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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 276**

**EXITING THE EUROPEAN UNION  
ENVIRONMENTAL PROTECTION**

The Environmental Liability etc. (EU Exit)  
(Scotland) (Amendment) Regulations 2019

*Made - - - - 3rd September 2019*  
*Laid before the Scottish*  
*Parliament - - - - 5th September 2019*  
*Coming into force in accordance with regulation 1*

The Scottish Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1), paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018(2), and all other powers enabling them to do so.

**PART 1**

Introductory

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 and come into force—

- (a) as regards this Part, Part 2 and Part 3, on 31 October 2019, and
- (b) as regards Part 4, on exit day.

(2) These Regulations extend to Scotland only.

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(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (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 the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), schedule, Part 1. 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. Section 2(2) is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) from exit day (see section 20 of that Act). The power in section 2(2) is exercised in relation to Parts 2 and Part 3 of these Regulations.

(2) 2018 c.16.

## PART 2

### Amendments to the Environmental Liability (Scotland) Regulations 2009

- 2.—(1) The Environmental Liability (Scotland) Regulations 2009<sup>(3)</sup> are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) omit the definition of “[Directive 79/409/EEC](#)”,
  - (b) after the definition of “[Directive 2008/56/EC](#)”<sup>(4)</sup> insert—
 

“[Directive 2009/147/EC](#)” means [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds<sup>(5)</sup>,”
  - (c) in the definition of “protected species and natural habitats” in both places it occurs, for “[Directive 79/409/EEC](#)” substitute “[Directive 2009/147/EC](#)”.
- (3) In regulation 5(a) (exemptions) for “[Directive 79/409/EEC](#)” substitute “[Directive 2009/147/EC](#)”.
- (4) After regulation 7 (competent authority), insert—

#### “7A. Reporting requirements

- (1) In the event that a competent authority other than the Scottish Ministers becomes aware that environmental damage has occurred, whether by virtue of the circumstances specified in paragraph (3) or otherwise, it must, as soon as reasonably practicable, notify the Scottish Ministers, providing the information in paragraph (2).
- (2) The information is—
- (a) the type of damage, and its classification in accordance with regulation 4(1)(a), (b) or (c),
  - (b) the date that the damage occurred or was discovered, and
  - (c) a description of the activity causing the damage, as listed in schedule 1.
- (3) For the purposes of paragraph (1), a competent authority becomes aware that environmental damage has occurred if—
- (a) it has received potential remedial measures from an operator submitted for approval under regulations 11(2) or (3),
  - (b) it has received a notification from an operator under regulation 12(1)(a),
  - (c) it is satisfied on the basis of information provided to it by an operator following a request under regulations 12(2) or (3)(a), that environmental damage has occurred,
  - (d) it is satisfied that remedial measures are necessary under regulations 12(3) or (4), or
  - (e) it is satisfied on the basis of a request from an interested person under regulation 14(2) that environmental damage has occurred.”
- (5) In schedule 1 (activities for the purposes of regulation 4(1))—
- (a) for paragraphs 1 and 2 substitute—
 

“1. The operation of installations subject to permit in pursuance of—

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<sup>(3)</sup> S.S.I. 2009/266, amended by S.I. 2011/1043, S.S.I. 2011/116 and S.S.I. 2015/214.

<sup>(4)</sup> Definition inserted by S.S.I. 2015/214.

<sup>(5)</sup> OJ L 20, 26.1.2010, p.7, last amended by Regulation (EU) 2019/1010 (OJ L 170, 25.6.2019, p.115).

- (a) Council [Directive 96/61/EC](#) of 24 September 1996 concerning the integrated pollution prevention and control(6) in respect of all activities listed in Annex I to that Directive with the exception of installations or parts of installations used for research, development and testing of new products and processes,
- (b) [Directive 2008/1/EC](#) of the European Parliament and of Council of 15 January 2008 concerning integrated pollution prevention and control(7) in respect of all activities listed in Annex I to that Directive with the exception of installations or parts of installations used for research, development and testing of new products and processes, or
- (c) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)(8).

2.—(1) Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of—

- (a) Council [Directive 91/689/EEC](#) of 12 December 1991 on hazardous waste(9),
- (b) [Directive 2006/12/EC](#) of the European Parliament and of Council of 5 April 2006 on waste(10),
- (c) [Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste(11).

(2) The operation of—

- (a) landfill sites under Council [Directive 1999/31/EC](#) of 26 April 1999 on the landfill of waste(12), or
- (b) incineration plants under—
  - (i) [Directive 2000/76/EC](#) of the European Parliament and of the Council of 4 December 2000 on the incineration of waste(13), or
  - (ii) [Directive 2010/75/EU](#) of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

(3) Sub-paragraphs (1) and (2) do not apply to operations to the extent to which they include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for the purposes of agriculture (within the meaning of regulation 2 of the Sludge (Use in Agriculture) Regulations 1989(14)).”

(b) for paragraph 4 substitute—

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(6) OJ L 257, 10.10.1996, p.26, last amended by Regulation (EC) No. 166/2006 (OJ L 33, 4.2.2006, p.1) and repealed by [Directive 2008/1/EC](#) (OJ L 24, 29.1.2008, p.8).

(7) OJ L 24, 29.1.2008, p.8, amended by [Directive 2009/31/EC](#) (OJ L 140, 5.6.2009, p.114) and repealed by [Directive 2010/75/EU](#) (OJ L 334, 17.12.2010, p.17).

(8) OJ L 334, 17.12.2010, p.17.

(9) OJ L 377, 31.12.1991, p.20, last amended by [Directive 2008/98/EC](#) (OJ L 312, 22.11.2008, p.3) and repealed by [Directive 2008/98/EC](#) (OJ L 312, 22.11.2008, p.3).

(10) OJ L 114, 27.4.2006, p.9, last amended by [Directive 2009/31/EC](#) (OJ L 140, 5.6.2009, p.114) and repealed by [Directive 2008/98/EC](#) (OJ L 312, 22.11.2008, p.3).

(11) OJ L 312, 22.11.2008, p.3, last amended by Directive (EU) 2018/851 (OJ L 150, 14.6.2018, p.109).

(12) OJ L 182, 16.7.1999, p.1, last amended by Directive (EU) 2018/850 (OJ L 150, 14.6.2018, p.100).

(13) OJ L 332, 28.12.2000, p.91, corrected in OJ L 145, 31.5.2001, p.52, last amended by Regulation (EC) No. 1137/2008 (OJ L 311, 21.11.2008, p.1) and repealed by [Directive 2010/75/EU](#) (OJ L 334, 17.12.2010, p.17).

(14) S.I. 1989/1263.

“4. All discharges of substances into groundwater which require prior authorisation in pursuance of—

- (a) Council [Directive 80/68/EEC](#) of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances<sup>(15)</sup>,
- (b) [Directive 2006/118/EC](#) of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration<sup>(16)</sup>.”,
- (c) for paragraphs 7 and 8 substitute—

“7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of—

- (a) dangerous substances as defined in Article 2(2) of Council [Directive 67/548/EEC](#) of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances<sup>(17)</sup>,
- (b) hazardous substances as defined in Article 3 of Regulation [\(EC\) No. 1272/2008](#) of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures<sup>(18)</sup>,
- (c) dangerous preparations as defined in Article 2(2) of [Directive 1999/45/EC](#) of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations<sup>(19)</sup>,
- (d) plant protection products which has the same meaning as in Article 2(1) of Regulation [\(EC\) No 1107/2009](#) of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market<sup>(20)</sup>,
- (e) biocidal products as defined in Article 2(1)(a) of [Directive 98/8/EC](#) of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market<sup>(21)</sup> or as defined in Article 3(1)(a) of Regulation (EU) No. 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products<sup>(22)</sup>.

8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in—

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(15) OJ L 20, 26.1.1980, p.43, amended by [Directive 91/692/EEC](#) (OJ L 377, 31.12.1991, p.48) and repealed by [Directive 2000/60/EC](#) (OJ L 327, 22.12.2000, p.1).

(16) OJ L 372, 27.12.2006, p.19, amended by Commission [Directive 2014/80/EU](#) (OJ L 182, 21.6.2014, p.52).

(17) OJ L 196, 16.8.1967, amended by Council [Directive 2013/21/EU](#) (OJ L 158, 10.6.2013, p.240) and repealed by Regulation [\(EC\) 1272/2008](#) (OJ L 353, 31.12.2008, p.1).

(18) OJ L 353, 31.12.2008, p.1; last amended by Commission Regulation (EU) 2017/776; last amended by Commission Regulation (EU) 2017/776 (OJ L 116, 5.5.2017, p.1).

(19) OJ L 200, 30.7.1999, p.1, amended by Council [Directive 2013/21/EU](#) (OJ L 158, 10.6.2013, p.240) and repealed by Regulation [\(EC\) No 1272/2008](#) (OJ L 353, 31.12.2009, p.1).

(20) OJ L 309, 24.11.2009, p.1, as last amended by Commission Regulation (EU) 2018/605 (OJ L 101, 20.4.2018, p.33).

(21) OJ L 123, 24.4.1998, p.1, as last amended by Commission [Directive 2013/44/EU](#) (OJ L 204, 31.7.2013, p.49) and repealed by Regulation (EU) No 528/2012 (OJ L 167, 27.6.2012, p1).

(22) OJ L 167, 27.6.2012, p.1, last amended by Regulation (EU) No. 334/2014 (OJ L 103, 5.4.2014, p.22).

- (a) Annex A to Council [Directive 94/55/EC](#) of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road(23),
  - (b) the Annex to Council [Directive 96/49/EC](#) of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail(24),
  - (c) Council [Directive 93/75/EEC](#) of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods(25),
  - (d) [Directive 2002/59/EC](#) of the European Parliament and of the Council of 27th June 2002 establishing a Community vessel traffic monitoring and information system(26),
  - (e) [Directive 2008/68/EC](#) of the European Parliament and of the Council of 24th September 2008 on the inland transport of dangerous goods(27).”,
- (d) in paragraph 9 for “Council [Directive 90/219/EEC](#) of 23 April 1990 on the contained use of genetically modified micro-organisms” substitute “[Directive 2009/41/EC](#) of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms(28)”.

## PART 3

### Amendments to the Sulphur Content of Liquid Fuels (Scotland) Regulations 2014

3.—(1) The Sulphur Content of Liquid Fuels (Scotland) Regulations 2014(29) are amended as follows.

(2) In regulation 4(1) (maximum sulphur content of heavy fuel oil) for “paragraph (2)” substitute “paragraphs (2) and (3)”.

(3) In the schedule (sulphur content of liquid fuels permit), in paragraph 6—

- (a) in the opening line omit “intended to be”,
- (b) in sub-paragraphs (a) and (b) omit “intended” in each place where it occurs.

## PART 4

### Amendments to the Environmental Liability (Scotland) Regulations 2009: exiting the European Union

4.—(1) The Environmental Liability (Scotland) Regulations 2009 are amended as follows.

(2) For regulation 3 substitute—

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- (23) OJ L 319, 12.12.1994, p.7, last amended by Commission [Directive 2006/89/EC](#) (OJ L 305, 4.11.2006, p.4) and repealed by [Directive 2008/68](#) (OJ L 260, 30.9.2008, p.13).
- (24) OJ L 235, 17.9.1996, p.25, last amended by Commission [Directive 2006/90/EC](#) (OJ L 305, 4.11.2006, p.6) and repealed by [Directive 2008/68](#) (OJ L 260, 30.9.2008, p.13).
- (25) OJ L 247, 5.10.1993, p.19, last amended by [Directive 2002/84/EC](#) (OJ L 324, 29.11.2002, p.53) and repealed by [Directive 2002/59/EC](#) of the European Parliament and of the Council of 27 June 2002 (OJ L 208, 5.8.2002, p.10).
- (26) OJ L 208, 5.8.2002, p.10, last amended by Commission [Directive 2014/100/EU](#) (OJ L 308, 29.10.2014, p.82).
- (27) OJ L 260, 30.9.2008, p.13, last amended by Commission [Directive \(EU\) 2018/1846](#) (OJ L 299, 26.11.2018, p.58).
- (28) OJ L 125, 21.5.2009, p.75.
- (29) [S.S.I. 2014/258](#).

“3. For the purposes of these Regulations, a reference in any EU instrument referred to in these Regulations—

- (a) to the “European Union” or otherwise to the area to which that instrument applies is to be taken to include the United Kingdom,
- (b) to a “Member State” is to be taken to include the United Kingdom.”.

(3) In regulation 4 (application)—

- (a) in paragraph (1)(b)(i), for “Article 4(7) of Directive 2000/60/EC” substitute “regulations 8 or 9 of the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013(30)”,
- (b) in paragraph (1)(b)(ii), after “addressed through” insert “the retained EU law which implemented”,
- (c) in paragraph (5)(b), for “or higher, including the European Union” substitute “, or national or by reference to the natural range of the species”.

(4) In regulation 15 (co-operation between competent authorities)—

- (a) in paragraph (1)(a), for “another” substitute “a”,
- (b) omit paragraph (3)(a).

(5) In schedule 1 (activities for the purposes of regulation 4(1))—

- (a) after the heading, insert—

**“A1. Interpretation**

A reference in this schedule to an activity being authorised, prohibited or managed pursuant to, or subject to a permit, authorisation or registration under, a Directive includes, on or after exit day, any activity authorised, prohibited or managed pursuant to, or subject to a permit, authorisation or registration under, any retained EU law which transposed that Directive.”.

- (b) in paragraph 11, after “the European Union” insert “or into or out of the United Kingdom”.

St Andrew’s House,  
Edinburgh  
3rd September 2019

*ROSEANNA CUNNINGHAM*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

Part 4 of these Regulations is made in exercise of the powers in paragraph 1(1) and (3) of schedule 2, and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (c.16) 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.

Parts 2 and 3 of these Regulations are made in exercise of powers under the European Communities Act 1972 (c.68).

Part 2 makes amendments to the Environmental Liability (Scotland) Regulations 2009 to update references to a number of EU instruments referred to in those Regulations. In addition, regulation 2(4) inserts a new regulation 7A into those Regulations to impose a new reporting requirement on competent authorities other than the Scottish Ministers where environmental damage has occurred. This implements Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p.56), as amended by Article 3 of Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment (OJ L 170, 25.6.2019, p.115).

Part 3 amends the Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 to correct drafting errors and fulfils a commitment to the Scottish Parliament to do so.

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.