

THE WASTE AND AGRICULTURE (LEGISLATIVE FUNCTIONS) REGULATIONS 2021

1. Is the notification Type 1 or Type 2

Type 1

2. Name of the instrument

The Waste and Agriculture (Legislative Functions) Regulations 2021 (“the Regulations”)

3. Summary of the proposal

Parts 2 and 3 of the Regulations transfer some functions which prior to EU exit could be exercised by the European Commission. The functions being transferred are contained within six Directives relating to waste –

- Directive 1999/31/EC on the landfill of waste (as last amended by Directive (EU) 2018/850)
- Directive 2000/53/EC on end-of life vehicles (as last amended by Commission Delegated Directive (EU) 2020/363)
- Directive 2006/21/EC on the management of waste from extractive industries (as last amended by Regulation (EC) 596/2009)
- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (as last amended by Directive (EU) 2018/849)
- Directive 2008/98/EC on waste (as last amended by Directive (EU) 2018/851)
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) (as last amended by Directive (EU) 2018/849).

The Commission’s powers within the six Directives included enabling certain Annexes to Directives to be updated, usually as a result of scientific and technical progress, and allowing the Commission to specify various technical rules and standards. Transferring these powers will allow changes to be made to the domestic regimes which transpose these Directives, for example to keep up to date with the latest scientific understanding.

Part 4 of the Regulations proposes to amend Regulation (EU) No 1306/2013 (“the Horizontal Regulation”) to insert a definition of “appropriate authority” and revoke a provision in a previous deficiency fixing SI that was intended to insert that definition but which failed due to a drafting error.

4. Explanation of law that the proposals amend

The Regulations contains various Chapters conferring functions derived from the six Directives. All of the powers covered by this notification are being conferred on the “appropriate authority”. That is defined as meaning the Scottish Ministers in relation regulations applying in Scotland. However, the definition also includes the Secretary of State, if consent is given by the Scottish Ministers for regulations applying in relation to Scotland. The powers can therefore be exercised in Scotland either by the Scottish Ministers, or by the Secretary of State provided that Scottish Ministers have consented to any regulations. There are powers conferred by the Regulations only on the Secretary of State in relation to end-of-life vehicles, batteries and waste electrical and electronic equipment in reserved matters (for example certain labelling requirements) and these are not covered by this notification.

Chapter 2 of the Regulations covers Directive 1999/31/EC on the landfill of waste which aims to prevent, or reduce as much as possible, any negative impact from landfill on surface water, groundwater, soil, air or human health. The power being conferred derives from Article 15c of the Directive and allows for the specification of a standard for sampling of waste being sent to landfill. The power also allows for modification of Council Decision 2003/33 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC or corresponding domestic legislation. The Landfill (Scotland) Regulations 2003 currently set out criteria and procedures for the acceptance of waste at landfills.

Chapter 3 of the Regulations covers Directive 2000/53/EC on end-of life vehicles. The power being conferred derives from Article 6(6) of the Directive and will allow amendments to be made to conditions of storage and treatment of end-of-life vehicles in light of scientific and technical progress. Part 2 of Schedule to the End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003 currently set out storage and treatment conditions.

Chapter 4 of the Regulations covers Directive 2006/21/EC on the management of waste from extractive industries. Under the powers transferred the Scottish Ministers will be able to amend the Management of Extractive Waste (Scotland) Regulations 2010. The aspects covered by the new powers in these Regulations includes the ability to amend technical guidelines and requirements, definitions relating to the definition of waste, the harmonised standard of sampling and this includes any aspects covered by five previous Commission Decisions in this area.

Chapter 5 of the Regulations covers Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators. The power being conferred derives from Article 15(3) of Directive and allows specification of criteria relating to export of waste batteries. Provision is currently contained in the Waste Batteries and Accumulators Regulations 2009 which apply on a UK basis

Chapter 6 of the Regulations covers Directive 2008/98/EC on waste (the Waste Framework Directive). Two powers being conferred derive from Articles 5 and 6 of the Waste Framework Directive and allow criteria to be prescribed criteria for by-products and end-of-waste status criteria respectively. A further power is conferred which will allow the modification of the specification of the application of the ‘R1’ formula for incineration facilities (relating to categorisation as a recovery rather than

disposal operation). Regulation 2 of the Waste Management Licensing (Scotland) Regulations 2011 sets out the definition of 'recovery' as operations listed in Part III of Schedule 4, which in turn sets out operations listed in Annex II of the Waste Framework Directive and also sets out the R1 formula.

Chapter 7 of the Regulations covers Directive 2012/19/EU on waste electrical and electronic equipment (WEEE). The first power being conferred derives from Article 8(4) of the Directive and allows specification of technologies for the treatment of materials and components of waste electrical and electronic equipment, including modification of any provision corresponding to Annex VII of the Directive. The second power being conferred derives from Article 19 of the Directive and allows modification of any subordinate legislation which corresponds Annex IV (non-exhaustive list of EEE which falls within the categories listed in Annex III to the WEEE Directive), Annex VII (selective treatment for materials and components of waste electrical and electronic equipment) or Annex VIII (technical requirements) of the WEEE Directive. The current provisions on WEEE are contained in **Waste Electrical and Electronic Equipment Regulations 2013** which apply on a UK basis.

Before any of these functions can be exercised in Scotland, there also is a requirement for the appropriate authority to consult the Scottish Environment Protection Agency and any other persons they think appropriate.

Part 4 of the Regulations proposes to amend the Horizontal Regulation, which lays down a framework, now incorporated into UK law as retained EU law, for the finance, management and monitoring of the common agricultural policy, by inserting a definition of "appropriate authority". The inserted definition takes effect in the Horizontal Regulation insofar as it applies to Rural Development and Common Market Organisation.

Part 4 of the Regulations also proposes to amend the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020/1445 (reference AGS05) by revoking regulation 10(2), which sought to insert said definition of "appropriate authority" into the Horizontal Regulation but due to a drafting error (detailed below) did not take effect as planned.

For information, a separate definition of "appropriate authority" exists in the Horizontal Regulation, insofar as it applies to direct payments, and was inserted by the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020/90.

5. Why are these changes necessary?

The transfer of these powers to the Scottish Ministers (or the Secretary of State with the consent of the Scottish Ministers) under Parts 2 and 3 of the Regulations will allow specific changes in relation to these limited areas to be made to the domestic regimes which transposed the Directives, for example to keep up to date with the latest scientific understanding. The powers are being transferred as concurrent powers because in relation to some of the matters there is a mix of devolved and

reserved matters, and there are currently some regulations which already apply on a UK basis.

Part 4 of the Regulations is necessary to correct an error in previous UK deficiency fixing SIs that the UK Government have brought to our attention. The result of the drafting error is that Scottish Ministers are not currently able to exercise the regulation-making powers contained in the Horizontal Regulation, insofar as the Horizontal Regulation applies to Rural Development and Common Market Organisation schemes.

Regulation 3 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019/748 (reference AGTF01) purported to insert a definition of “appropriate authority” into the Horizontal Regulation. Regulation 65 of the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019/831 (reference AGTF02) revoked regulation 3 of AGTF01 and regulation 62 of AGTF02 separately purported to insert a new definition of “appropriate authority” into the Horizontal Regulation. The Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020/1445 (reference AGS05) contained the drafting error that must now be corrected by the Regulations, as it erroneously sought to amend regulation 3 of AGTF01 to contain the “appropriate authority” definition, which had already been revoked by AGTF02 and separately omitted regulation 62 from AGTF02, which would otherwise have inserted the definition of “appropriate authority” into the Horizontal Regulation.

The “appropriate authority” definition is a necessary component of the drafting to provide the Scottish Ministers with the regulation-making powers under the Horizontal Regulation. Accordingly, this error means that Part 4 of the Regulations is necessary to ensure that the Scottish Ministers, the Secretary of State and the other UK administrations are able to exercise the powers contained in the Horizontal Regulation as they apply to Rural Development and Common Market Organisation schemes.

The proposed amendments contained in Part 4 of the Regulations will allow the regulation-making powers in the Horizontal Regulation to be exercised in respect of Scottish devolved matters by the Scottish Ministers or, by the Secretary of State with Scottish Ministers’ consent as was originally intended and as is currently the case in respect of the Horizontal Regulation insofar as it applies to Direct Payments. This approach has been approved by the Scottish Parliament as it provides flexibility but still ensures the devolution settlement is respected.

6. Impact on devolved areas

Parts 2 and 3 of the Regulations contain various powers to make regulations amending certain aspects of domestic waste legislation which corresponds to the provisions of the six Directives. Previously all of these powers could be exercised by the European Commission. For Scotland, the powers are conferred on the Scottish Ministers, or the Secretary of State with the consent of the Scottish Ministers. This provides Scottish Ministers the option to make provision separately for Scotland or, particularly in relation to matters such as end-of-life vehicles, batteries and waste

electronic and electrical equipment, to work with the other governments of the UK on UK wide provisions where there is a mix of devolved and reserved responsibilities.

Part 4 of the Regulations is required to enable Scottish Ministers to exercise powers in devolved areas of the Rural Development and Common Market Organisation schemes.

7. Does the SI relate to a common framework or other scheme?

The provisions in the Regulations which derive from the six waste Directives relate to the Waste and Resources Common Framework, although the provisions do not have any specific impact on the framework as they do not make any policy changes. In future, the use of the any of the regulation-making powers will be covered by the Framework.

Part 4 of the Regulations relates to schemes covered by the framework for Agricultural Support, but will have no impact or effect on this framework as it does not implement any policy change and only corrects an error in previous UK deficiency fixing legislation.

8. Stakeholder engagement/consultation

A consultation was not required because no policy changes are being made in the Regulations.

The UK Government has worked with all of the UK Devolved Administrations in developing and drafting the Regulations.

9. Any other impact assessments?

An Impact Assessment has not been prepared for the Regulations because they only correct errors in UK legislation and repatriate powers to the UK following the UK's withdrawal from the EU.

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

The powers being repatriated by the Regulations from the six Directives are being dealt with in a UK SI in order to reflect overlapping reserved and devolved responsibilities within the area of waste, and it is the most effective way to confer the powers (which were previously conferred on the Commission within these Directives) on Scottish Ministers and/or the Secretary of State as appropriate. 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 provisions.

Part 4 of the Regulations proposes to correct an error made in previous deficiency fixing SIs that the Scottish Ministers' had consented to. The Scottish Ministers

consider that consenting to Part 4 of the Regulations is the most efficient and effective way to correct the error made and deliver the original intentions at the same UK level. Officials have worked with the UK Government to ensure the drafting delivers for and respects devolved competence in Scotland.

11. Intended UK laying date

The current anticipated laying date for the Regulations is 18 November 2021 and it will be subject to the affirmative resolution procedure.

12. Information about any time dependency associated with the proposal

There is no time dependency associated with the proposals.

13. Any significant financial implications?

There are no financial implications associated with the proposals.

SI NOTIFICATION: SUMMARY

Title of Instrument
The Waste and Agriculture (Legislative Functions) Regulations 2021
Proposed laying date at Westminster
18 November 2021
Date by which Committee has been asked to respond
28 days
Power(s) under which SI is to be made
Sections 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018
Categorisation under SI Protocol
Type 1 Notification
Purpose
<p>Parts 2 and 3 of the Regulations transfer some functions which prior to EU exit could be exercised by the European Commission. The functions being transferred are contained within six Directives relating to waste. The Commission's powers within the six Directives included enabling certain Annexes to Directives to be updated, usually as a result of scientific and technical progress, and allowing the Commission to specify various technical rules and standards. Transferring these powers will allow changes to be made to the domestic regimes which transposed these Directives, for example to keep up to date with the latest scientific understanding. The functions being transferred are to be exercisable by the Scottish Ministers, or by the Secretary of State provided that Scottish Ministers have consented.</p> <p>Part 4 of the Regulations proposes to correct a drafting error made in previous deficiency fixing SIs. This correction will ensure that the regulation-making powers under the Horizontal Regulation, insofar as it relates to Rural Development and Common Market Organisation schemes, are available to the Scottish Ministers. This problem does not affect Direct Payments for which these powers are already available. The Scottish Ministers consider that consenting to Part 4 of the Regulations is the most efficient and effective way to correct the error and deliver the original intentions at the same UK level. Officials have worked with the UK Government to ensure the drafting delivers for and respects devolved competence in Scotland.</p>
Other information
N/A
SG Policy contacts:
[Redacted]