

Ionising Radiation

The Justification of Practices for Ionising Radiation, Radioactive Contaminated Land (England) (Northern Ireland) and Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Miscellaneous Amendments) (EU Exit) Regulations 2018

Notification to the Scottish Parliament

Name of the instrument and summary of proposal

The Justification of Practices for Ionising Radiation, Radioactive Contaminated Land (England) (Northern Ireland) and Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Miscellaneous Amendments) (EU Exit) Regulations 2018 address minor and technical deficiencies arising from the withdrawal of the United Kingdom from the European Union. One element of these Regulations extends to Scotland, and they respect the devolution settlement and do not affect the scope of powers exercisable by UK and Scottish Ministers.

The regulations contain amendments to an existing set of UK Regulations for Ionising Radiation that include devolved responsibilities:

- The Justification of Practices Involving Ionising Radiation Regulations 2004

Explanation of law that the proposals amend

There is one part of the draft Regulations that includes devolved responsibilities:-

The Justification of Practices Involving Ionising Radiation Regulations 2004

give the relevant UK and Scottish Ministers the power to approve new practices involving ionising radiation, across devolved and reserved responsibilities.

There are other measures in the draft instrument that do not impact on devolved responsibilities.

The measures on Contaminated Land extend only to England and to Northern Ireland (as they are not currently able to make their own regulations). Minor amendments to address deficiencies in the equivalent Scottish regulations will follow in due course.

The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 are reserved, as the regulation of nuclear installations is reserved. These regulations have effect across Great Britain, and the Office for Nuclear Regulation is required to consult the appropriate Scottish local authority, SEPA and SNH when considering the environmental impact of a proposed decommissioning project in Scotland.

Summary of the proposals

This notification covers proposals to fix the following deficiencies:

The Justification of Practices Involving Ionising Radiation Regulations 2004 (“the Justification Regulations”) contain a number of references to the Euratom Directive 2013/59/Euratom (“the 2013 Directive”) which will no longer be appropriate in their current form following the United Kingdom’s exit from the European Union and Euratom. Amendments in the draft instrument are intended to ensure that the Justification Regulations will continue to operate effectively in the United Kingdom.

Regulation 2 of the Justification Regulations provides that the Regulations only apply to practices involving ionising radiation to the extent to which the 2013 Directive applies to them. Following the UK’s exit from the European Union, the 2013 Directive will no longer apply to activities carried out in the UK. Amending regulation 2 of the Justification Regulations will ensure that those Regulations continue to apply to the same categories of practice as they did immediately before EU exit. This will ensure that the Justification Regulations continue to operate effectively, so that new practices involving ionising radiation (e.g. new nuclear reactor designs) can be justified (approved) subject to the existing process which includes consideration of the risk to public health .

Additionally, regulation 3(2) of the Justification Regulations provides that expressions and words used in the Regulations have the same meaning as those in the 2013 Directive, whether or not they are defined in the Directive. A defined term (“competent authority”) used within the definition of “inspection” in the Directive contains a reference to “Member State”, which will no longer be appropriate once the UK ceases to be a Member State.

Why is the change necessary?

These changes are necessary to allow the continuation of the effective function of these regulations, which are key elements in the overall regulation of practices involving radioactive substances.

Scottish Government categorisation of significance of proposals

Category A. The provisions are making small, minor technical changes to preserve the functioning of the regulations.

Impact on devolved areas

The Justification Regulations cover activities which fall both within reserved and devolved subject matters. These amendments will ensure that the Justification Regulations remain operable following withdrawal from Euratom and that the Justification Regulations can continue to be applied by both the United Kingdom Government and Devolved Administrations. The changes to be made by the SI cut across the whole breadth of the justification system, because they relate to general provisions on the application of the Justification Regulations and the interpretation of them that are relevant to all practices covered by the Justification Regulations. There is no impact on the scope of devolved powers exercised under the regulations, or on future devolved discretion over future changes to the regulations.

Stakeholder engagement/consultation

We are in regular contact with all our stakeholders regarding the move towards leaving the EU and the Euratom Community. However, these measures are aimed solely at preserving the functioning of the regulations as it is at present and we have not undertaken any focussed engagement on this basis. We have not undertaken any formal consultation.

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

The guiding principles on the environment as set out in Article 191(2) in Title XX of the Treaty on the Functioning of the European Union are not relevant to these proposals. The two instruments being amended are part of the UK implementation of the Basis Safety Standards Directive which is made under the Treaty Establishing the European Atomic Energy Community, which does not include the environmental principles.

However, the Basic Safety Standards Directive does require radiation protection legislation to be based on the principles of justification, optimisation and dose limitation which provide a similar function to the environmental principles in TFEU. As the provisions are making small, minor technical changes to preserve the functioning of the regulations, which adhere to the spirit of the underlying EU regime, Ministers are satisfied the proposals are sufficiently aligned with the radiation protection principles.

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

There is an existing memorandum between the four UK administrations that sets out the practical steps that the administrations follow in implementing the Justification of Practices Involving Ionising Radiation Regulations 2004. More generally, 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.

Any other impact assessments?

We have discussed with the UK Government and on the basis that this does not result in any policy changes, there is not a requirement to undertake an impact assessment.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The provisions were made at the UK level to reflect overlapping reserved and devolved responsibilities, and it is most effective to make the changes to address deficiencies at the same level.

Intended laying date

Before end 2018

Does the Scottish Parliament have 28 days to scrutinise Scottish Minister's proposal to consent?

Yes

Information about any time dependency associated with the proposal

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

Any significant financial implications

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

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