

NOTIFICATION TO THE SCOTTISH PARLIAMENT

1. Name of the SI

The Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019 (“the Detergents 1 Regulations”).

2. A brief explanation of law that the proposals amend

Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents (the “European Regulation”) establishes rules designed to achieve the free movement of detergents and surfactants for detergents in the internal market while, at the same time, ensuring a high degree of protection of the environment and human health. The European Regulation establishes the standards which a detergent must meet before it can be placed on the market, and also provides for various “competent authority” functions which are currently exercised by the European Commission.

3. Summary of the proposals and how these correct deficiencies

The Detergents 1 Regulations make corrections to ensure operability when the UK leaves the EU and to transfer the safeguarding function to the appropriate UK authorities. The safeguarding function is the power to take measures to remove a detergent from the market where it poses a risk to public health or the environment.

In the Scottish Ministers’ view, only the safeguarding function from the European Regulation can be exercised within devolved competence. The Detergents 1 Regulations transfer the safeguarding function to the Scottish Ministers to the extent the function is within devolved competence.

The Detergents 1 Regulations also correct references to EU legislation and Member States.

4. An explanation of why the change is considered 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 proposals are minor and technical in detail, and ensure continuity of law. The proposals transfer the safeguarding functions to the Scottish Ministers and the Welsh Ministers (to the extent the functions can be exercised within devolved competence) and to the Secretary of State to the extent that the function relates to England or is not within devolved competence. The Scottish Government considers the transfer of functions to be in line with the devolution settlement.

6. Impact on devolved areas

As noted at section 3 above, the Scottish Ministers consider that public health and environmental protection measures in the European Regulation are devolved. The Scottish Ministers are content that the transfer of the safeguarding function to them, to the extent that it can be exercised within devolved competence, is appropriate and in line with the devolution settlement.

A second EU exit SI will also amend the European Regulation, the Detergents (Amendment) (EU Exit) Regulations 2019 (“the Detergents 2 Regulations”). The Scottish Government considers that the provisions in that second SI fall within the scope of the technical standards, product safety and liability and product labelling reservation in the Scotland Act 1998 (Schedule 5, Part II, section C8), and do not impact on devolved matters.

7. 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. 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.

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

The Scottish Ministers consider it necessary to ensure that the relevant legislation is prepared to ensure the continued effective operation of the detergents regime. The Scottish Ministers agree with the policy intention of the proposed Detergents 1 Regulations and are content to consent to those Regulations on the basis that the safeguarding function is the only function currently exercised by the Commission under the European Regulation which falls within devolved competence.

The UK Government has not requested the consent of the Scottish Ministers to the other statutory instrument, the Detergents 2 Regulations, which amends the European Regulation. The Scottish Ministers have accepted that the provisions in that statutory instrument are reserved.

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

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 Detergents 1 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.

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

The Scottish Ministers will shortly 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 environmental governance arrangements once the future relationship is clear.

There are no specific governance issues in relation to this proposal.

12. Intended UK laying date

14 February 2019

13. If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The SI is subject to affirmative procedure and will be laid on 14 February 2019 in draft. The Chancellor of the Duchy of Lancaster Minister for the Cabinet Office has given an undertaking that the UK Government will not schedule debates for affirmative SIs until the Scottish Parliament has given a view on the notification under the protocol. We would welcome a view from the committee as soon as possible, however the Scottish Parliament will have 28 days for consideration if needed under the agreed protocol to consider the proposal to consent to the SI.

14. Information about any time dependency associated with the proposal

There are no time dependencies associated with the proposals in the Detergents 1 Regulations.

15. Any significant financial implications?

There are no financial implications associated with the proposals in the Detergents 1 Regulations.

Lead Official: Joyce Carr
Environmental Quality and Circular Economy Division