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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 273**

**EXITING THE EUROPEAN UNION  
ENVIRONMENTAL PROTECTION**

**The Management of Extractive Waste (EU Exit) (Scotland)  
(Miscellaneous Amendments) Regulations 2019**

*Made - - - - 2nd September 2019*

*Laid before the Scottish*

*Parliament - - - - 4th September 2019*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018(2) and all other powers enabling them to do so.

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019.

(2) These Regulations come into force on 30 October 2019, apart from Part 3 which comes into force on exit day.

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(1) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of schedule 1 of the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) 2018 c.16.

## PART 2

### Amendments to Out of Date References in Subordinate Legislation

#### Amendment of the Management of Extractive Waste (Scotland) Regulations 2010

2. The Management of Extractive Waste (Scotland) Regulations 2010(3) are amended in accordance with regulations 3 to 6.

3. In regulation 2(1) (interpretation)—

(a) in the definition of “Category A waste facility”—

(i) for “[Directive 96/82/EC](#)” to “dangerous substances” substitute “[Directive 2012/18/EU](#)”, and

(ii) for paragraph (c) substitute—

“(c) which contains substances or mixtures classified as hazardous under Regulation (EC) No 1272/2008 above a certain threshold;”,

(b) for the definition of “dangerous substance” substitute—

““dangerous substance” means a substance or mixture which is hazardous within the meaning of Regulation (EC) No 1272/2008,”

(c) omit the definition of “[Directive 67/548/EEC](#)”,

(d) omit the definition of “[Directive 76/464/EEC](#)”,

(e) omit the definition of “[Directive 80/68/EEC](#)”,

(f) omit the definition of “[Directive 1999/45/EC](#)”

(g) after the definition of “[Directive 2008/98/EC](#)”, insert—

““[Directive 2012/18/EU](#)” means [Directive 2012/18/EU](#) of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council [Directive 96/82/EC\(4\)](#)”, and

(h) after the definition of “receiving body of water” insert—

““Regulation (EC) No 1272/2008” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives [67/548/EEC](#) and [1999/45/EC](#), and amending Regulation (EC) No 1907/2006(5);”.

4. In regulation 22(1)(c) (construction and management: duties of operator), for “Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#)” substitute “[Directive 2000/60/EC](#)”.

5. In regulation 23 (prevention of water status deterioration, air and soil pollution)—

(a) in paragraph (2) for “Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#)” substitute “[Directive 2000/60/EC](#)”, and

(b) in paragraph (3) for “Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#)” substitute “[Directive 2000/60/EC](#)”.

6. In regulation 27 (after-closure procedures: duties of operator) for “Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#)” substitute “[Directive 2000/60/EC](#)”.

(3) [S.S.I. 2010/60](#).

(4) [OJ L 197, 24.7.2012, p.1](#).

(5) [OJ L 353, 31.12.2008, p.1](#).

## PART 3

### Other Amendments to Subordinate Legislation (EU Exit)

#### **Amendment of the Management of Extractive Waste (Scotland) Regulations 2010**

7. The Management of Extractive Waste (Scotland) Regulations 2010(6) are amended in accordance with regulations 8 to 18.

8.—(1) In regulation 2 (interpretation)—

(2) in paragraph (1)—

(a) before the definition of “the 1997 Act”, insert—

““the 1996 Regulations” means the Special Waste Regulations 1996(7),”

(b) for the definition of “best available techniques” substitute—

““best available techniques” is as defined in Article 2(2) as read with Article 2(3) of [Decision 2012/134/EU](#) establishing the best available techniques (BAT) conclusions under [Directive 2010/75/EU](#) of the European Parliament and of the Council on industrial emissions for the manufacture of glass(8),”

(c) in the definition of “[Directive 2000/60/EC](#)”, at the end insert “, as it had effect immediately before exit day”,

(d) in the definition of “[Directive 2008/98/EC](#)”, at the end insert “, as it had effect immediately before exit day”,

(e) in the definition of “[Directive 2012/18/EU](#)”, at the end insert “, as it had effect immediately before exit day”,

(f) after the definition of “[Directive 2012/18/EU](#)”, insert—

““European Waste Catalogue” is as defined in regulation 1(4) of the 1996 Regulations;”

(g) in the definition of “Regulation (EC) No 1272/2008”, at the end insert “, as it had effect immediately before exit day”, and

(h) in the definition of “unpolluted soil”, before “EU” insert “retained”.

(3) In paragraph (2)—

(a) omit “and in [Directive 2006/21/EC](#) on the management of waste from extractive industries”,

(b) for “that Directive” substitute “[Directive 2006/21/EC](#) on the management of waste from extractive industries(9) as it had effect immediately before exit day”.

9. In regulation 5(3)(b) (transitional provisions), for “or EU legislation” substitute “legislation or retained direct EU legislation”.

10. In regulation 11(1)(j) (waste management plan) for “[Directive 2000/60/EC](#)” substitute “the Water Environment and Water Services (Scotland) Act 2003(10) and the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013(11)”.

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(6) [S.S.I. 2010/60](#).

(7) [S.I. 1996/972](#). Relevant amending instruments are [S.S.I. 2004/112](#), [S.S.I. 2011/226](#), and [S.S.I. 2019/26](#).

(8) OJ L 70, 08.03.2012 p.1 as amended by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations [S.I. 2018/1407](#).

(9) OJ L 102, 11.4.2006, p.15.

(10) 2003 asp 3.

(11) [S.S.I. 2013/323](#).

11. In regulation 12 (consultations before consideration of applications)—
  - (a) in paragraph (2) for “or EU legislation” substitute “legislation or retained direct EU legislation”,
  - (b) in paragraph (3) for “another” substitute “a”, and
  - (c) in paragraph (4) for “another” substitute “a”.
12. In regulation 13 (decision by planning authority)—
  - (a) in paragraph (1) for “or EU legislation” substitute “legislation or retained direct EU legislation”, and
  - (b) in paragraph (5) for “or EU legislation” substitute “legislation or retained direct EU legislation”.
13. In regulation 14(b) (mandatory conditions: general) for “and EU legislation” substitute “legislation or retained direct EU legislation”.
14. In regulation 21 (co-operation with other member states)—
  - (a) in the heading omit “other”, and
  - (b) in paragraph (1) for “another” substitute “a”.
15. In regulation 22(1)(c) (construction and management: duties of operator) omit “EU or”.
16. In regulation 23 (prevention of water status deterioration, air and soil pollution) for paragraph (4)(b) substitute—

“(b) compliance with retained direct EU legislation.”.
17. In schedule 1 (waste management plan: objectives) for “at Community level” in each place where it appears substitute “in retained direct EU legislation”.
18. In schedule 2 (waste characterisation) for paragraph (b) substitute—

“(b) a description of the waste using—

  - (i) the classification of waste according to the European Waste Catalogue with particular regard to its hazardous characteristics;
  - (ii) a reference to the notice published or provided by the Scottish Ministers in relation to a determination made by them under regulation 2ZA, 2ZB or 2ZC of the 1996 Regulations;
  - (iii) evidence that in relation to Wales, England or Northern Ireland the waste is for the time being subject to a determination, made in a manner prescribed in regulation 2ZB(3) of the 1996 Regulations, that it is hazardous;
  - (iv) evidence that in relation to Wales, England or Northern Ireland the waste is for the time being subject to a determination, made in a manner prescribed in section 2ZC(4) of the 1996 Regulations, that it is non-hazardous;”.

St Andrew’s House,  
Edinburgh  
2nd September 2019

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68) and paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (c.16). These Regulations make amendments to legislation concerning the management of extractive waste. The amendments update out of date references to EU instruments which are no longer in force. The amendments also address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(d) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes amendments to the Management of Extractive Waste (Scotland) Regulations 2010. The amendments made ensure that references to the relevant European Union Directives are amended to replace out of date reference to EU law with either equivalent text or references to current EU instruments. References to EU instruments which are no longer in force are removed and, where appropriate, references to repealed EU instruments are replaced with references to current EU equivalents.

Part 3 makes amendments to the Management of Extractive Waste (Scotland) Regulations 2010 to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union by updating, replacing or removing EU references, including references to EU instruments, which will become redundant or will no longer be appropriate after exit day.

No Business and Regulatory Impact Assessment has been prepared in relation to these Regulations, as no impact upon business, charities or voluntary bodies is foreseen.