



The Scottish Parliament
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Environment, Climate Change and Land Reform Committee

Comataidh Atharrachadh Clìomaid is Ath-leasachaidh Fearann

Consent Notification considered by the Environment, Climate Change and Land Reform Committee 25 September 2018



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Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



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Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018 and The Justification Decision Powers (EU Exit) Regulations 2018

The Committee reports to Parliament as follows—

1. Ahead of the UK's withdrawal from the European Union, the Scottish Government has [written](#) to the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee of the Scottish Parliament outlining its approach to affording Parliament the opportunity to scrutinise proposals to consent to the UK Government legislating in devolved areas.
2. The Scottish Government and the Scottish Parliament have agreed a protocol for notification of Parliament of Scottish Government proposals.
3. The Scottish Government sent the Environment, Climate Change and Land Reform Committee notification of its intention to consent to the UK Government legislating on devolved matters in the following statutory instruments (SIs):
 - The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018; and
 - The Justification Decision Powers (EU Exit) Regulations 2018
4. It is for the Environment, Climate Change and Land Reform Committee to agree to consider the instrument and determine whether it is content for the Scottish Government to give its consent for UK Ministers to lay a statutory instrument in the UK Parliament on this subject.
5. The Committee considered the notification at its meeting on 25 September 2018 and took evidence from:
 - Charles Stewart Roper, Head of Radioactive Waste and Nuclear Decommissioning Policy Team, Scottish Government; and
 - James Hamilton, Solicitor, Scottish Government
6. The evidence taken, and the debate held, can be found in the Official Report at the following link:
 - [Official Report of Meeting 25 September 2018](#)
7. Following the meeting, the Scottish Government sent two updates on:
 - [Procedures for the regulations made under powers conferred by the Justification of Practices Involving Ionising Radiation Regulations 2004](#); and

- [Future governance and the replication of the function of Euratom following the UK's departure from the EU](#)

8. Having taken evidence and considered the proposal to consent, the Committee agreed to make the following recommendations.
9. The Committee is content for the Scottish Government to give its consent for the UK Ministers to lay a Statutory Instrument in the UK Parliament on the following instruments:
 - The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018; and
 - The Justification Decision Powers (EU Exit) Regulations 2018.
10. The Committee asked the Scottish Government clarify under which procedure regulations made under powers conferred by the Justification of Practices Involving Ionising Radiation Regulations 2004 will be introduced following the UK's exit from the European Union. In the update provided to the Committee, the Scottish Government confirmed that regulations, under the new power in the 2018 regulations, will be subject to either the negative or the affirmative procedure, with the choice between the two procedures being at Scottish Ministers' discretion. The Committee understands this replicates the current position under section 2(2) of the European Communities Act, so the regulations will replace like with like.
11. The Committee remains concerned about the potential governance gap in environmental law at Member State level following the UK's exit from the European Union. The Committee asked the Scottish Government for clarification on this in relation to how the functions of Euratom will be replicated. In the update provided to the Committee the Scottish Government stated regarding this Member State level of enforcement 'we have made clear to the UK Government that it would be unacceptable for these functions to fall to UK Ministers, and this is accepted'. It appears to the Committee that this statement is made in the context of reserved and devolved powers and therefore how the governance gap resulting from the loss of threat of action by the Commission at a Member State level is to be addressed remains unclear.
12. The Committee seeks clarification from the Scottish Government on the proposed arrangements for ensuring the adequacy of national plans and Ministerial actions following the UK withdrawal from the EU.
13. The Committee seeks clarification from the Scottish Government on the proposed arrangements for environmental governance (including enforcement) following the UK withdrawal from the EU.
14. The Committee further recommends that in each forthcoming consent notification, the Scottish Government include information on its consideration of governance in the appropriate area, and how this will be regulated and monitored post-withdrawal.

15. The Committee recommends the Scottish Government update Parliament that the SI is consistent with the notification, asks the Scottish Government to notify the Committee when the UK parliamentary process is complete and provide the Committee with information on the commencement date, once confirmed.
16. The Committee recommends that the Scottish Government provide this information for each Statutory Instrument it notifies Parliament of its intention to consent to, for all Committees of the Scottish Parliament.

