

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved provision)

The Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021 is the third fluorinated greenhouse gas (F-gas) and ozone depleting substance (ODS) SI made by the UK Government using powers under the European Union (Withdrawal) Act 2018. The first instrument (the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/583) corrected deficiencies that would arise when EU law was retained in the event of a no-deal EU Exit. That instrument was amended by the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1616), made in December 2020, for the purpose of implementing the Northern Ireland Protocol (which means Northern Ireland remains in the EU regime and the first amending instrument only applies to Great Britain). The Scottish Ministers and the Scottish Parliament consented to both these instruments. Both earlier amending instruments maintained the approach provided by the EU regimes insofar as practicable, ensured our continued compliance with our international obligations under the UN Montreal Protocol, and conferred powers on Scottish Ministers respecting devolved competence (for example, regulation 2(3) of the first instrument defines the Scottish Ministers as “the appropriate authority” in relation to Scotland and the amendments made by the instrument as a whole confer a number of functions on the appropriate authority).

The Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021 amends Commission Implementing Regulation (EU) 2019/661 and Commission Implementing Regulation (EU) 1191/2014 in order to correct deficiencies arising from references that no longer apply now that the United Kingdom has left the EU. References to the Union and Commission are replaced with references to the United Kingdom or, as the case may be, Great Britain and the appropriate regulator respectively. This mirrors the approach taken in the previous two amending instruments and the current amending instrument does not include a policy decision (these changes were not included in the previous instrument due to UK parliamentary procedures relating to NI Protocol legislation).

The deficiencies in EU legislation amended by this instrument relate to:

- In the case of Commission Implementing Regulation (EU) 2019/611, the legislation ensures the smooth functioning of the F-gas quota registry (for which there are only two Scottish participants), setting out information they need to provide to registry, and in particular enables separate undertakings with the same owner to be treated as one (replacing EU definition of beneficial owner with a corresponding definition as applies in UK law);
- In the case of Commission Implementing Regulation (EU) 1191/2014, the legislation determines the format and means for submitting reports on a specific subset of fluorinated gases to ensure alignment with the requirement of the UN Montreal Protocol.

Details of the provisions that Scottish Ministers are being asked to consent to.

The Scottish Ministers are being asked to consent to the whole of the instrument.

Summary of the proposals

The instrument does not include a policy decision and is being made to update references in two Commission Implementing Regulations that are no longer appropriate now that the UK has left the EU. The amended provisions confer powers on the appropriate regulator, which, in relation to Scotland, is SEPA. The approach is consistent with the approach taken for the previous two amending instruments in relation to fluorinated greenhouse gases and ozone-depleting substances. The intended purpose of the amendments is to ensure the smooth functioning of the F-gas registry and ensure that reporting in this area is aligned and fulfils our obligations under the UN Montreal Protocol.

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

The instrument relates to the F-gas and ODS Common Framework. Together with the two preceding instruments, it provides the legislative basis for a shared approach that applies across Great Britain (Northern Ireland remain in the EU regime directly in accordance with the Northern Ireland Protocol).

Summary of stakeholder engagement/consultation

This instrument maintains the previously established policy approach, and makes minor corrections to ensure the legislation is operable. As it is a continuation of the existing approach, on which the UK Government has sought stakeholders' views over the past 3 years, no further stakeholder engagement has been undertaken.

A note of other impact assessments, (if available)

This instrument maintains the policy approach set out in the previous two SIs, and therefore no further impact assessment has been undertaken.

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

The Scottish Ministers propose to consent to this SI because it is consistent with the policy approach agreed in the previous two amending instrument and the current instrument fixes further minor deficiencies.

Intended laying date (if known) of instruments likely to arise

Currently Defra plan to lay the negative instrument for sifting on the 24 March

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

The Scottish Parliament will have 28 days to scrutinise Scottish Ministers' proposal to consent.

Information about any time dependency associated with the proposal

None

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

There are no broader governance issues related to this proposal which is makes minor changes to the previously agreed approach.

Any significant financial implications?

No – as stated above, this instrument is a continuation of the policy approach agreed in the previous two amending instruments. The changes are of a minor technical nature and no further costs are entailed.

SI NOTIFICATION: SUMMARY

Title of Instrument
The Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021
Proposed laying date at Westminster
24 March 2021
Date by which Committee has been asked to respond
22 March 2021
Power(s) under which SI is to be made
Section 8(1) and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018.
Categorisation under SI Protocol
Type 1
Purpose
To update references that are no longer appropriate now that the UK has left the EU, as part of the policy approach agreed in two previous analogous instruments that were consented by Scottish Ministers and Scottish Parliament.
Other information
<p>This SI is consistent with the policy approach scrutinised by ECCLR for two previous SIs:</p> <ul style="list-style-type: none">• SI 2019/583 – December 2018. This corrected deficiencies that would arise when EU law was retained in the event of a no-deal EU Exit.• SI 2020/1616 – October 2020. This amended the first SI for the purpose of implementing the Northern Ireland Protocol.
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