

# WATER ENVIRONMENT, WATER SUPPLY AND FLOOD RISK MANAGEMENT - NOTIFICATION TO THE SCOTTISH PARLIAMENT

## The Floods and Water (Amendments etc.) (EU Exit) Regulations 2018

### 1. Name of the instrument and summary of proposal

The Floods and Water (Amendments etc.) (EU Exit) Regulations 2018 address minor and technical deficiencies arising from withdrawal from the European Union, based on a presumed “no deal” scenario. The regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

### 2. Explanation of law that the proposals amend

The proposed regulations deal with retained, directly applicable EU legislation and UK legislation relating to the associated topics of water environment, nitrates, water industry, coast protection, flood risk management and flood reinsurance. The vast majority of the legislation being amended, and therefore the corresponding amendments, relate to England and Wales only, and do not extend to Scotland. There are also amendments proposed to UK-wide flood reinsurance regulations, which are reserved.

However, the proposed regulations make amendments or revocations extending to Scotland in respect of the following UK legislation and retained directly applicable EU legislation in devolved areas:

#### a. Cross-border river management

- There are 2 sets of water environment cross-border regulations dealing with the arrangements for river basin management planning in those river basin districts which are partly in Scotland and partly in England – the **Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**, and the **Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003**, where both UK and Scottish Ministers have functions, some of which are carried out jointly.
- The **Water Act 2014** also contains a small number of provisions relating to cross-border water management to support the free passage of fish.

#### b. Directly applicable EU legislation – Decisions

- European Decisions in the field of water environment and water industry policy which will be incorporated into domestic law on exit, on the following topics:
  - establishing symbols for informing the public about bathing water quality (Commission Implementing Decision 2011/321/EU)
  - specifying the standard method for the microbiological monitoring of water quality (Commission Decision (EU) 2017/1583)
  - determining equivalence of environmental standards across Member States (Commission Decision (EU) 2018/229)
  - establishing a register of sites across Member States to enable the determination of the equivalence of environmental standards across Member States (Commission Decision 2005/646/EC)

- priority substances for monitoring water quality (Commission Decision (EU) 2018/840 and Decision 2455/2001/EC )
- formats of reporting to the European Commission on implementation of Directive 91/271/EEC, relating to urban waste water treatment (Commission Implementing Decision 2014/431/EU).

### 3. Summary of the proposals

This notification covers proposals to fix the following deficiencies:

#### a. Cross-border river management

- The **Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004**, the **Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003** and the **Water Act 2014** contain deficient EU related references, including references to European Directives. To address this, the regulations make minor and technical amendments to EU related references. In particular, the regulations modify the way the references to particular Directives are to be read, to ensure that those references continue to operate effectively after EU Exit.
- For example, various provisions of the Directives place obligations on Member States, and those references are to be read as if they refer to the relevant authority currently responsible for that obligation; in the case of Scotland this will be Scottish Ministers or SEPA, whichever is appropriate.
- Articles of the Directive which place obligations on Member States to notify information to the European Commission are being omitted as they would not be appropriate after EU Exit.
- References to EU Directives or Community legislation or EU Treaties are replaced with “retained EU law” or “retained EU obligations” as appropriate.

#### b. Commission Decisions

- Amendments are proposed to the following Decisions in the field of water environment policy to ensure they will operate effectively as UK retained law:
  - Commission Implementing Decision 2011/321/EU (bathing water quality symbols);
  - Commission Decision (EU) 2017/1583 (microbiological monitoring);
  - Commission Decision (EU) 2018/229 (environmental standards);
  - Commission Decision (EU) 2018/840 (priority substances).
- For example, where the Decisions currently place certain responsibilities on Member States, these will be amended to place those responsibilities on the appropriate body; in the case of Scotland this will be Scottish Ministers or SEPA, whichever is appropriate. Deficient references to Directives are modified in a similar way to the cross-border regulations. Other redundant articles (for example, the standard article addressing the decision to “Member States”) are being omitted as they would not make sense as a matter of domestic law.

- In addition, the following Decisions are now redundant and are being revoked:
  - Decision 2455/2001/EC (priority substances) and Commission Decision 2005/646/EC (register of monitoring sites) – these decisions relate to exercises completed in the past and have no future application;
  - Commission Implementing Decision 2014/431/EU – the UK will no longer be required to report to the Commission, so this decision relating to the format of such reports will become redundant.

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

These changes are necessary to allow the continuation of the effective functioning of this legislation.

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

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

#### **6. Impact on devolved areas**

These changes do not impact on devolved powers, nor on our implementation of the relevant legislation, now or in future.

#### **7. Stakeholder engagement/consultation**

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the law as it is at present, therefore apart from direct discussion with SEPA we have not undertaken any engagement, nor any formal consultation, about these specific amendments. In terms of the water environment, stakeholders will be more interested in any amendments we may make to Scottish legislation at a later stage; and we will carry out focussed engagement at that time.

#### **8. Any other impact assessments?**

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

#### **9. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

Within the cross-border regulations, many obligations properly rest jointly with UK and Scottish Ministers. Given the existing complex mix of reserved/devolved competence, it would be virtually impossible to disaggregate Scottish interests only. Officials have worked with Defra to ensure the drafting delivers for our interests, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

Regarding the European Decisions, there is no policy change and no policy difference between Scotland and other parts of the UK in relation to these issues. It therefore makes sense to fix the straight-forward deficiencies in those at a UK level, in the interests of coherence and efficiency.

**10. Do the proposed changes adhere to the environment and animal principles?**

The proposed changes are minor technical changes and adhere fully to the existing environmental principles. There are no changes relevant to animal welfare.

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

The sole governance issue arising from these proposed changes is the matter of reporting requirements, as reporting to the Commission will no longer be required:

- The revocation of the Commission Implementing Decision on urban waste water treatment removes the requirement for Scotland to report on their compliance with the Urban Waste Water Treatment Directive 91/271/EEC in accordance with the format prescribed by the European Commission. Planned amendments, to be made by SSI, to the Urban Waste Water Treatment (Scotland) Regulations 1994 will require Scottish Ministers to publish reports on levels of compliance.
- Similarly, under the cross-border regulations, reports on the implementation of the Water Framework Directive are still to be prepared and published.

**12. Intended UK laying date**

4 December 2018

**13. Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers' proposal to consent?**

Yes

**14. Information about any time dependency associated with the proposal**

The provisions make small, minor technical changes to preserve the functioning of the regulations, so there is no time dependency associated with the proposals.

**15. Any significant financial implications**

The provisions make small, minor technical changes to preserve the functioning of the legislation, and there are no financial implications associated with the proposals.

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