

## **WASTE - NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019**

#### **1. Name of instrument and summary of proposal:**

The Waste (Miscellaneous) Amendments (EU Exit) (No. 2) Regulations 2019 (“The Regulations”) are made under powers in section 2(2) of the European Communities Act 1972 and section 8 of the European Union (Withdrawal) Act 2018. They amend the secondary legislation detailed below on producer responsibility obligations under EU waste law. The EU provisions deal with the production, recycling, reuse and disposal of packaging, motor vehicles, batteries and accumulators, and electrical and electronic equipment by means of placing obligations on producers to ensure that certain environmental standards and targets are met, and recycling, reuse and recovery of materials are prioritised.

The Regulations aim to ensure that the secondary legislation is up dated and amended, and any necessary modifications are made to the relevant Directives so that that the producer responsibility regime continues to function effectively after exiting the European Union. Certain provisions extend to England and Wales only – those that amend secondary legislation on controlled waste, hazardous waste and extractive waste.

#### **2. Explanation of law that the proposals amend and summary of the proposals**

The Regulations amend 12 sets of waste Regulations, 8 of which extend to Scotland. They implement the following European Directives relating to producer responsibility obligations:

- Directive 2000/53/EC on end-of-life vehicles
- Directive 91/689/EEC on hazardous waste
- Directive 94/62/EC on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Directive 2004/12/EC and Directive 2005/20/EC
- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
- Directive 2006/21/EC on the management of waste from extractive industries( in respect of modifications for England and Wales only)
- Directive 2008/98/EC on waste
- Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment

The regulations which are amended and extend to Scotland are: –

**The End-of-Life Vehicles Regulations 2003** transpose the production, treatment and destruction requirements of Directive 2000/53/EC of the European Parliament and the Council on end-of-life vehicles. They provide for the design requirements for materials and components of vehicles put on the market after the Regulations came into effect. They also introduce minimum treatment standards and the Certificate of Destruction, which deregisters a vehicle from the national vehicle database on notification by an authorised treatment facility (licensed by the Scottish Environment Protection Agency

(SEPA) in Scotland). The Regulations update definitions in the End-of-Life Vehicles Regulations, and modify the Waste Framework Directive in its application to these regulations to ensure continued operability by appropriate UK agencies and authorities on and after exit day - in Scotland the Scottish Ministers, SEPA and local authorities.

**The End-of-Life Vehicles (Producer Responsibility) Regulations 2005** transpose the aspects of Directive 2000/53/EC on the end-of-life vehicles relating to producer responsibility for establishing collection systems to take back end-of-life vehicles free of charge, and the arrangements for meeting re-use, recycling and recovery targets, from 2006. The Regulations update definitions in these regulations, and modify the End – of-Life Vehicles and Waste Directives in their application to these regulations to ensure continued operability by appropriate UK agencies and authorities on and after exit day – in Scotland the Scottish Ministers, SEPA and local authorities.

**The Producer Responsibility Obligations (Packaging Waste) Regulations 2007** transpose Council Directive 94/62/EC on packaging and packaging waste, as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC. These regulations make provision for the management of packaging waste, and the prevention or reduction of the impact of packaging and packaging waste on the environment. They encourage minimisation of the use and reuse of packaging, and set recovery and recycling targets, whilst also seeking to avoid obstacles to trade and the distortion and restriction of competition. The Regulations update definitions in these regulations and modify the Packaging Waste and Waste Directives in their application to these regulations to ensure continued operability by appropriate UK agencies and authorities on and after exit day - in Scotland the Scottish Ministers and SEPA.

**The Batteries and Accumulators (Placing on the Market) Regulations 2008** partially transpose Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators. The purpose of these regulations is to protect the environment and human health. They provide that new batteries (single use cells) and accumulators (commonly known as rechargeable batteries) or appliances containing batteries or accumulators that are placed on the market must not contain prohibited levels of heavy metals and that they must be labelled to show the presence of lead-acid, cadmium or mercury and to promote recycling. They also provide that certain types of new electrical and electronic equipment must be designed in a way that facilitates the easy removal of waste batteries and accumulators for recycling purposes. The Regulations update definitions and modify the WEEE and Waste Directives in their application to these regulations to ensure continued operability by the appropriate UK agency on and after exit day – in Scotland, SEPA.

**The Waste Batteries and Accumulators Regulations 2009** partially transpose Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators. They require producers of batteries and accumulators to take responsibility for separately collecting and recycling batteries and accumulators once they become waste; enable the setting up, operation and monitoring of battery compliance schemes; provide for the treatment and recycling of batteries, and the monitoring of compliance with the schemes and the regulations by appropriate authorities. The Regulations update definitions in these regulations and modify the Waste and Landfill Directives in their application to these regulations to ensure continued

operability by appropriate UK agencies and authorities on and after exit day - in Scotland the Scottish Ministers, SEPA and local authorities.

**The Restrictions of the Use and Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012** transpose Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE) with the aim of contributing to the protection of human health and the environment (including environmentally sound recovery and disposal of waste EEE). These regulations prohibit or restrict the use of certain hazardous substances in defined categories of electrical and electronic equipment (EEE), and require compliant products to be CE marked for ease of identification, recovery, reuse and disposal. They also require economic operators to meet certain requirements and provide for the monitoring and enforcement of the requirements and prohibitions provided for in these regulations. The Regulations amend these regulations by adapting the CE marking and procedural requirements currently transposed in these regulations, to work on a UK basis. They also modify the Directive in its application to these regulations. They retain all existing obligations, standards and procedures, and ensure the conformity procedures and technical documentation will continue to operate effectively on and after exit day.

**The Waste Electrical and Electronic Equipment Regulations 2013** transpose the main provisions of Directive 2012/19/EU on waste electrical and electronic equipment (WEEE). The main purpose of the Directive is the protection of the environment and human health. These regulations provide that producers of electrical and electronic equipment (EEE) will be financially responsible for managing the waste that arises from products they place on the market in the EU. Producers must also be registered with the appropriate authorities in any Member State where they place EEE onto the market either directly or by appointing an authorised representative to act on their behalf. They establish systems for the collection, treatment, recovery and environmentally sound disposal of most types of WEEE; and for the costs of these systems to be borne largely by the producers of such equipment. Distributors of EEE have obligations under these regulations to establish systems for the return of WEEE from private households free of charge. The Regulations update and amend these regulations so that they continue to operate on a UK basis, retaining all existing obligations, and procedures. They also modify the WEEE, Waste, Basic Safety Standards and Industrial Emissions Directives in their application to these regulations to ensure continued operability by appropriate UK agencies and authorities on and after exit day - in Scotland, Scottish Ministers, SEPA and local authorities.

**The Packaging (Essential Requirements) Regulations 2015** transpose Articles 9 and 11 of Directive 94/62/EC of the European Parliament and Council on packaging and packaging waste, last amended by Directive (EU) 2015/720. These regulations set the essential requirements packaging must meet (including requirements as to production, recyclability, reuse and disposal) before it can be placed on the market. They provide enforcement authorities with powers to enforce the requirements of these regulations. The Regulations amend these regulations so that they continue to operate on and after exit day, but restricted in application to the UK. They make provision for the continued recognition of published EU and member state standards as a means of complying with the requirements of the regulations. They also modify

the Waste Directive as it applies to these regulations, to ensure continued operability by appropriate UK agencies on and after exit day - in Scotland, SEPA.

### **3. Why are these changes necessary?**

The European Union (Withdrawal) Act 2018 provides that EU provisions will become domestic law on exit, and makes some modifications to ensure continued operability of retained EU law in these circumstances, The Act also makes provision to address further deficiencies that may be identified..

These Regulations make provision in respect of additional identified deficiencies to the Producer Responsibility Schemes. These Schemes operate on a UK basis, by agreement with the devolved administrations. The Regulations make the changes necessary to enable their continued and effective operability on and after exit day. They remove EU provisions which have no practical application in relation to the UK or part of it; enable certain functions to be exercised by appropriate UK bodies; and remove redundant provisions that were dependent on the UK's membership of the EU.

There is no change of policy in respect of any of the provisions modified by the Regulations, beyond the changes necessitated by leaving the EU.

### **4. Scottish Government categorisation of significance of proposals**

Category A. The changes made by the Regulations are technical, and provide for a continuation of current functions and responsibilities (particularly of SEPA and local authorities). It is beneficial to make provision on a UK basis as it accords with current practice where there is agreement amongst administrations that the schemes operate across the UK. They ensure continuation of present arrangements.

### **5. Impact on Devolved Area**

Producer Responsibility Schemes operate at UK level by agreement with Scottish Ministers, on the basis of powers which are devolved. We have ensured that devolved interests are recognised and accounted for.

### **6. Stakeholder engagement/consultation**

We have written to our stakeholders setting out the general approach we are taking to correcting deficiencies in environmental legislation and we are in regular contact with all our stakeholders regarding the move towards leaving the EU. SEPA has also considered the Regulations, and we have taken account of their comments. However, these measures are aimed solely at preserving the functioning of the law as it stands at present and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments..

### **7. Any other impact assessments**

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

## **8. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating**

The provisions were made at the UK level to reflect the fact that all of the current domestic Producer Responsibility Schemes operate on a UK basis. The most effective and transparent way to make the changes necessary to address deficiencies is to do so at the same level. Officials have worked with DEFRA to ensure the drafting delivers for our interests and respects devolved competence in Scotland, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

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

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by the Regulations is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

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

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 and the relevant regulators specifically looking at the waste regulation in the UK outside of the EU and its existing regime. These framework discussions are progressing. The Scottish Government's position is that these arrangements should be based on staying closely aligned with the existing EU waste regulatory regime and maintaining existing standards of protection for human health and the environment.

## **11. Intended UK laying date**

This instrument is subject to the negative procedure and will be laid for sifting at Westminster on 18 December. 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.

## **12. Does the Scottish Parliament have 28 days to scrutinise?**

Yes.

## **13. Information about any time dependency associated with the proposal?**

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of the

prevention of waste, and its effective re-use, recycling and disposal within the UK. In addition, this is likely to be particularly important in maintaining the standards that will enable the shipment of waste within and outwith the UK.

#### **14. Any significant financial implication?**

These regulations make technical amendments to existing regimes to preserve the way they function after exit. There are no significant financial implications associated with the proposals.

Lead Official: Elspeth MacDonald  
Environmental Quality and Circular Economy Division  
Tel: 0131 244 1436