16 January 2019

Dear Gillian,

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

The Scottish Parliament recommended on 5 December 2018 that the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 should include Scottish devolved matters, as set out in the notification to the Parliament.

The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 were laid in draft in the UK Parliament on 17 December 2018. I can now confirm that the regulations vary in one respect from the original proposal but that the variation is not so significant as to need any further process. The regulations now include amendments to the Environmental Protection Act 1990 to update references to the Waste Framework Directive; and to modify the application of Waste Framework Directive for the purposes of Part II of that Act (the regulation of waste) so that it continues to function effectively post exit. These changes are of the same nature as those made in the rest of the regulations and do not represent a change of policy or operability post exit.

A copy of the SI can be found on the UK Parliament at https://beta.parliament.uk/work-packages/bQ6Qmvky

The Waste (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2019

In respect of the notification of these Regulations, the Committee has asked -

Environmental principles

The notification states the Regulations are in adherence with the guiding principles on the environment as set out in the Treaty on the Functioning of the European Union. The Regulations implement European directives relating to producer responsibility obligations, which are

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underpinned by a number of additional principles: the waste hierarchy principle, the proximity principle, the producer responsibility principle and the self-sufficiency principle.

Although these principles may be mentioned in specific pieces of UK legislation, and current Regulations may be designed to be compatible with them, they are not necessarily all set out in UK law as underlying principles. The Withdrawal Act 2018 does not commit to maintaining these specific principles.

It would be helpful, therefore, if you could provide further information about how the proposed Regulations will ensure that the above principles of EU waste law are transferred into UK law?

The Scottish Government responds –

As the Committee is aware, the Scottish Government are committed to maintaining or exceeding EU environmental standards and have consistently said that EU Exit must not provide an excuse to lower environmental standards in Scotland, the UK or Europe. In particular, the Scottish Government is committed to ensuring that the EU environmental principles established by the Treaty of the Functioning of the European Union (TFEU) continue to sit at the heart of environmental policy and law in Scotland, guiding our future strategic approach to environmental policy.

The regulations which would be amended by the Waste (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2019 transpose EU legislation which is based on the polluter pays principle referred to in TFEU (of which the “producer responsibility principle” is a part), and on the additional principles referred to by the Committee. That position would continue post exit, and the regulations as amended would form part of EU retained law. Separately the Waste Management Licensing (Scotland) Regulations 2011 restate the waste hierarchy, the proximity principle and the principle of self-sufficiency and place obligations on waste regulation authorities to comply with those principles in regulation of all waste. These obligations will continue to apply to the regulation of waste in Scotland, and will ensure that these principles continue to underpin all waste regulation in Scotland. This includes situations and wastes covered by the retained EU law being amended by the Waste (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2019, and no further transposition of those principles is necessary in that instrument. Further, the principles of proximity and self-sufficiency as far as they apply to transboundary shipment of waste also appear in the Basel convention to which the UK will remain a party post-exit.

Implementation of the Circular Economy Package


What is the Scottish Government’s position on whether and how these updated Directives should be transposed into Scottish and UK law in a no deal scenario? How does the Scottish Government’s position compare with that of the UK Government on this issue?

The Scottish Government responds –

The Scottish Government are committed to maintaining or exceeding EU environmental standards and have consistently said that EU Exit must not provide an excuse to lower

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environmental standards in Scotland, the UK or Europe. On the Circular Economy, Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the revisions made to the Packaging and Packaging Waste, Waste Framework and Landfill of Waste Directives, as part of the European Commission’s Circular Economy Package by 5 July 2020. I can confirm that my officials are working closely with their counterparts in Defra on transposition arrangements for 2020, including analysis of where we already meet the provisions, and where further action and consultation may be required. As always, protection of Scotland’s natural environment is at the heart of this work and we are committed to maintaining or exceeding the standards set by Europe, including in the event of the UK exiting the EU.

Yours  

Roseanna

ROSEANNA CUNNINGHAM