

(c) S.S.I. 2013/325.

(d) 2009 asp 6, as relevantly amended by S.I. 2011/1043 and S.S.I. 2018/391.

- (b) a reference to Community legislation is to be read as a reference to retained EU law,
- (c) a reference to Directive 2000/60/EC is to be read as a reference to that Directive as interpreted in accordance with Part 1 of schedule 5 of the Water Environment and Water Services (Scotland) Act 2003(a),
- (d) the Directive is to be read subject to the following rules.
 - (3) The final paragraph of Article 3(2) is to be ignored.
 - (4) Articles 4(3), 5(2) and 6(2) are to be ignored.
 - (5) In Article 6(5)(c) the reference to “Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution and prevention control” is to be read as a reference to “Annex 1 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)”(b).
 - (6) Articles 7(4), 8(2) to (5), 11 to 13, 15, 16 and 17(2) are to be ignored.
 - (7) Section 1 of Part A of the Annex is to be read as if—
 - (a) in paragraph 4, for “other Community acts, including Council Directives 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and 96/82/EC of 9 December 1996 on the control of major accident hazards involving dangerous substances” there were substituted “retained EU law which implemented Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(c), Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC(d)”,
 - (b) in paragraph 5, for “Member States concerned” there were substituted “Scottish Ministers”.”.
 - (4) In section 23(2) (flood risk maps)(e)—
 - (a) in paragraph (c), for “referred to”, where it first occurs, substitute “in which there is carried out any activity mentioned in”,
 - (b) in paragraph (d)(vi), after “pursuant to” insert “any retained EU law which implemented”.
 - (5) In section 51(1) (power to give effect to EU obligations etc.), for “EU obligation of the United Kingdom” substitute “obligation arising from retained EU law”.
 - (6) In section 95(2) (interpretation: general), for “as amended from time to time” substitute “as it had effect immediately before IP completion day”.
 - (7) In Part 1 of schedule 1 (matters to be included in flood risk management plans), in paragraph 4—
 - (a) at the beginning of each of sub-paragraphs (a), (b) and (c), insert “any retained EU law which implemented”,
 - (b) in sub-paragraph (d), for “EU instrument” substitute “retained EU law”.
 - (8) In schedule 4 (index), in the entry for “the Directive”, for “Section 6” substitute “Sections 6 and 6A”.

(a) 2003 asp 3; schedule 5 was inserted by S.S.I. 2019/26.
 (b) OJ L 334, 17.12.2010, p. 17.
 (c) OJ L 26, 28.1.2012, p. 1.
 (d) OJ L 197, 24.7.2012, p. 1.
 (e) Section 23(2) was amended by S.S.I. 2018/391.

Amendment of the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010

7.—(1) The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation), omit the definition of “Union legislation”.

(3) In regulation 2A(3)(b) (meaning of “environmental impact assessment” etc.)(b), after “protected under” insert “any retained EU law which implemented”.

(4) In regulation 10A(2)(b) (monitoring measures, etc.)(c) and paragraph 2(c)(vi) of schedule 1 (location of the scheme)(d), for “Union legislation” substitute “retained EU law”.

(5) In schedule 2 (information for inclusion in EIA reports)(e)—

(a) in paragraph 5(2), in the second sentence —

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

(ii) after “established under” insert “any law in Scotland which implemented”,

(b) in paragraph 8 for “legislation of the European Union such as” substitute “any law which implemented”.

PART 4

Amendments to legislation concerning environmental protection

Amendment of the Environmental Noise (Scotland) Regulations 2006

8.—(1) The Environmental Noise (Scotland) Regulations 2006(f) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 20 (co-operation with external competent authorities)—

(a) in paragraph (1)—

(i) omit “or” at the end of sub-paragraph (a),

(ii) omit sub-paragraph (b),

(b) for paragraph (2) substitute—

“(2) In this Part, “external competent authority” means a competent authority specified in relation to England, Northern Ireland or Wales in accordance with—

(a) the Environmental Noise (England) Regulations 2006(g),

(b) the Environmental Noise Regulations (Northern Ireland) 2006(h), or

(c) the Environmental Noise (Wales) Regulations 2006(i).”.

(a) S.S.I. 2010/426, amended by S.S.I. 2017/112.

(b) Regulation 2A was inserted by S.S.I. 2017/112.

(c) Regulation 10A was inserted by S.S.I. 2017/112.

(d) Schedule 1 was substituted by S.S.I. 2017/112.

(e) Schedule 2 was substituted by S.S.I. 2017/112.

(f) S.S.I. 2006/465, as amended by S.S.I. 2018/342.

(g) S.I. 2006/2238.

(h) S.R. (NI) 2006 No. 387.

(i) S.I. 2006/2629 (W. 225).

- (3) In regulation 24(4)(b) (powers of the Scottish Ministers)—
 - (a) omit “or” at the end of head (i),
 - (b) omit head (ii).
- (4) For paragraph 2(2) of schedule 1 (general requirements for strategic noise maps) substitute—
 - “(2) In applying sub-paragraph (1)(a)—
 - (a) any reference in Annex IV to the Directive to—
 - (i) Article 8 of the Directive is to be read as a reference to regulations 13, 15 and 17 of these Regulations,
 - (ii) Article 9 of the Directive is to be read as a reference to regulation 26 of these Regulations,
 - (b) in paragraph 4 of Annex IV to the Directive, the words “the provision of the data to be sent to the Commission in accordance with Article 10(2) and Annex VI” are to be disregarded, and
 - (c) paragraph 5 of Annex IV to the Directive is to be disregarded.”.

Air Quality Standards (Scotland) Regulations 2010

9.—(1) The Air Quality Standards (Scotland) Regulations 2010^(a) are amended in accordance with paragraphs (2) to (8).

- (2) In regulation 2 (definitions) in the definition of—
 - (a) “Directive 2004/107/EC”, after “air” insert “(but see regulation 2A)”,
 - (b) “Directive 2008/50/EC”, after “Europe” insert “(but see regulation 2A)”.
- (3) After regulation 2 (definitions) insert—

“Interpretation

2A.—(1) When interpreting Directive 2004/107/EC for the purposes of these Regulations—

- (a) in Annex 2, in Section 2, the second paragraph is to be read as if for “Member States” there were substituted “the Scottish Ministers”,
- (b) in Annex 3, in Section 4, paragraph (b), for “BAT as defined by Article 2(11) of Directive 96/61/EC” there is substituted “best available techniques (as defined in regulation 4 of the Pollution Prevention and Control (Scotland) Regulations 2012^(b))”,
- (c) in Annex 4, in Section 1, the fourth and fifth paragraphs following the table are to be read as if for “Member States” in each place where the words occur, there were substituted “The Scottish Ministers”,
- (d) Annex 5 is to be read as if—
 - (i) in Sections 1, 2 and 3, in the second paragraph of each —
 - (aa) for “A Member State” there were substituted “The Scottish Ministers”,
 - (bb) for “it” there were substituted “they”,
 - (ii) in Section 2, in the first paragraph, for “Member States are allowed to” there were substituted “the Scottish Ministers may”,
 - (iii) Section 5 were omitted.

^(a) S.S.I. 2010/204, as amended by S.S.I. 2016/376, S.S.I. 2017/446 and S.S.I. 2018/391.
^(b) S.S.I. 2012/360.

- (2) When interpreting Directive 2008/50/EC for the purposes of these Regulations—
- (a) Article 3(f) is to be read as if for “other Member States” there were substituted “Member States”,
 - (b) in Annex 1, in section A, footnote (1) is to be read as if—
 - (i) for “Member States” there were substituted “the Scottish Ministers”,
 - (ii) the words “to the Commission” were omitted,
 - (c) in Annex 1, section C is to be read as if—
 - (i) in paragraph 1, for “appropriate competent authorities and bodies designated pursuant to Article 3” there were substituted “Scottish Ministers”,
 - (ii) in subparagraph (i)—
 - (aa) the words “pursuant to Articles 6 and 9” were omitted,
 - (bb) for “set out in the harmonised standard for testing and calibration laboratories” there were substituted “of the ISO/IEC standard 17025”(a),
 - (iii) in subparagraph (iii), the words from “and that institutions” to the end were omitted,
 - (iv) in subparagraph (iv)—
 - (aa) for the first sentence there were substituted “that the National Reference Laboratories are appointed by the Scottish Ministers and are accredited for the reference methods referred to in Annex 6, at least for those pollutants for which concentrations are above the lower assessment threshold, according to the ISO/IEC standard 17025”,
 - (bb) in the second sentence, the words from “for the coordination” to “be responsible” were omitted,
 - (cc) in the third sentence, for the words “relevant harmonised standard for proficiency testing” there were substituted “ISO/IEC standard 17043”(b),
 - (v) subparagraphs (v) and (vi) were omitted,
 - (vi) in paragraph 2, for “All reported data under Article 27” there were substituted “All data”,
 - (d) in Annex 2, in Section B, the second paragraph is to be read as if for “Member States” there were substituted “the Scottish Ministers”,
 - (e) in Annex 3—
 - (i) in Section A, paragraph (2)(b) is to be read as if the words “in accordance with Article 2(1),” were omitted,
 - (ii) in Section B, paragraph 2 is to be read as if for “A Member State” there were substituted “The Scottish Ministers”,
 - (iii) Section D is to be read as if the last sentence were omitted,
 - (f) in Annex 5, in Section A, footnotes (1) and (2) to the table are to be read as if for “a Member State” in each place, there were substituted “the United Kingdom”,

(a) ISO standards are published in Geneva by the International Organisation for Standardisation, and are available on their website (www.iso.org) or at ISO Central Secretariat, International Organization for Standardization (ISO), 1 rue de Varembé, Case postale 56, CH-1211, Geneva 20, Switzerland. ISO/IEC 17025 General requirements for the competence of testing and calibration laboratories was published in November 2017.

(b) ISO/IEC 17043 General requirements for the competence of providers of proficiency testing schemes was published in February 2010.

- (g) in Annex 6, Section B is to be read as if—
 - (i) in paragraph 1—
 - (aa) for “A Member State” there were substituted “The Scottish Ministers”,
 - (bb) for “it” there were substituted “they”,
 - (cc) for “Member State concerned” there were substituted “Scottish Ministers”,
 - (ii) paragraphs 2, 3 and 4 were omitted,
 - (h) in Annex 8, in Section A, the paragraph after the table is to be read as if after the words “in the Community” there were inserted “in so far as it forms part of retained EU law”.”.
- (4) For regulation 17(3) (duties in relation to limit values) substitute—
- “(3) Where the Scottish Ministers consider that a limit value set out in Schedule 2 has been exceeded for a reason attributable to natural sources, that limit value will not be considered to be exceeded for the purposes of these Regulations.
- (4) Where the Scottish Ministers consider that a limit value has been exceeded for a reason attributable to natural sources in accordance with paragraph (3), the Scottish Ministers must publish information, for the relevant zones and agglomerations, demonstrating that the exceedances are attributable to natural sources.”.
- (5) In regulation 18(5) (duties in relation to target values), for “programme prepared pursuant to Article 6 of Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants” substitute “national air pollution control programme drawn up in accordance with regulation 9 of the National Emission Ceilings Regulations 2018(a)”.
- (6) In regulation 19 (date of application for limit values and target values in regulations 17 and 18), omit paragraphs (2) and (3).
- (7) In regulation 24 (air quality plans)—
- (a) in paragraph (2), omit “, in accordance with Article 21 of Directive 2008/50/EC,”,
 - (b) for paragraph (7) substitute—
- “(7) Wherever possible, air quality plans must be consistent with—
- (a) a national air pollution control programme drawn up in accordance with regulation 9 of the National Emission Ceilings Regulations 2018,
 - (b) an action plan drawn up in accordance with Part 3 of the Environmental Noise (Scotland) Regulations 2006(b)”.
- (8) In regulation 27(3) (public information), for “Council Directive 2007/2/EC on establishing an infrastructure for spatial information in the European Community (INSPIRE)” substitute “the INSPIRE (Scotland) Regulations 2009(c)”.

PART 5

Amendments to legislation concerning animals

10. In the Trade in Animals and Related Products (Scotland) Regulations 2012(d), in paragraph 4(3B)(e) (derogation from regulation 12: notification of importation) of schedule 5 (application of, derogations from, and modifications to, Part 3 in relation to certain territories subject to

(a) S.I. 2018/129.
 (b) S.S.I. 2006/465, as amended by S.S.I. 2018/342.
 (c) S.S.I. 2009/440, as amended by S.S.I. 2012/284 and S.S.I. 2019/103.
 (d) S.S.I. 2012/177. Schedule 5 was inserted by S.S.I. 2020/458 and paragraph 4 was amended by S.I. 2021/429, S.I. 2021/809, S.S.I. 2021/297, S.S.I. 2021/342, S.S.I. 2021/493 and S.S.I. 2022/90.
 (e) Sub-paragraph (3B) of paragraph 4 was inserted by regulation 2 of S.S.I. 2022/90.

transitional import arrangements) after “Northern Ireland” where it second occurs, insert “or the Republic of Ireland”.

MAIRI McALLAN

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th April 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

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.

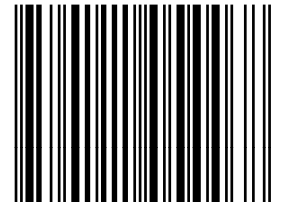
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