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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**EXITING THE EUROPEAN UNION**

**ENVIRONMENTAL PROTECTION**

**The Environment (EU Exit) (Scotland) (Amendment etc.)  
(No. 2) Regulations 2019**

*Made* - - - - - *2019*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with paragraph 1(6) of schedule 7 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**PART 1**

**Introductory**

**Citation and commencement**

1. These Regulations may be cited as the Environment (EU Exit) (Scotland) (Amendment etc.) (No. 2) Regulations 2019 and come into force on the later of the following—

- (a) the day after the day on which they are made,
- (b) exit day.

## PART 2

### Amendments of primary legislation relating to withdrawal from the European Union

- 2.—(1) The Regulatory Reform (Scotland) Act 2014<sup>(a)</sup> is amended as follows.
- (2) In section 16 (general purpose: protecting and improving the environment)—
- (a) for subsection (1)(b) substitute—
    - “(b) implementing—
      - (i) the relevant EU instruments, or
      - (ii) any international obligations relating to protecting and improving the environment.”,
  - (b) in subsection (2)—
    - (i) for “subsection (1),” substitute “subsection (1)—  
“the relevant EU instruments” has the same meaning as in paragraph 22(2) of schedule 2, and”,
    - (ii) in the definition of “international obligations” omit “other than obligations to observe and implement EU obligations”.
- (3) In schedule 2 (particular purposes for which provision may be made under section 18)—
- (a) in paragraph 3 (regulators)—
    - (i) for sub-paragraph (3)(b) substitute—
      - “(b) directions given for the purpose of the implementation of—
        - (i) the relevant EU instruments, or
        - (ii) any international obligations of the United Kingdom relating to protecting and improving the environment,”,
    - (ii) after sub-paragraph (3) insert—
      - “(4) In sub-paragraph (3)(b) “the relevant EU instruments” has the same meaning as in paragraph 22(2) of this schedule.”,
  - (b) in paragraph 22 (general) for sub-paragraphs (1)(b) and (2) substitute—
    - “(b) any provision (not being a provision within any of paragraphs 1 to 21 or paragraph (a)) that might be made by an Act of the Scottish Parliament in connection with the relevant EU instruments, other than provision—
      - (i) imposing or increasing taxation,
      - (ii) taking effect from a date earlier than that of the making of the instrument containing the provision,
      - (iii) conferring any power to legislate by means of order, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal.
- (2) In sub-paragraph (1)(b) “the relevant EU instruments” means—
- (a) Council Directive 91/271/EEC concerning urban waste water treatment<sup>(b)</sup>,

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<sup>(a)</sup> 2014 asp 3.

<sup>(b)</sup> OJ L 135, 30.5.1991, p.40, as relevantly amended by Commission Directive 98/15/EC (OJ L 67, 7.3.1998, p.29), Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1) and Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1). Commission Directive 98/15/EC was corrected by Corrigendum (OJ L 139, 2.6.1999, p.34) and Corrigendum (OJ L 189, 17.7.2015, p.41).

- (b) Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources**(a)**,
- (c) European Parliament and Council Directive 94/62/EC on packaging and packaging waste**(b)**,
- (d) Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)**(c)**,
- (e) Council Directive 1999/31/EC on the landfill of waste**(d)**,
- (f) Directive 2000/53/EC of the European Parliament and of the Council on end-of life vehicles**(e)**,
- (g) Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy**(f)**,
- (h) Directive 2002/49/EC of the European Parliament and of the Council relating to the assessment and management of environmental noise**(g)**,
- (i) Directive 2006/7/EC of the European Parliament and of the Council concerning the management of bathing water quality and repealing Directive 76/160/EEC**(h)**,
- (j) Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC**(i)**,
- (k) Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration**(j)**,
- (l) Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe**(k)**,

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- (a) OJ L 375, 31.12.1991, p.1, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1) and Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1).
  - (b) OJ L 365, 31.12.1994, p.10, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1), Directive 2004/12/EC (OJ L 47, 18.2.2004, p.26), Directive 2005/20/EC (OJ L 70, 16.3.2005, p.17), Regulation (EC) No 219/2009 (OJ L 87, 31.3.2009, p.109), Commission Directive 2013/2/EU (OJ L 37, 8.2.2013, p.10), Directive (EU) 2015/720 (OJ L 115, 6.5.2015, p.11) and Directive (EU) 2018/852 (OJ L 150, 14.6.2018, p.141).
  - (c) OJ L 243, 24.9.1996, p.31, as amended by Regulation (EC) No 596/2009 (OJ L 188, 18.7.2009, p.14).
  - (d) OJ L 182, 16.7.1999, p.1, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1), Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1), Council Directive 2011/97/EU (OJ L 328, 10.12.2011, p.49) and Directive (EU) 2018/850 (OJ L 150, 14.6.2018, p.100).
  - (e) OJ L 269, 21.10.2000, p.34, as amended by Commission Decision 2002/525/EC (OJ L 170, 29.6.2002, p.81), Commission Decision 2005/63/EC (OJ L 25, 28.1.2005, p.73), Commission Decision 2005/438/EC (OJ L 152, 15.6.2005, p.19), Council Decision 2005/673/EC (OJ L 254, 30.9.2005, p.69), Directive 2008/33/EC (OJ L 81, 20.3.2008, p.62), Commission Decision 2008/689/EC (OJ L 225, 23.8.2008, p.10), Directive 2008/112/EC (OJ L 345, 23.12.2008, p.68), Commission Decision 2010/115/EU (OJ L 48, 25.2.2010, p.12), Commission Directive 2011/37/EU (OJ L 85, 31.3.2011, p.3), Commission Directive 2013/28/EU (OJ L 135, 22.5.2013, p.14), Commission Directive (EU) 2016/774 (OJ L 128, 19.5.2016, p.4), Commission Directive (EU) 2017/2096 (OJ L 299, 16.11.2017, p.24) and Directive (EU) 2018/849 (OJ L 150, 14.6.2018, p.93).
  - (f) OJ L 327, 22.12.2000, p.1, as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p.1), Directive 2008/32/EC (OJ L 81, 20.3.2008, p.60), Directive 2008/105/EC (OJ L 348, 24.12.2008, p.84), Directive 2009/31/EC (OJ L 140, 5.6.2009, p.114), Directive 2013/39/EU (OJ L 226, 24.8.2013, p.1), Directive 2013/64/EU (OJ L 353, 28.12.2013, p.8) and Commission Directive 2014/101/EU (OJ L 311, 31.10.2014, p.32).
  - (g) OJ L 189, 18.7.2002, p.12, as amended by Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1) and Commission Directive (EU) 2015/996 (OJ L 168, 1.7.2015, p.1), Regulation (EU) 2019/10/10 (OJ L 170, 25.6.2019, p.115) and Regulation (EU) 2019/1243 (OJ L 198, 25.7.2019, p.241). Commission Directive (EU) 2015/996 was corrected by Corrigendum (OJ L 005, 10.1.2018, p.35).
  - (h) OJ L 64, 4.3.2006, p.37, as amended by Regulation (EC) No 596/2009 (OJ L 188, 18.7.2009, p.14) and Directive 2013/64/EU (OJ L 353, 28.12.2013, p.8).
  - (i) OJ L 266, 26.9.2006, p.1, as amended by Directive 2008/12/EC (OJ L 76, 19.3.2008, p.39), Directive 2008/103/EC (OJ L 327, 5.12.2008, p.7), Directive 2013/56/EU (OJ L 329, 10.12.2013, p.5) and Directive (EU) 2018/849 (OJ L 150, 14.6.2018, p.93), and as corrected by Corrigendum (OJ L 311, 10.11.2006, p.58).
  - (j) OJ L 372, 27.12.2006, p.19, as amended by Commission Directive 2014/80/EU (OJ L 182, 21.6.2014, p.52).
  - (k) OJ L 152, 11.6.2008, p.1, as amended by Commission Directive (EU) 2015/1480 (OJ L 226, 29.8.2015, p.4). Commission Directive (EU) 2015/1480 was corrected by Corrigendum (OJ L 72, 14.3.2019, p.141).

- (m) Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives(a),
- (n) Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council(b),
- (o) Commission Directive 2009/90/EC laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status(c),
- (p) Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations(d),
- (q) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(e),
- (r) Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products(f),
- (s) Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals(g),
- (t) Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)(h),
- (u) Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom(i),
- (v) Directive (EU) 2015/2193 of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants(j),
- (w) Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008(k),
- (x) Directive (EU) 2019/904 of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment(l),
- (y) Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants(m).

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- (a) OJ L 312, 22.11.2008, p.3, as amended by Commission Regulation (EU) No 1357/2014 (OJ L 365, 19.12.2014, p.89), Commission Directive (EU) 2015/1127 (OJ L 184, 11.7.2015, p13), Council Regulation (EU) 2017/997 (OJ L 150, 14.6.2017, p.1) and Directive (EU) 2018/851 (OJ L 150, 14.6.2018, p.109). Commission Directive (EU) 2015/1127 was corrected by Corrigendum (OJ L 297,13.11.2015, p.9) and Commission Regulation (EU) No 1357/2014 was corrected by Corrigendum (OJ L 42, 18.2.2017, p.43).
  - (b) OJ L 348, 24.12.2008, p.84, as amended by Directive 2013/39/EU (OJ L 226, 24.8.2013, p.1).
  - (c) OJ L 201, 1.8.2009, p.36.
  - (d) OJ L 285, 31.10.2009, p.36, as amended by Commission Directive 2014/99/EU (OJ L 304, 23.10.2014, p.89) and Regulation (EU) 2019/1243 (OJ L 198, 25.7.2019, p.241).
  - (e) OJ L 334, 17.12.2010, p.17, as corrected by Corrigendum (OJ L 158, 19.6.2012, p.25).
  - (f) OJ L 167, 27.6.2012, p.1, as amended by Commission Delegated Regulation (EU) No 736/2013 (OJ L 204, 31.7.2013, p.25), Commission Delegated Regulation (EU) No 837/2013 (OJ L 234, 3.9.2013, p.1) and Regulation (EU) No 334/2014 of the European Parliament and of the Council (OJ L 103, 5.4.2014, p.22), and as corrected by Corrigendum (OJ L 280, 28.10.2017, p.57).
  - (g) OJ L 201, 27.7.2012, p.60, as amended by Commission Delegated Regulation (EU) No 1078/2014 (OJ L 297, 15.10.2014, p.1), Commission Delegated Regulation (EU) 2015/2229 (OJ L 317, 3.12.2015, p.13), Commission Delegated Regulation (EU) 2018/172 (OJ L 32, 6.2.2018, p.6) and Commission Delegated Regulation (EU) 2019/330 (OJ L 59, 27.2.2019, p.1). Commission Delegated Regulation (EU) No 1078/2014 was corrected by Corrigendum ( OJ L 363, 18.12.2014, p.185).
  - (h) OJ L 197, 24.7.2012, p.38, as amended by Directive (EU) 2018/849 (OJ L 150, 14.6.2018, p.93).
  - (i) OJ L 13, 17.1.2014, p.1.
  - (j) OJ L 313, 28.11.2015, p.1.
  - (k) OJ L 137, 24.5.2017, p.1.
  - (l) OJ L 155, 12.6.2019, p.1.
  - (m) OJ L 169, 25.6.2019, p.45.

- (3) In sub-paragraph (1)(b)(iii), the reference to provision conferring any power to legislate does not include provision—
- (a) amending or extending a power to legislate conferred other than under this paragraph,
  - (b) giving directions as to matters of administration.
- (4) Making provision about the application of the regulations to the Crown.”,
- (c) paragraph 30 (power to specify EU instruments for the purposes of paragraph 22) and the cross-heading immediately preceding it is repealed.

## PART 3

### Amendments of secondary legislation relating to withdrawal from the European Union

**3.** In regulation 2(1) (interpretation) of the Landfill Allowances Scheme (Scotland) Regulations 2005(a) for the definition of “European Waste Catalogue”(b) substitute—

““European Waste Catalogue” has the same meaning as in regulation 1(4) of the Special Waste Regulations 1996(c).”.

**4.—**(1) The National Waste Management Plan for Scotland Regulations 2007(d) are amended as follows.

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

(a) after the definition of “the 1990 Act” insert—

““best available techniques” has the meaning given 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(e).”.

(b) for the definition of “hazardous waste” substitute—

““hazardous waste” means any waste which is “special waste” as defined in regulation 2 of the Special Waste Regulations 1996(f).”.

(3) In the schedule (objectives for the purposes of the national waste management plan) in paragraph 3(a)(g)—

(a) for “European Union as a whole to become” substitute “Scotland to move towards the aim of becoming”, and

(b) omit “and the Member States individually to move towards that aim.”.

**5.—**(1) The Waste Batteries (Scotland) Regulations 2009(h) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “battery” substitute—

““battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include—

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(a) S.S.I. 2005/157.

(b) Definition substituted by S.S.I. 2015/188.

(c) S.I. 1996/972, as relevantly amended by S.S.I. 2011/226.

(d) S.S.I. 2007/251, amended by S.I. 2011/1043, S.S.I. 2011/226, S.S.I. 2015/438 and S.S.I. 2018/391.

(e) OJ L 70, 8.3.2012, p.1.

(f) S.I. 1996/972, as relevantly amended by S.S.I. 2004/112 and S.S.I. 2011/226.

(g) As relevantly amended by S.I. 2011/1043.

(h) S.S.I. 2009/247.

- (a) equipment connected with the protection of essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes, or
- (b) equipment designed to be sent into space,”
- (b) for the definition of “waste battery”(a) substitute—

““waste battery” means any battery which the holder discards or intends or is required to discard.”.

**6.**—(1) The Waste Management Licensing (Scotland) Regulations 2011(b) are amended as follows.

(2) In schedule 4 (waste framework directive) in paragraph 6(4)(b)—

- (a) for “European Union as a whole to become” substitute “Scotland to move towards the aim of becoming”,
- (b) omit “and the Member States individually to move towards that aim,”.

## PART 4

### Revocations

**7.** The Orders specified in the Schedule to these Regulations are revoked.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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(a) Definition substituted by S.S.I. 2011/226 and amended by S.S.I. 2018/391.  
(b) S.S.I. 2011/228 as relevantly amended by S.I. 2011/1043.

## SCHEDULE Revocations

Regulation 7

<i>Orders revoked</i>	<i>References</i>
The Pollution Prevention and Control (Designation of Council Directives on Large Combustion Plants and National Emission Ceilings) (Scotland) Order 2002	S.S.I. 2002/488
The Pollution Prevention and Control (Designation of Landfill Directive) (Scotland) Order 2003	S.S.I. 2003/185
The Pollution Prevention and Control (Designation of Waste Incineration Directive) (Scotland) Order 2003	S.S.I. 2003/204
The Pollution Prevention and Control (Designation of Solvent Emissions Directive) (Scotland) Order 2003	S.S.I. 2003/600
The Pollution Prevention and Control (Designation of Public Participation Directive) (Scotland) Order 2005	S.S.I. 2005/461
The Pollution Prevention and Control (Designation of Batteries Directive) (Scotland) Order 2008	S.S.I. 2008/86
The Pollution Prevention and Control (Designation of Directives) (Scotland) Order 2010	S.S.I. 2010/131
The Pollution Prevention and Control (Designation of Classification of Substances and Mixtures Directive) (Scotland) Order 2010	S.S.I. 2010/235
The Pollution Prevention and Control (Designation of Energy Efficiency Directive) (Scotland) Order 2013	S.S.I. 2013/321
The Pollution Prevention and Control (Designation of Medium Combustion Plant Directive) (Scotland) Order 2017	S.S.I. 2017/322
The Regulatory Reform (Specification of Basic Safety Standards Directive) (Scotland) Order 2018	S.S.I. 2018/192
The Regulatory Reform (Specification of EU Instruments) (Scotland) Order 2019	S.S.I. 2019/304

## EXPLANATORY NOTE

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

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018.

These Regulations make amendments to legislation relating to waste and the protection of the environment to 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 amends the Regulatory Reform (Scotland) Act 2014 and Part 3 amends subordinate legislation concerning waste.

Part 4 and the schedule contain revocations. The schedule revokes subordinate legislation in consequence of amendments made to the Pollution Prevention Control Act by Part 2 of the Environment (Amendment etc.) (EU Exit) Regulations 2019 and to the Regulatory Reform (Scotland) Act 2014 by these Regulations.

A business and regulatory impact assessment has not been produced for this instrument as no, or no significant, impact upon business, charities or voluntary bodies is foreseen.

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