

Net Zero, Energy and Transport Committee

10th Meeting, 2021 (session 6), Tuesday, 16
November 2021

European Union (Withdrawal) Act 2018 Subordinate
legislation - The Storage of Carbon Dioxide (Licensing
etc.) (EU Exit) (Scotland) (Amendment) Regulations
2021 (SSI 2021/354 and SSI2021/383)

Note by the Clerk

Overview of instruments

1. The following two Scottish Statutory Instruments laid under the European Union (Withdrawal) Act 2018 are being considered at today's meeting:
 - [The Storage of Carbon Dioxide \(Licensing etc.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2021 \(SSI 2021/354\)](#)
The instrument was laid before the Parliament on 7 October 2021 and comes into force on 1 December 2021.
 - [Storage of Carbon Dioxide \(Licensing etc.\) \(EU Exit\) \(Scotland\) \(Amendment\) Amendment Regulations 2021 \(SSI 2021/383\)](#)
The instrument was laid before the Parliament on 2 November 2021 and comes into force on 30 November 2021.
2. Both instruments are subject to negative procedure and were made using powers under the European Union (Withdrawal) Act 2018.

Purpose of the instruments

3. SSI 2021/354 corrects deficiencies in the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011. Specifically, it amends definitions, references and expressions related to EU law which require updating or correction following the UK's withdrawal from the EU. The Policy Note states that the Regulations "are purely technical in nature, and only seek

to correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations.”

4. SSI 2021/383 corrects a technical drafting error in SSI 2021/354 before it comes into force on 1 December 2021.
5. The Policy Notes for both SSIs provide further detail on the instruments and are attached in Annexe A (SSI 2021/354) and B (SSI 2021/383).

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered both instruments at [its meeting on 9 November 2021](#). The Committee determined that the appropriate scrutiny procedure has been applied to the instruments and that the SSIs are of low significance. [Read the official report for the meeting on 9 November 2021](#).
7. At the meeting, the Convener noted that the committee had written to the Scottish Government to ask whether regulation 8 of the instrument 2021/354 contained an error in respect of references to certain EU law applying, as they had effect immediately before the implementation period completion day. The Scottish Government, in its response, said that it was grateful to the committee for highlighting the error. It said SSI 2021/383, had since been laid to correct it. This will come into force on Tuesday 30 November, which is a day before the provision containing the error in SSI 2021/ 354 will come into force.
8. The committee agreed to draw instrument 2021/354 to the attention of the Parliament on reporting ground (h), on the basis that the meaning of regulation 8, as outlined in correspondence with the Scottish Government, could be clearer. The committee also agreed to welcome the Scottish Government’s acknowledgment of the drafting error and its lodging of a correcting instrument.
9. The Committee also determined that both instruments had been laid under the appropriate procedure and given the appropriate categorisation.

Committee consideration

10. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2021/354 is 29 November 2021. For SSI 2021/383, the deadline for reporting is 6 December 2021.

Procedure

11. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
12. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
13. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
14. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
15. Each negative instrument appears on the Net Zero, Energy and Transport Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
16. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Policy note

The Storage of Carbon Dioxide (Licensing Etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/354)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018(1) and all other powers enabling them to do so. The instrument is subject to negative procedure.

This instrument will correct deficiencies in the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011. The 2011 Regulations contain definitions, references and expressions related to EU law which require correction following EU Exit. References to European Directives are amended to refer to retained EU law.

Policy Objectives and explanation of the law being amended by the regulations

This SSI will correct deficiencies in Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (the “2011 Regulations”). The 2011 Regulations contain outdated references to EU law which require correction following EU Exit.

The UK Government brought forward similar changes in respect of the licensing regulations for England, Wales and Northern Ireland earlier in 2019 and in 2021. The 2011 Regulations partially implemented Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide by implementing the requirements of the Directive with regard to the licensing regime. The licensing regime for the storage of carbon dioxide in areas within UK territorial waters, and in areas beyond those water which have been designated as a Gas Importation and Storage Zone within the meaning of section 1(5) of the Energy Act 2008, was established by Part 1, Chapter 3 of that Act.

These regulations are purely technical in nature, and correct outdated references following EU Exit. This instrument does not introduce any policy changes.

Statements required by the European Union (Withdrawal) Act 2018

The Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MPS has made the following statements –

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021 do no more than is appropriate”.

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is the case because the changes are minor and technical in nature.”

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts. The amendments are minor and technical in nature and concern amendments to be made to the 2011 Regulations.”

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

The Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MPS has made the following statement -

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

The statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence) is not applicable to this instrument.

Choice of procedure

The instrument is subject to the negative procedure. The amendments within the instrument are considered to be minor and technical in nature and amend Regulations which are all themselves made subject to the negative procedure.

Consultation

These regulations are purely technical in nature, and correct outdated references following EU Exit. They do not fundamentally change the substance of the

2011 Regulations. Therefore, no specific consultation has been carried out in relation to this instrument.

Impact Assessments

These regulations are purely technical in nature, and only seek to correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations. Therefore, no specific impact assessments are required in relation to this instrument.

Financial Effects

The Cabinet Secretary for Net Zero, Energy, and Transport confirms that no Business and Regulatory Impact Assessment is necessary: these regulations are purely technical in nature, and only seek to correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations. The instrument itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Directorate for Energy and Climate Change, 05 October 2021

Policy Note

The Storage Of Carbon Dioxide (Licensing Etc.) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 (SSI 2021/383)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of Instrument This instrument will correct a deficiency in regulation 8 of The Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021, which was signed by the Cabinet Secretary for Net Zero, Energy, and Transport on 05 October 2021. The purpose of that instrument was to correct deficiencies in the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011. The 2011 Regulations contain definitions, references and expressions related to EU law which require correction following EU Exit. References to European Directives are amended to refer to retained EU law.

Policy Objectives and explanation of the law being amended by the regulations

This instrument will correct an error in regulation 8 of The Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Regulations 2021, which was signed by the Cabinet Secretary for Net Zero, Energy, and Transport on 05 October 2021 (“the 2021 regulations”).

This correction is purely technical in nature, and amends the 2021 regulations for clarity. This instrument does not introduce any policy changes.

Statements required by the European Union (Withdrawal) Act 2018 The Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MPS has made the following statements –

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 do no more than is appropriate”.

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is the case because the changes are minor and technical in nature.”

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made Certified copy from legislation.gov.uk Publishing under those Acts. The amendments are minor and technical in nature and concern amendments to be made to the 2011 Regulations.”

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

The Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MPS has made the following statement -

“In my view the Storage of Carbon Dioxide (Licensing etc.) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

The statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence) is not applicable to this instrument.

Choice of procedure

The instrument is subject to the negative procedure. The amendment within the instrument is minor and technical in nature and amend Regulations which are all themselves made subject to the negative procedure.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

Consultation These regulations are purely technical in nature, and correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations. Therefore, no specific consultation has been carried out in relation to this instrument.

Impact Assessments

These regulations are purely technical in nature, and only seek to correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations. Therefore, no specific impact assessments are required in relation to this instrument.

Financial Effects

The Cabinet Secretary for Net Zero, Energy, and Transport confirms that no Business and Regulatory Impact Assessment is necessary: these regulations are purely technical in nature, and only seek to correct outdated references following EU Exit. They do not fundamentally change the substance of the 2011 Regulations. The instrument itself has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Directorate for Energy and Climate Change, 29 October 2021