The Justification Decision Powers (EU Exit) Regulations 2018

On Tuesday 25th September 2018 the Scottish Government was asked:

1. Subject to the amendments proposed by the Justification Decision Powers (EU Exit) Regulations 2018, under what procedure would justification decisions under regulation 14(1) of the Justification of Practices Involving Ionising Radiation Regulations 2004 (2004/1796) be made after exit day?

The Justification of Practices Involving Ionising Radiation Regulations 2004 requires the relevant UK and Scottish Ministers to make decisions to approve new practices involving ionising radiation in the form of regulations. The regulations are currently made by powers “including but not limited to powers under section 2(2) of the European Communities Act 1972” (1972 c.68).

It is proposed that the Justification Decision Powers (EU Exit) Regulations 2018 will create a new regulation making power for that purpose exercisable by UK and Scottish Ministers, and the 2004 Regulations will be updated to refer to that new power.

Under the amendments proposed by the 2018 Regulations either the affirmative or the negative procedure may be used (regulation 5(2) and (3)).

For information, the three most recent justification decisions (all made by UK Ministers) are-

1. Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010 (2010/2845);
2. Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010 (2010/2844);

When making legislation under section 2(2), either the affirmative or the negative procedure can be used. Each of these Regulations was made using the affirmative procedure.