

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

**EXITING THE EUROPEAN
UNION, NORTHERN IRELAND
ENVIRONMENTAL PROTECTION,
NORTHERN IRELAND**

The Environment (Miscellaneous Amendments)
(Northern Ireland) (EU Exit) Regulations 2019

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations under section 8(1) of and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to the Act a draft has been laid before Parliament and approved by each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1. These Regulations may be cited as the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 and shall come into force on exit day.
2. These Regulations extend to Northern Ireland only.

PART 2

Amendment of primary legislation

Amendment of the Genetically Modified Organisms (Northern Ireland) Order 1991

3. The Genetically Modified Organisms (Northern Ireland) Order 1991(2) is amended as follows.
4. In Article 13(2)—
 - (a) omit “the Community Treaties or”; and,
 - (b) after “agreement”, insert “or retained EU law”.

Amendment of the Industrial Pollution Control (Northern Ireland) Order 1997

5. The Industrial Pollution Control (Northern Ireland) Order 1997(3) is amended as follows.
6. In Article 7(2)(b), for “the Community Treaties” substitute “retained EU obligations”.
7. In Article 30—
 - (a) in the heading for “Community and other” substitute “retained EU obligations and”;
 - (b) in paragraph (1)(a), for “Community” substitute “retained EU”; and,
 - (c) in paragraph (2)(a), for “Community” substitute “retained EU”.

Amendment of the Waste and Contaminated Land (Northern Ireland) Order 1997

8. The Waste and Contaminated Land (Northern Ireland) Order 1997(4) is amended as follows.
9. In Article 33, for paragraph (2)(a) substitute—
 - “(a) which was first supplied in any part of the United Kingdom or any EU member State on or after 18th September 1981; or”.
10. In Article 37—
 - (a) in paragraph (1), omit “or under any relevant instrument”;
 - (b) in paragraph (2)(b), omit “or any relevant instrument”; and,
 - (c) omit paragraph (5).
11. In Article 38(3)(b), for “under the law of any” substitute “under the law of any part of the United Kingdom or any EU”.
12. In Article 72(12), in the definition of “pollution control statutory provisions”, for “section 2(2) of the European Communities Act 1972” substitute “retained EU obligations” in each place.
13. In Article 77—
 - (a) in the heading for “Community” substitute “retained EU obligations”;
 - (b) in paragraph (1)(a), for “Community obligation” substitute “retained EU obligation”; and,
 - (c) in paragraph (2)(a), for “Community obligation” substitute “retained EU obligation”.
14. In Schedule 3—
 - (a) in Part 1 for paragraph 4(2) substitute—

(2) [S.I. 1991/1714 \(N.I. 19\)](#)

(3) [S.I. 1997/2777 \(N.I. 18\)](#)

(4) [S.I. 1997/2778 \(N.I. 19\)](#), as relevantly amended by [S.R. 2009 No. 178, 2011 c.5](#)

“(2) The network must be designed so as to enable the United Kingdom as a whole to become self-sufficient in waste disposal as well as in the recovery of mixed municipal waste collected from private households taking into account geographical circumstances or the need for specialised installations for certain types of waste.”;

- (b) in Part 2, in paragraph 6(d), for “waste oils, hazardous waste, or waste streams addressed by specific European Union legislation” substitute “waste oils or hazardous waste”; and,
- (c) in Part 3, in paragraph 9(b), omit “, taking into account the need to maintain the smooth functioning of the internal market”.

Amendment of the Producer Responsibility Obligations (Northern Ireland) Order 1998

15. The Producer Responsibility Obligations (Northern Ireland) Order 1998⁽⁵⁾ is amended as follows.

16. In Article 3(3)(a), for “obligations of the United Kingdom under the Community Treaties” substitute “retained EU obligations”.

17. In Article 4(2)(a)(i), for “obligations of the United Kingdom under the Community Treaties” substitute “retained EU obligations”.

Amendment to the Environment (Northern Ireland) Order 2002

18. The Environment (Northern Ireland) Order 2002⁽⁶⁾ is amended as follows.

19. Omit Article 9.

20. In Article 10(3)(a), for “the Community Treaties” substitute “retained EU obligations”.

21. In Article 14(5)(a), for “any obligations of the United Kingdom under the Community Treaties” substitute “retained EU obligations”.

22. In Article 15(1)(b)(i) for “obligations of the United Kingdom under the Community Treaties;” substitute “retained EU obligations;”.

23. In Article 22—

- (a) in the heading for “Community” substitute “retained EU obligations”;
- (b) in paragraph (1)(a), for “any obligations of the United Kingdom under the Community treaties” substitute “retained EU obligations”.

24. In Article 26(5), for “obligations of the United Kingdom under the Community Treaties” substitute “retained EU obligations”.

25. In Schedule 1—

- (a) for paragraph 3(b) substitute—
 - “(b) directions given for the purposes of the implementation of—
 - (i) any retained EU obligations;
 - (ii) any obligations of the United Kingdom under any international agreement to which the United Kingdom is a party;”;
- (b) in paragraph 9B(1), for “the EU ETS Directive” substitute “retained EU obligations”;
- (c) in paragraph 9C, for “Regulation EU 2017/852 of the Council on mercury, and repealing Regulation (EC) No 1102/2008” substitute “retained EU obligations”;

(5) S.I. 1998/1762 (N.I. 16), to which there is an amendment not relevant to these regulations

(6) S.I. 2002/3153, as relevantly amended by S.R. 2010 No. 92, S.R. 2011 No. 127, S.I. 2011/2911, S.I. 2012/2788, S.I. 2017/1200

(d) in paragraph 20—

(i) in sub-paragraph (1)(b) substitute—

“(b) any provision (not being a provision within any of paragraphs 1 to 19) that might be made by an Act of Parliament in connection with the relevant directives, other than provision—

- (i) imposing or increasing taxation;
- (ii) taking effect from a date earlier than that of the making of the regulations containing the provision;
- (iii) conferring any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal;
- (iv) creating any new criminal offence punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine.”;

(ii) in sub-paragraph (2)—

(aa) omit paragraph (c);

(bb) for paragraph (d) substitute—

“(d) Council [Directive 87/217/EEC](#) on the prevention and reduction of environmental pollution by asbestos(7);”;

(cc) after paragraph (d) add—

“(e) European Parliament and Council [Directive 94/63/EC](#) on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations(8);

(f) Council [Directive 1999/31/EC](#) on the landfill of waste(9) as last amended by [Directive 2011/97/EU](#)(10);

(g) [Directive 2000/53/EC](#) of the European Parliament and of the Council on end-of life vehicles(11) as last amended by [Directive \(EU\) 2017/2096](#)(12);

(h) [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(13);

(i) [Directive 2001/81/EC](#) of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants(14);

(j) [Directive 2003/35/EC](#) of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage(15);

(7) OJ No L 85, 28.3.1987, p. 40, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155)

(8) OJ No L 365, 31.12.1994, p. 24, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155)

(9) OJ No L 182, 16.7.1999, p. 1

(10) OJ No L 328, 10.12.2011, p. 49

(11) OJ No L 269, 21.10.2000, p. 34

(12) OJ No L 299, 16.11.2017, p. 24

(13) OJ No L 327, 22.12.2000, p. 1, as last amended by [Directive 2014/101/EU](#) (OJ No L 311, 31.10.2014, p. 32)

(14) OJ No L 309, 27.11.2001, p. 22, as last amended by [Directive \(EU\) 2016/2284](#) (OJ No L 344, 17.12.2016, p. 1)

(15) OJ No L 156, 25.6.2003, p. 17, as last amended by [Directive \(EU\) 2016/2284](#) (OJ No L 344, 17.12.2016, p. 1)

- (k) [Directive 2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries⁽¹⁶⁾;
- (l) [Directive 2006/66/EC](#) of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators⁽¹⁷⁾, as last amended by [Directive 2013/56/EU](#)⁽¹⁸⁾;
- (m) [Directive 2006/118/EC](#) of the European Parliament and of the Council (on the protection of groundwater against pollution and deterioration)⁽¹⁹⁾;
- (n) [Directive 2008/98/EC](#) of the European Parliament and of the Council of waste⁽²⁰⁾, as last amended by Regulation (EU) 2017/997⁽²¹⁾;
- (o) [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide⁽²²⁾;
- (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⁽²³⁾;
- (q) [Directive 2010/75/EU](#) of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)⁽²⁴⁾;
- (r) [Directive 2012/19/EU](#) of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)⁽²⁵⁾, as it had effect immediately before 4th July 2018;
- (s) [Directive 2012/27/EU](#) of the European Parliament and of the Council on Energy efficiency⁽²⁶⁾;
- (t) [Directive 2013/59/EURATOM](#) laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation⁽²⁷⁾;
- (u) [Directive 2015/2193/EU](#) of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants⁽²⁸⁾;
- (v) any other directive of the Council of the European Community designated by order for the purposes of this paragraph as in force on exit day.”;

(iii) after sub-paragraph (2), insert—

⁽¹⁶⁾ OJ No L 102, 11.4.2006, p. 15, as last amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p. 14)

⁽¹⁷⁾ OJ No L 266, 26.9.2006, p. 1

⁽¹⁸⁾ OJ No L 329, 10.12.2013, p. 5

⁽¹⁹⁾ OJ No L 372, 27.12.2006, p. 19, as last amended by [Directive 2014/80/EU](#) (OJ No L 182, 21.6.2014, p. 52)

⁽²⁰⁾ OJ No L 312, 22.11.2008, p. 3

⁽²¹⁾ OJ No L 150, 14.6.2017, p. 1

⁽²²⁾ OJ No L 140, 5.6.2009, p. 114, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155)

⁽²³⁾ OJ No L 285, 31.10.2009, p. 36

⁽²⁴⁾ OJ No L 334, 17.12.2010, p. 17, as corrected by Corrigendum to Council [Directive 2010/75/EU](#) (OJ No L 158, 19.6.2012, p. 25)

⁽²⁵⁾ OJ No L 197, 24.7.2012, p. 38

⁽²⁶⁾ OJ No L 315, 14.11.2012, p. 1, as last amended by Directive (EU) 2018/844 (OJ No L 156, 19.6.2018, p. 75)

⁽²⁷⁾ OJ No L 13, 17.1.2014, p. 1, as corrected by Corrigendum to Council Directive 2013/59/Euratom (OJ No L 72, 17.3.2016, p. 69)

⁽²⁸⁾ OJ No L 313, 28.11.2015, p. 1

“(2A) In sub-paragraph (1)(b)(iii), “power to legislate” does not include any power to—

- (a) amend or extend a power to legislate conferred other than under this paragraph;
 - (b) give directions as to matters of administration.”.
- (e) In paragraph 26 omit the definition of “the EU ETS Directive”.

Amendment of the Environmental Better Regulation Act (Northern Ireland) 2016

26. The Environmental Better Regulation Act (Northern Ireland) 2016⁽²⁹⁾ is amended as follows.

27. In section 1(1)(b), for “EU obligations of the United Kingdom” substitute “retained EU obligations”.

28. In Schedule 1 paragraph 3(4)(b), for “any obligations of the United Kingdom under the EU Treaties” substitute “retained EU obligations”.

PART 3

Amendment of subordinate legislation

Amendment of the Environmental Noise Regulations (Northern Ireland) 2006

29. The Environmental Noise Regulations (Northern Ireland) 2006⁽³⁰⁾ are amended as follows.

30. In regulation 2—

- (a) after paragraph (2) insert—

“(2A) For the purpose of these Regulations, a reference to the Directive is to be read as if any reference in that Directive to a member state or competent authority in a provision imposing an obligation on or providing a discretion to a member state or competent authority is to the Northern Ireland department which, immediately before exit day was responsible for compliance with that obligation or exercise of that discretion in Northern Ireland”.

31. In paragraph (4), for “as amended from time to time” substitute “as it had effect immediately before exit day”.

32. In regulation 4, at the end insert—

“(6) For the purposes of paragraph (2)(a), a reference to Annex 1 to the Directive is to be read as if, in paragraph (1) of the Directive, in the second subparagraph, in the first indent, the words from “The Member” to the end were omitted”.

33. In regulation 45—

- (a) in paragraph (2)(b), for the words “the Directive” substitute “relevant EU-derived domestic legislation⁽³¹⁾”;

⁽²⁹⁾ 2016 c.13 (N.I.)

⁽³⁰⁾ S.R. 2006 No. 387 as relevantly amended by S.R. 2018 No. 190

⁽³¹⁾ Relevant EU-derived domestic legislation includes: The Environmental Noise Regulations (Northern Ireland) 2006 (S.R. 2006 No. 387), The Environmental Noise (England) Regulations 2006 (S.I. 2006/2238, as amended by S.I. 2009/1610, S.I. 2010/340 and S.I. 2015/377), The Environmental Noise (Wales) Regulations 2006 (S.I. 2006/2629, (W, 225), as amended by S.I. 2009/47 W,15) and The Environmental Noise (Scotland) Regulations 2006 (S.I. 2006/465)

- (b) in paragraph (3), for “Article 4 of the Directive” substitute “the relevant EU-derived domestic legislation”.
34. In regulation 49, omit paragraph (4)(b)(ii) and the preceding “or”.
35. In Schedule 1—
- (a) in paragraph 1—
- (i) the existing text is renumbered as sub-paragraph (1);
- (ii) at the end insert—
- “(2) For the purposes of sub-paragraph (1), the reference to paragraphs 1.5, 1.6 and 2.6 of Annex VI to the Directive is to be read with the following modifications—
- (a) in paragraphs 1.5 and 1.6, as if the reference in those paragraphs to “major roads”, “major railways” and “major airports” as defined in Article 3 of the Directive were to “major road”, “major railway” and “major airport” as defined in regulation 2(3) of these Regulations;
- (b) in paragraphs 1.6 and 2.6, as if the words from “These data” to the end were omitted.”;
- (b) in paragraph 2, at the end insert—
- “(3) for the purpose of paragraph (1)(a), a reference to Annex IV of the Directive is to be read as if the following were omitted—
- (a) in paragraph 4, the first indent;
- (b) in paragraph 5, the words from “concerning” to “Commission”;
- (c) paragraph 9.”.

Amendment of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009

36. The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009⁽³²⁾ are amended as follows.
37. In regulation 2(2) after the definition of “operator” insert—
- ““river basin management plan” has the same meaning as in the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017⁽³³⁾.”
38. After regulation 2(3) insert—
- “(4) A reference to Council [Directive 1999/31/EC](#)⁽³⁴⁾ on the landfill of waste shall be construed as a reference to that directive (as amended from time to time) as it had effect immediately before exit day.”.
39. For regulation 2A substitute—
- “**2A.** References in Schedule 2 or 3 to EU instruments are to those instruments as they had effect immediately before exit day”.
40. In regulation 3(4A), omit from “in accordance” to the end.
41. In regulation 7(1)(b), omit “pursuant to [Directive 2000/60/EC](#)”.
42. In regulation 7(1)(c), omit “pursuant to that Directive”.

⁽³²⁾ [S.R. 2009 No. 252](#) as relevantly amended by [S.R. 2009 No. 361](#), [S.R. 2015 No.231](#)

⁽³³⁾ [S.R. 2017 No. 81](#)

⁽³⁴⁾ [OJ No L 182, 16.7.1999, p. 1](#)

43. In regulation 7(2)(b), omit “required under Article 13 of [Directive 2000/60/EC](#)”.

44. In Schedule 1 in paragraph 1(e), for “or Community-wide” substitute “, national or in their natural range”.

45. In Schedule 2—

(1) in paragraph 9, after “the Community” insert “or, after exit day, into or out of the United Kingdom”;

(2) after paragraph 10 insert—

“Interpretation

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

PART 4

Savings

Savings

46.—(1) The amendments made by regulation 25(a) to paragraph 3(b) of Schedule 1 to the Environment (Northern Ireland) Order 2002 do not affect the validity, on or after exit day, of any direction given under that paragraph which has effect immediately before exit day, and such a direction may be varied (so as to make provision that could be made in a direction given under that relevant paragraph on or after exit day) or revoked.

(2) The power to vary or revoke such a direction is subject to regulations 40 and 41 of the Pollution, Prevention and Control (Industrial Emission) Regulations (Northern Ireland) 2013⁽³⁵⁾.

(3) The amendment made by regulation 22 to Article 15(1)(b)(i) of the Environment (Northern Ireland) Order 2002 does not affect the validity, on or after exit day, of any regulations made under that section which have effect immediately before exit day.

Date

Name
Parliamentary Under Secretary
Department for Environment, Food and Rural
Affairs

(35) [S.R. 2013 No. 160](#) to which there are no relevant amendments

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes amendments to primary legislation concerning the environment.

Part 3 makes amendments to subordinate legislation concerning the environment.

Part 4 makes saving provisions in respect of amendments made to the Environment (Northern Ireland) Order 2002 (S.I. 2002 No.3153 (N.I.7)) in Part 2.