

AIR QUALITY - NOTIFICATION TO THE SCOTTISH PARLIAMENT

Title of instruments:

The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018.

The Air Quality (Amendments) (EU Exit) (No. 2) Regulations 2018.

1. Purpose of instruments

These instruments are necessary to address largely minor and/or technical deficiencies arising from the withdrawal of the United Kingdom from the European Union. The Regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

In the EU, the overall regulation of air quality is provided for by a range of legislative instruments, covering both emissions and ambient air. The legislation is important in order to protect human health and the environment. Much EU air quality legislation is transposed on a joint UK basis, with the permission of the devolved administrations where necessary.

The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018 contain amendments to directly applicable EU legislation. The Air Quality (Amendments) (EU Exit) (No. 2) Regulations 2018 contain amendments to EU-derived domestic legislation.

2. Explanation of law that the proposals amend

The regulations contain amendments to the following legislation that includes devolved responsibilities:

Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release Transfer Register establishes an integrated pollutant release and transfer register at European level in the form of a publically accessible database and lays down rules for its functioning. The European Pollutant Release Transfer Register (E-PRTR) implements for the European Community the UNECE (United Nations Economic Commission for Europe) PRTR Protocol to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Member States are required to report to the European Commission on release and transfer of a range of pollutants from industry. The E-PRTR is published by the European Commission.

Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air provides guidance in relation to the general aspects for consideration by Member States when developing and implementing short-term action plans as required by Directive 2002/3/EC to in relation to the management of ozone levels in ambient air and for measuring ozone precursors.

Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality establishes rules implementing Directives 2004/107/EC and 2008/50/EC as regards Member States' obligations to report on the assessment and management of ambient air quality and the reciprocal exchange of information concerning the measurements of air quality from stations and networks.

Decision 2012/115/EU laying down the rules concerning the transitional national plans referred to in Directive 2010/75/EU sets out the implementing rules for transitional national plans (TNPs) made for the purposes of Directive 2010/75/EU on industrial emissions, and covers elements such as emissions ceilings, compliance monitoring, action, reporting etc.. TNPs are a mechanism which provide exemption until June 2020 from emission limit values specified in the Directive for large combustion plant.

Several decisions establishing best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for a range of industrial processes - through Directive 2010/75/EU on industrial emissions, the European Commission holds a power to establish Best Available Techniques (BAT) for the purpose of environmental permitting for activities that come within the scope of this Directive. The Commission adopts BAT conclusions on the basis of BAT reference documents that are developed through an EU level process.

The Air Quality Standards Regulations 2010 transpose for England Directive 2008/50/EC on ambient air quality, but also transpose for the whole of the UK provisions relating to reference methods for assessment of air pollutants.

The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 implement Directive 2004/42/EC on the limitation of emissions of volatile organic compounds from these products.

The National Emission Ceilings Regulations 2018 transpose, on a UK-wide basis, Directive 2016/2284/EC setting national emission ceilings for certain atmospheric pollutants. They implement at EU level obligations under the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution of 1979 (CLRTAP) and, in particular, its 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of 1999, which was revised in 2012 (the revised Gothenburg Protocol).

3. Summary of the proposals

This notification covers proposals to fix the following deficiencies:

Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release Transfer Register – various definitional changes to ensure that the Regulations remain operable after exit. The amendments establish a United Kingdom integrated pollutant transfer register (The UK-PRTR), to ensure the UK continues to fulfil its obligations as

a signatory to the Aarhus Convention. The Secretary of State will incorporate the relevant data provided by the Scottish Ministers, and the other devolved administrations, into the UK-PRTR and will publish it. The Scottish Ministers, together with the Secretary of State and the other devolved administrations, shall promote awareness of the UK PRTR and provide assistance in accessing it and understanding the information. The Secretary of State, assisted by the Scottish Ministers, shall provide the public with opportunities to participate in the further development of the UK-PRTR. The Scottish Ministers must take due account of public input and shall inform the public about the outcome of the public participation.

Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air – this guidance relates to the development of short-term action plans in accordance with Directive 2002/3/EC. The obligations to consider the guidance, which under EU law were placed upon Member States, are now obligations of the Scottish Ministers, in relation to Scotland. The references to Directive 2003/3/EC have been removed and short-term action plan is defined by reference to domestic legislation.

Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality – The duty to report on the assessment and management of ambient air quality is conferred on the Scottish Ministers as it relates to Scotland and the exchange of information will occur at a UK, as opposed to an EU, level. This includes a duty on the Scottish Ministers to establish a data repository for Scotland, which is publically accessible.

Decision 2012/115/EU laying down the rules concerning the transitional national plans referred to in Directive 2010/75/EU – omission of Articles in the Decision which are now redundant, either because the UK has already implemented its TNP (submitted to the Commission on 20 October 2015) or to remove arrangements with the Commission which are no longer appropriate.

Several decisions establishing best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for a range of industrial processes – amendments to ensure that the BAT Conclusions continue to apply in the UK after exit day, as well as including some definitions for clarity.

The Air Quality Standards Regulations 2010 – various definitional changes to transfer the powers for adopting and making changes to reference methods from the European Commission to the Secretary of State and the devolved administrations.

The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 – one definitional change to reflect that the regulations no longer apply to a country or territory outside of the customs territory of the United Kingdom rather than outside of the customs territory of the European Union.

The National Emission Ceilings Regulations 2018 – definitional changes to transfer reporting and emissions projection responsibilities from the European Commission to

the Secretary of State, given that the UK is a signatory to the UN Convention noted in paragraph 2.

4. Why are the changes necessary?

To ensure retained EU law continues to operate effectively and correct other deficiencies arising from the withdrawal of the United Kingdom from the EU.

The areas covered by the instruments are mainly minor and/or technical in nature. There is no change to policy or impact on businesses and communities.

The changes do not diminish current EU standards.

The amendments to Decision 2012/115/EU laying down the rules concerning the transitional national plans do remove some of the TNP implementing rules on the basis that these rules have no practical application, and are substantially redundant, since the UK has already submitted its TNP to the Commission. The UK TNP is not being changed by these amendments so the regulatory standards applied to large combustion plant are not affected.

5. Scottish Government categorisation of significance of proposals

Category A. This is on the basis that they are primarily concerned with making minor adjustments to legislation; they are part of a package of wider legislation on air quality arising from EU withdrawal.

6. Impact on devolved areas

Although air quality is devolved, all of the changes made by these instruments relate to policies and other procedures which are currently exercised on a joint UK basis for reasons of practicality, efficient use of resources and ease of collaboration. The intention is for this approach to continue and for the UK Government not to make any changes which potentially impact on the devolved administrations without first obtaining their consent.

7. Stakeholder engagement/consultation

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation. However, these measures are aimed solely at preserving the functioning of the regulations as they are at present and make no changes to current policy. We therefore have not undertaken any focused engagement with specific bodies or organisations, nor any formal consultation.

8. Any other impact assessments

On the basis that this does not result in any policy changes, there is no requirement to undertake any impact assessments.

9. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating

These reasons are summarised in the paragraph covering impact on devolved areas.

10. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?

These instruments amend Air Quality legislation and the guiding principles on the environment are relevant. However, these instruments are amending directly applicable EU legislation and EU derived domestic legislation which has regard to the environmental principles. As the provisions are making small, minor technical changes to preserve the functioning of the regimes, which adhere to the environmental principles, Ministers are satisfied there is no impact on the continued application of the environmental principles.

11. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Later this year, Scottish Ministers will consult on the governance gaps that will be created once the UK leaves the EU, with a view to bringing proposals back to the Scottish Parliament on medium and long term governance arrangements once the future relationship is clear.

We have been engaged in framework discussions with all the administrations of the UK. These framework discussions are progressing. The Scottish Government's position is that these arrangements should be based on staying closely aligned with the EU regulatory regime and maintaining existing standards of protection for human health and the environment.

12. Intended laying date

22 November 2018 for both instruments. Defra have agreed that no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

13. Does the Scottish Parliament have 28 days to scrutinise?

Yes.

14. Information about any time dependency associated with the proposal

As the provisions are making minor and/or technical changes to preserve the functioning of the regulations, there is no time dependency associated with the proposals.

15. Any significant financial implications

As the provisions are making minor and/or technical changes to preserve the functioning of the regulations, there are no significant financial implications associated with the proposals.

16. Additional Information to Note

These SIs are part of a package which will impact on air quality. Further proposals will be detailed in two further notifications for two SIs. These are provisionally titled The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2018 and Transfer of Functions (Environment) (Directives) (EU Exit) (Miscellaneous Amendments) Regulations.

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