The Committee will meet at 9.45 am in the Robert Burns Room (CR1).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 5 and 6 in private. The Committee will also decide whether its review of evidence heard in relation to EU exit and the environment and the EU (Withdrawal) Act 2018 should be taken in private at future meetings.

2. **European Union (Withdrawal) Act 2018:** The Committee will take evidence on the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 from—

   Elspeth MacDonald, Environmental Quality & Circular Economy Division, and Emily Freeman, Directorate of Legal Services, Scottish Government.

3. **European Union (Withdrawal) Act 2018:** The Committee will consider proposals by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

   The Persistent Organic Pollutants (EU Exit) Regulations 2018;
   The Control of Mercury (EU Exit) Regulations 2018;
   The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018;
   The Animal Welfare (Amendment) (EU Exit) Regulations 2018;
   The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018;
   The Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018;
   The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018;
   The Air Quality (Amendment) (EU Exit) (No. 2) Regulations 2018;
   The Marine Environment (Amendment) (EU Exit) Regulations 2018;
   The Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments); and
   The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019.
4. **EU exit and the environment:** The Committee will take evidence from—

Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform;

Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity;

Katriona Carmichael, Deputy Director, Environment and Land Use Strategy, David Barnes, National Adviser for Agriculture, and Mike Palmer, Deputy Director, Marine Scotland, Scottish Government.

5. **EU exit and the environment:** The Committee will review the evidence heard earlier in the meeting.

6. **European Union (Withdrawal) Act 2018:** The Committee will review the evidence heard earlier in the meeting.

Lynn Tullis
Clerk to the Environment, Climate Change and Land Reform Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: ecclr.committee@parliament.scot.

The papers for this meeting are as follows—

**Agenda item 2**

Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019  
PRIVATE PAPER

**Agenda item 3**

Statutory Instrument Notifications - cover note  
PRIVATE PAPER

**Agenda item 4**

EU exit and the environment - cover note  
PRIVATE PAPER
Introduction

1. This paper provides detail of a recent consent notification sent by the Scottish Government on The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019. It also provides background on the process for consideration of consent notifications and detail on the regulations.

2. The Cabinet Secretary for Environment, Climate Change and Land Reform wrote to the Committee on 9 November 2018 providing detail on the consent notification (Annexe A includes the correspondence and consent notification). The Scottish Parliament has until 6 December to report. The notification indicates that DEFRA intend to lay the instrument on 14 December.

3. The Scottish Government has determined this is a category A and B notification. Information about the legislative changes the SI seeks to make are set out in the consent notification.

4. The SI makes changes to the following instruments:
   - The Control of Pollution (Amendment) Act 1989

5. The Regulations also amend retained EU law in this area.

6. The Committee will hear evidence from Scottish Government officials on the consent notification on 4 December. The Committee will consider whether it is content for the Scottish Government to give its consent for UK Ministers to lay the SI.

Background

7. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.

8. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

9. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the UK Parliament legisitating on these devolved matters. The
protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.

10. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

11. Under the protocol, following its consideration of a consent notification, a committee can—

- Write to the Scottish Government confirming its agreement with the consent notification; or

- Report to Parliament and recommend that—
  - it is content for consent to be given for a UK SI to be made in the UK Parliament only.
  - It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
  - It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

12. Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

13. The Waste (Miscellaneous) Amendments (EU Exit) Regulations 2019 (“The Regulations”) are made under powers in section 2(2) of the European Communities Act 1972 and section 8 of the European Union (Withdrawal) Act 2018. They aim to ensure that existing primary legislation dealing with the regulation of waste carriers and the landfill of waste, and EU legislation on various categories of waste batteries, scrap metal (including copper), glass cullet, industrial emissions, hazardous waste, packaging and packaging waste, extractive waste and waste targets are updated and modified to ensure continued functionality after exiting the European Union. Certain provisions relate to England and Wales only – those that update secondary legislation on landfill and extractive waste.

14. The Control of Pollution (Amendment) Act 1989 makes provision for the registration and regulation of carriers of controlled waste and has effect across all of the UK. The Regulations amend this so that carriers from EU member states will no longer be exempt from registration. This has no impact on the registration of UK carriers.

15. Part 1 of the Waste and Emissions Trading Act 2003 (“the 2003 Act”) includes power to create targets in respect of the amount of biodegradable waste going to landfill for England, Wales, Scotland, Northern Ireland and the UK as a whole. At present, the Act requires that these targets must be
consistent with the targets set in the Landfill Directive 1999/31/EC. The relevant provisions of the Landfill Directive are fully transposed by the Landfill (Maximum Landfill Amount) Regulations 2011 by setting targets for biodegradable waste up until end March 2020. The reference to the Landfill Directive targets is therefore no longer needed and the Regulations remove the reference to the Landfill Directive in the Act. The Regulations amend sections 1 and 23 of the 2003 Act to recognise the devolved nature of powers in this area after EU exit: any exercise by the Secretary of State of the power to set new targets can only be with the consent of the relevant devolved administrations. These changes will retain provision for setting of targets for future years by agreement with devolved administrations, although it should be noted that Scotland has already legislated to ban biodegradable municipal waste going to landfill in 2021. Finally, the Regulations amend section 37 of the 2003 Act to ensure that references to the Waste Directive and retained EU law flowing from it is up-to-date and modified so that they will operate effectively on exit. This includes making specific domestic provision for Ministers to make determinations as to what is, and what ceases to be, hazardous waste.

16. The Regulations also amend retained EU law in this area to ensure continued operability of the waste management regime on and after exit day.

Waste Regulatory and Policy Background

17. Scottish Parliaments’ Information Centre (SPICe) has published a Brexit and the Environment briefing which provides a summary of EU Waste legislation and policy. The European Commission has also published a circular economy briefing.

18. The key piece of EU waste legislation is the Waste Framework Directive (2008/98/EC). This Directive includes key definitions, sets a hierarchy for how waste should be managed, introduces the ‘polluter pays principle’ and ‘extended producer responsibility’, and sets recycling targets for 2020. The Directive includes a definition of waste. This legislation is supplemented by further EU legislation on particular sources of waste including:

- The European Landfill Directive (1999/31/EC): requires Member States to develop strategies for reducing landfilling of biodegradable wastes and sets specific reduction targets;
- The European Packaging and Packaging Waste Directive (94/62/EC). Establishes recovery and recycling targets and deadlines for EU Member States to recover and recycle packaging waste.

19. Further directives that relate to particular waste streams, for example vehicles and waste electrical and electronic equipment (WEEE) have also been established.

20. In 2018 the European Commission adopted a wide package of measures designed to implement a circular economy. This work builds on the 2012 Manifesto for a Resource Efficient Europe and the 2015 Circular Economy Package (CEP) that sought to ‘stimulate Europe’s transition towards a circular economy which will boost global competitiveness, foster sustainable economic growth and generate new jobs’.
21. The revised legislative proposals on waste in the CEP set new waste and recycling targets, including a common EU target for recycling 65% of municipal waste and 75% of packaging waste by 2030, and a ban on landfilling separately collected waste. The package will amend the Waste Framework Directive and Packaging Waste Directive. The legislation gives the UK and other member states until July 2020 to bring their national laws into line and the UK Government has committed to doing so post EU Exit.


23. The EU Waste Framework Directive (2008/98/EC) is cited as one of the main policy drivers of The Waste (Scotland) Regulations 2012 which seek to increase the amount and quality of material that is recycled, provide improved recycling services to households and businesses and create conditions that will boost business investment in recycling and materials reprocessing, as well as introducing bans on certain materials being disposed of to landfill, and a requirement on local authorities to provide a collection service for dry recyclables and food waste. In February 2016 the Scottish Government published a circular economy strategy for Scotland.

24. Current Scottish targets on waste are, by 2025:

- reduce total waste arising in Scotland by 15% against 2011 levels
- reduce food waste by 33% against 2013 levels
- recycle 70% of remaining waste
- send no more than 5% of remaining waste to landfill

25. The Scottish Government is also aiming to match the EU ambition for all plastic packaging to be economically recyclable or reusable by 2030. The Scottish Government aims to reach these targets by:

- Improving resource efficiency, for example by discouraging use of single-use materials;
- Reducing and recycling food waste;
- Introducing a deposit return scheme for drinks containers;
- Supporting partners, including local authorities, to tackle litter and flytipping;
- Taking advice from the Expert Panel on Environmental Charging;
- Funding Zero Waste Scotland to deliver waste-reducing initiatives;
- Funding SEPA to regulate on treatment and disposal of waste;
- Delivering the New Plastics Economy global commitment.
Correspondence received from the Scottish Government on 9 November 2018

WASTE (MISCELLANEOUS AMENDMENTS) (EU) EXIT REGULATIONS 2019
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government's views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a no-deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the detail of a SI relating to waste management which the UK Government propose to make and the reasons why I am content that Scottish devolved matters can be included in the SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you in due course.

Yours,

ROSEANNA CUNNINGHAM

WASTE- NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Waste (Miscellaneous Amendments) (EU) Exit Regulations 2019

1. Name of instrument and summary of proposal:

The Waste (Miscellaneous) Amendments (EU Exit) Regulations 2019 (“The Regulations”) are made under powers in section 2(2) of the European Communities Act 1972 and section 8 of the European Union (Withdrawal) Act 2018. They aim to ensure that existing primary legislation dealing with the regulation of waste carriers and the landfill of waste, and EU legislation on
various categories of waste batteries, scrap metal (including copper), glass cullet, industrial emissions, hazardous waste, packaging and packaging waste, extractive waste and waste targets are updated and modified to ensure continued functionality after exiting the European Union. Certain provisions relate to England and Wales only – those that update secondary legislation on landfill and extractive waste.

2. Explanation of law that the proposals amend and summary of the proposals

The Control of Pollution (Amendment) Act 1989 makes provision for the registration and regulation of carriers of controlled waste and has effect across all of the UK. The Regulations amend this so that carriers from EU member states will no longer be exempt from registration. This has no impact on the registration of UK carriers.

Part 1 of the Waste and Emissions Trading Act 2003 (“the 2003 Act”) includes power to create targets in respect of the amount of biodegradable waste going to landfill for England, Wales, Scotland, Northern Ireland and the UK as a whole. At present, the Act requires that these targets must be consistent with the targets set in the Landfill Directive 1999/31/EC. The relevant provisions of the Landfill Directive are fully transposed by the Landfill (Maximum Landfill Amount) Regulations 2011 by setting targets for biodegradable waste up until end March 2020. The reference to the Landfill Directive targets is therefore no longer needed and the Regulations remove the reference to the Landfill Directive in the Act. The Regulations amend sections 1 and 23 of the 2003 Act to recognise the devolved nature of powers in this area after EU exit: any exercise by the Secretary of State of the power to set new targets can only be with the consent of the relevant devolved administrations. These changes will retain provision for setting of targets for future years by agreement with devolved administrations, although it should be noted that Scotland has already legislated to ban biodegradable municipal waste going to landfill in 2021. Finally, the Regulations amend section 37 of the 2003 Act to ensure that references to the Waste Directive and retained EU law flowing from it is up-to-date and modified so that they will operate effectively on exit. This includes making specific domestic provision for Ministers to make determinations as to what is, and what ceases to be, hazardous waste.

The Regulations also amend retained EU law in this area to ensure continued operability of the waste management regime on and after exit day.

EU Regulations

The Regulations amend the definition of various types of waste that appear in multiple EU Regulations to ensure that the definitions are consistent with one another and will continue to operate on exit day as they do now. The Regulations also ensure that where hazardous waste is referred to, there is domestic power available to Ministers to determine that a type or batch of waste as hazardous or non-hazardous. Where obligations are placed on “Member States” in the EU/EC Regulations, these are addressed to ensure that they continue to operate on exit day, or are removed if they are no longer relevant. If an obligation has already been met through domestic action or legislation then the reference to that obligation is removed. Where the obligation continues
to operate it is imposed on the appropriate domestic agencies or authorities which are currently responsible for implementation and/or compliance. In Scotland the appropriate authority or agency can be the Scottish Ministers, the Scottish Environment Protection Agency (“SEPA”), or local authorities. Where a Directive is referred to in an EU Regulation, the Regulations address the text of the Directive to ensure that references to and in that Directive will operate effectively as required on exit day. These are administrative changes that recognise in legislation the domestic situation as it is now and do not involve policy changes.

**Commission Regulation (EU) No. 1103/2010** sets out rules on capacity labelling of rechargeable and automotive batteries and accumulators to assist in reduction of waste, and ensure fair competition. This is modified to reflect EU law as it will be on exit day (including updating references in and to the Waste Framework Directive and the Waste Electrical and Electronic Equipment Directive) and to modify or remove Member State obligations to ensure continued operability by appropriate UK agencies on and after exit day. In Scotland the appropriate agency is SEPA.

**Council Regulation (EU) No. 333/2011** sets out criteria for determining when certain types of scrap metal cease to be waste, and for regulating conformity with those criteria by producers or importers of scrap metal. The Regulations restrict the effect of the retained EU law version of the Council Regulation to the UK, and modify the application of the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Council Regulation so that the criteria continue to be operable by the appropriate UK agencies on and after exit day. It includes transitional provisions to ensure that verification processes continue uninterrupted. In Scotland the appropriate agencies are SEPA and local authorities.

**Commission Regulation (EU) No. 493/2012** sets out rules for calculating the efficiency of recycling processes of waste batteries and accumulators to encourage the improvement of existing recycling and treatment technologies and the development of new ones. The Regulations update references to the Waste Framework Directive, and the Directive on batteries and accumulators itself, as well as updating definitions and ensuring that the relevant UK agencies continue to receive the required information on the recycling of waste from batteries and accumulators. This ensures continued effective operability on exit. In Scotland the relevant agency is SEPA.

**Commission Regulation (EU) No. 1179/2012** sets criteria for determining when glass cullet destined for the production of glass substances or objects ceases to be waste. This helps reduce waste and ensures a viable product for re-use, whilst protecting the environment and human health. The Regulations update references to the Waste Framework Directive in its application to the Commission Regulation, and makes provision for the appropriate UK agencies to continue to operate effectively after exit (including making provision for the continuation of verification processes without interruption). In Scotland the appropriate agencies are SEPA and local authorities.

**Commission Regulation (EU) No. 715/2013** sets criteria for determining when copper scrap ceases to be waste. This helps reduce waste, and enables re-use of copper, whilst ensuring a high level of environmental protection. The
Regulations update references to the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Commission Regulation, and makes provision for the appropriate UK agencies to continue to operate effectively after exit. It makes provisions for the continuation of verification processes without interruption. In Scotland, the appropriate agencies are SEPA and local authorities.

**EU Decisions**

These Regulations make similar amendments in a number of EU Decisions to those made for EU Regulations. They include ensuring that the definitions of waste and hazardous waste continue to operate as described above; removing or redirecting obligations put on Member States to an appropriate agency or authority with domestic responsibility in that area, and ensuring that references to and in EU Directives referred to in the Decisions will operate appropriately on exit day. These are administrative changes that recognise in legislation the domestic situation as it is now and do not involve policy changes.

**Commission Decision 2000/532/EC** establishes a list of hazardous waste under the Waste Framework Directive. The Waste Framework Directive establishes a hierarchy of waste management – prevention, re-use, recycling, recovery and disposal. It also creates categories of waste on the basis of their impact on the environment and human health, to ensure that waste identified as hazardous is treated and stored in accordance with strict conditions. It has been recognised that new technology can have two effects: to create new hazardous substances, as well as creating better treatment processes for hazardous waste. The Directive provides mechanisms for updating the list of waste, and this Decision creating the list of hazardous waste has itself been amended and updated several times. The Regulations update references to the Waste Framework Directive, the Mining Waste Directive and the Industrial Emissions Directive in their application to the Commission Decision, and make provision for the appropriate UK authorities and agencies to continue to operate effectively in respect of hazardous waste after exit. Specific provision has been made for Ministers to make determinations as to what is hazardous waste and what ceases to be hazardous waste as technology develops, and so ensure that such waste is dealt with in a manner that continues to protect the environment and human health. In Scotland, the appropriate authorities and agencies are the Scottish Ministers, SEPA and local authorities.

**Commission Decision 2001/171/EC** establishes a derogation, relaxing the limits of heavy metal concentration levels for glass packaging or packaging waste, to encourage the recycling and re-use of glass packaging. The Regulations amend the Commission Decision to remove redundant references to Member State obligations, and make provision for appropriate UK agencies to ensure its continued monitoring and effectiveness after exit. In Scotland the appropriate agency is SEPA.

**Council Decision 2003/33/EC** establishes criteria and procedures for the acceptance of waste at landfills. The modifications of this Council Decision apply to England and Wales only. Any necessary Scottish modifications will be taken forward in Scottish regulations.
**Commission Decision 2009/292/EC** sets the conditions for a derogation which allows for the use of plastic crate and pallet packaging with higher levels of heavy metal concentrations than normally permitted, where those crates and pallets are kept in product loops which are in a closed and controlled chains and satisfy specified conditions. This is to encourage the re-use and recycling of such crates and pallets, and reduce the amount that requires to be disposed of as waste. The Regulations amend the Commission Decision to remove redundant references to Member State obligations, and make provision for appropriate UK agencies to ensure its continued monitoring and effectiveness after exit. In Scotland the appropriate agency is SEPA.

**Commission Decisions 2009/335/EC; 2009/337/EC; 2009/359/EC and 2009/360/EC** makes provision relating to the management of extractive waste in respect of financial guarantees; criteria for the classification of waste facilities; the definition of inert waste; and technical requirements for waste characterisation. Aside from the changes to the definition of waste which will apply consistently across the UK, the modifications of these Commission Decisions in the Regulations apply to England and Wales only. The necessary Scottish modifications will be taken forward in Scottish regulations.

**Commission Decision 2011/753/EU** sets out rules and calculation methods for compliance with re-use and recycling targets for municipal, construction and demolition waste, established in Article 11(2) of the Waste Directive. The Regulations update references to the Waste Framework Directive, in their application to the Commission Decision and amend the Commission Decision to modify Member State obligations, so that appropriate UK agencies are able to continue monitoring the effectiveness of the targets after exit. In Scotland the appropriate agencies are SEPA, and local authorities.

**Revocations**

The Regulations revoke a number of EU Regulations and Decisions which will no longer have any meaningful effect in the UK post EU-exit. These include Regulations which will have no effect in domestic law post exit as they make minor amendments to EU Directives; and Decisions which deal with issues relating to reporting on progress in implementing or meeting targets in Directives which will have no effect in domestic law after EU exit. A number of provisions of the EEA Agreement are revoked to remove references to Decisions which have been revoked or are no longer relevant.

**3. Why are these changes necessary?**

The waste management regime in Scotland is derived from a comprehensive set of EU legislation, made by way of Directives, with details and updated provisions set out in Regulations and Decisions provided for under those Directives. Whilst the majority of the EU instruments in the area have been transposed into domestic law, and will continue to have full effect on exit day, some have not been fully transposed, some require modification to ensure that they continue to be effective, and some provisions will no longer be relevant on exit. The European Union (Withdrawal) Act 2018 makes some modifications to ensure continued operability of retained EU law in these circumstances, but has recognised that further provision will be necessary in relation to some deficiencies.
These Regulations correct deficiencies arising from the UK's withdrawal from the EU that are not catered for by the 2018 Act, to enable the continued and effective function of domestic transposing provisions and retained EU law. In particular, they make the changes necessary to remove anything which has no practical application in relation to the UK or part of it (or is otherwise redundant); transfer functions in relation to EU entities which will no longer have those functions to appropriate UK bodies; remove provision for arrangements that are dependent on the UK's membership of the EU, or which makes provision in relation to reciprocal or other arrangements which no longer exist or are appropriate.

There is no change of policy on any of the provisions modified by the Regulations, but the 2003 Act is also being amended to reflect the impact of withdrawal from the EU on devolved powers to set landfill targets.

4. Scottish Government categorisation of significance of proposals

The legislation modified by these Regulations is a mix of environmental and market orientated measures which, taken together, encourage the responsible use of materials by producers, help prevent waste, and actively encourage its re-use, recycling and recovery as alternatives to disposal.

Category A - Most of these changes are technical, and provide for a continuation of current functions and responsibilities (particularly of SEPA and local authorities) which flow from EU obligations on the management of waste. The majority of the changes are to ensure continued application and operability of EU Regulations and Decisions which currently apply equally across the UK, even though this is a largely devolved area.

Category B - We consider that the modification to Council Regulations No. 1103/2010 which makes provision for Scottish Ministers to make determinations as regards the classification of hazardous waste classifications falls within Category B. This determination function has been exercised at EU level, and the discretion to make such determinations at UK level has not been exercised to date. We consider it appropriate that the discretion will rest with Scottish Ministers as regards Scotland once the UK leaves the EU.

5. Impact on Devolved Area

Given the mix of environmental and market provisions in this area, reserved and devolved interests are heavily intertwined in the Regulations. However, we take the view that a significant proportion of the Regulations deal with devolved matters, and we have ensured that devolved interests are fully accounted for.

6. 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 stands at present. Therefore, apart from direct discussion with SEPA, we have not undertaken any engagement, nor any formal consultation, about these specific amendments.
7. Any other impact assessments

On the basis that this does not result in any policy changes, there is not a requirement to undertake any impact assessment.

8. Summary of reasons for Scottish Ministers proposing to consent to UK Ministers legislating

The provisions were made at the UK level to reflect the mix of reserved and devolved responsibilities and the UK wide approach taken in the subject matter dealt with in the Regulations. It is the most effective and transparent way to make changes to address deficiencies at the same level. 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 deficiencies.

9. Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?

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 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.

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

Later this year, Scottish Ministers will 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.

We have been engaged in framework discussions with all the administrations of the UK and the relevant regulators specifically looking at the waste regulation in the UK outside of the EU and its existing regime. These framework discussions are progressing. The Scottish Government’s position is that these arrangements should be based on staying closely aligned with the existing EU waste regulatory regime and maintaining existing standards of protection for human health and the environment.

11. Intended laying date

14 December

12. Does the Scottish Parliament have 28 days to scrutinise?

Yes
13. Information about any time dependency associated with the proposal?

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of the prevention of waste, and its effective re-use, recycling and disposal within the UK. In addition, this is likely to be particularly important in providing the standards that will enable the shipment of waste within and out-with the UK.

14. Any significant financial implication?

These regulations make technical amendments to existing regimes to preserve the way they function after exit. There are no significant financial implications associated with the proposals.

15. Additional Information to Note

Waste management is covered by specific EU regulations, some of which are the concern of the Regulations that this notification refers to. However, this is a wide-ranging area of EU law, and a further notification is anticipated in December 2018 to cover the remaining elements.
European Union (Withdrawal) Act 2018

Introduction

1. This paper details recent consent notifications sent by the Scottish Government and provides links to related correspondence on the following UK statutory instruments—

- The Persistent Organic Pollutants (EU Exit) Regulations 2018;
- The Control of Mercury (EU Exit) Regulations 2018;
- The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018;
- The Animal Welfare (Amendment) (EU Exit) Regulations 2018 (transport section only);
- The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018;
- The Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018;
- The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018;
- The Air Quality (Amendment) (EU Exit) (No. 2) Regulations 2018;
- The Marine Environment (Amendment) (EU Exit) Regulations 2018;
- The Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments); and
- The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019.

2. The Committee is invited to consider the consent notifications and agree whether it is content for the Scottish Government to give its consent for UK Ministers to lay the instruments.

Background

3. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.
4. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

5. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the UK Parliament legislating on these devolved matters. The protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.

6. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

7. Under the protocol, following its consideration of a consent notification, a committee can—

- Write to the Scottish Government confirming its agreement with the consent notification; or

- Report to Parliament and recommend that—
  
  o it is content for consent to be given for a UK SI to be made in the UK Parliament only.

  o It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or

  o It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

8. Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

The Persistent Organic Pollutants (EU Exit) Regulations 2018 and the Control of Mercury (EU Exit) Regulations 2018

9. The Cabinet Secretary and Minister for Rural Affairs and the Natural Environment wrote to the Committee on 8 November 2018. The 28-day deadline is 5 December 2018. The Scottish Government has determined this is a category B notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

10. The Committee wrote to the Cabinet Secretary and Minister on 20 November and a response was received on 16 November.
The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018

11. The Minister for Rural Affairs and the Natural Environment wrote to the Committee on 8 November 2018. The 28-day deadline is 5 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

12. The Committee wrote to the Minister seeking further information on 20 November and a response was received on 28 November. The Committee wrote to the Minister seeking further information on 20 November and a response was received on 28 November.

The Animal Welfare (Amendment) (EU Exit) Regulations 2018 (transport section only)

13. The Minister for Rural Affairs and the Natural Environment wrote to the Committee on 8 November 2018. The 28-day deadline is 5 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

14. The Committee did not write to the Scottish Government seeking further information relating to this consent notification.

The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018

15. The Cabinet Secretary wrote to the Committee on 9 November 2018. The 28-day deadline is 6 December 2018. The Scottish Government has determined this is a category B notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

16. The Committee wrote to the Cabinet Secretary on 20 November and a response was received on 26 November.

The Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018

17. The Cabinet Secretary wrote to the Committee on 13 November 2018. The 28-day deadline is 10 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

18. The Committee did not write to the Scottish Government seeking further information relating to this consent notification.
The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018 and the Air Quality (Amendment) (EU Exit) (No. 2) Regulations 2018

19. The Cabinet Secretary wrote to the Committee on 13 November 2018. The 28-day deadline is 10 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

20. The Committee wrote to the Cabinet Secretary on 27 November seeking further information relating to this consent notification and a response was received on 29 November.

The Marine Environment (Amendment) (EU Exit) Regulations 2018

21. The Cabinet Secretary wrote to the Committee on 14 November 2018. The 28-day deadline is 11 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

22. The Committee did not write to the Scottish Government seeking further information relating to this consent notification.

The Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments)

23. The Minister for Rural Affairs and the Natural Environment wrote to the Committee on 15 November 2018. The 28-day deadline is 12 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

24. The Committee did not write to the Scottish Government seeking further information relating to this consent notification. The REC Committee also has an interest in aspects of this notification and will consider this on 5 December.

The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

25. The Minister for Rural Affairs and the Natural Environment wrote to the Committee on 15 November 2018. The 28-day deadline is 12 December 2018. The Scottish Government has determined this is a category A notification and information about the legislative changes the SI seeks to make are set out in the consent notification.

26. The Committee did not write to the Scottish Government seeking further information relating to this consent notification. The REC Committee also has an interest in aspects of this notification and will consider it on 5 December.
For Decision

27. The Committee is invited to consider the consent notifications and agree whether it is content for the Scottish Government to give its consent for UK Ministers to lay the following statutory instruments in the UK Parliament—

- The Persistent Organic Pollutants (EU Exit) Regulations 2018;
- The Control of Mercury (EU Exit) Regulations 2018;
- The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018;
- The Animal Welfare (Amendment) (EU Exit) Regulations 2018 (transport section only);
- Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018;
- The Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018;
- The Air Quality (Amendment etc.) (EU Exit) (No. 1) Regulations 2018;
- The Air Quality (Amendment) (EU Exit) (No. 2) Regulations 2018;
- Marine Environment (Amendment) (EU Exit) Regulations 2018;
- The Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments); and
- The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019.

Clerks/SPICe
Environment, Climate Change and Land Reform Committee
Introduction

1. As part of its work programme discussion on 2 October, the Committee agreed to hear from the Cabinet Secretary for Environment, Climate Change and Land Reform and from the Cabinet Secretary for the Rural Economy on the environmental implications of the UK exit from the EU. The Committee will discuss: the UK agriculture and fisheries bills; ‘no deal scenario planning’; the development of frameworks and regulatory alignment; environmental principles; environmental governance; funding to deliver environmental objectives post EU exit and; the possibility of an Environment bill.

Background

2. The Committee previously considered the UK Withdrawal from the EU (Legal Continuity) (Scotland) Bill and held an inquiry into EU Environmental and Animal Welfare Principles and governance post the UK exit from the EU. The Committee wrote to the Scottish Government in January seeking an update on progress. The Scottish Government responded in February.

3. The Committee received correspondence from the Scottish Government on 2 June with a report from the Roundtable on Environment and Climate Change on environmental governance in Scotland should the UK exit the EU. At its meeting of 5 June the Committee took evidence from the Roundtable on Environment and Climate Change on its report on environmental governance in Scotland after EU withdrawal. The Committee subsequently wrote to the Scottish Government to suggest further work is required to identify what short-term measures are necessary to ensure a smooth transition and to develop and establish the necessary long term measures. A response was received from the Scottish Government on 5 September.

4. The Committee took evidence from the Rt. Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs, on 27 June and wrote to him on 3 July.

5. The Committee has received a number of updates on Environmental Council Meetings from the Scottish Government. The most recent update was received on 26 October.

6. The Committee has also considered a number of notifications to consent from Scottish Ministers seeking the Committee’s approval for the Scottish Government to give its consent for UK Ministers to lay a number of statutory instruments correcting legislative deficiencies, as a result of the UK exit from the EU, in the UK Parliament.

Clerks/SPICe
Environment, Climate Change and Land Reform Committee