

**Changes to legislation:** Water Environment and Water Services (Scotland) Act 2003, SCHEDULE 5 is up to date with all changes known to be in force on or before 19 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## [<sup>F1</sup>SCHEDULE 5 Section 28A

### INTERPRETATION OF DIRECTIVES FOR THE PURPOSES OF PART 1

#### Textual Amendments

- F1** Sch. 5 inserted (31.12.2020) by [The Environment \(EU Exit\) \(Scotland\) \(Amendment etc.\) Regulations 2019 \(S.S.I. 2019/26\)](#), regs. 1, **2(6)** (as amended by [S.S.I. 2019/175](#), regs. 1(1)(b), **8(2)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

## PART 1

### THE DIRECTIVE

#### *Introduction*

- 1 (1) When interpreting the Directive for the purposes of Part 1 of this Act—
- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation, or able to exercise that discretion, in respect of Scotland,
  - (b) a reference to Community legislation is to be read as a reference to [<sup>F2</sup>assimilated] law,
  - (c) the Directive is to be read subject to the following rules.
- (2) In sub-paragraph 1(a)—
- “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
- “relevant authority” means—
- (a) the Scottish Ministers,
  - (b) SEPA,
  - (c) any responsible authority.

#### Textual Amendments

- F2** Word in [sch. 5 para. 1\(1\)\(b\)](#) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(a\)](#)

#### *Modifications to the Articles*

- 2 Article 2 is to be read as if—
- (a) in paragraph 24, for the words from “in Annex IX” to the end, there were substituted “ by the Priority Substances Directive, and under relevant [<sup>F3</sup>assimilated] law which sets environmental quality standards ”,

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- (b) in paragraph 37, for the words from “Directive 80/778/EEC” to the end, there were substituted “ Council Directive 98/83/EC on the quality of water intended for human consumption ”.

#### Textual Amendments

**F3** Word in sch. 5 para. 2(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(b)

3 Article 3(9) is to be ignored.

4 Article 4 is to be read as if—

- (a) in paragraph 1—
- (i) in sub-paragraph (a)(iv), for “Article 16(1) and (8)” there were substituted “ the Priority Substances Directive ”,
  - (ii) in sub-paragraph (b)(iii), for “paragraphs 2, 4 and 5 of Article 17” there were substituted “ the Groundwater Directive ”,
- (b) in paragraph 8, the reference to “other Community environmental legislation” were a reference to “[<sup>F4</sup>assimilated] law relating to the environment”,
- (c) in paragraph 9, the reference to “the existing Community legislation” were a reference to “other relevant [<sup>F5</sup>assimilated] law”.

#### Textual Amendments

**F4** Word in sch. 5 para. 4(b) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(c)

**F5** Word in sch. 5 para. 4(c) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(d)

5 Article 7(2) is to be read as if—

- (a) for “at Community level under Article 16” there were substituted “ by the Priority Substances Directive ”,
- (b) for “Directive 80/778/EEC as amended by Directive 98/83/EC” there were substituted “ the [<sup>F6</sup>assimilated] law which implemented Council Directive 98/83/EC on the quality of water intended for human consumption ”.

#### Textual Amendments

**F6** Word in sch. 5 para. 5(b) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(e)

6 Article 10 is to be ignored.

7 Article 11(3) is to be read as if—

- (a) in sub-paragraph (a), for the words from “to implement” to the end, there were substituted “ under [<sup>F7</sup>assimilated] law for the protection of water ”,

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- (b) in sub-paragraph (j), in the fourth indent, for the words from “Directive 2009/31/EC” to the end, there were substituted “ the [<sup>F8</sup>assimilated] law which implemented Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide ”,
- (c) in sub-paragraph (k)—
  - (i) for “action taken pursuant to Article 16,” there were substituted “ the Priority Substances Directive ”,
  - (ii) for “agreed pursuant to Article 16(2)” there were substituted “ in Annex X ”.

#### Textual Amendments

- F7** Word in sch. 5 para. 7(a) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(f)
- F8** Word in sch. 5 para. 7(b) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(2)(g)

- 8 Article 12 is to be ignored.
- 9 Article 15 is to be ignored.
- 10 Article 24 is to be ignored.
- 11 Annex II is to be read as if, in section 1.4—
  - (a) in the second paragraph—
    - (i) after “gathered under” there were inserted “ the [<sup>F9</sup>assimilated] law which implemented ”,
    - (ii) in sub-paragraph (ii), the reference to information gathered under Articles 9 and 15 of Directive 96/61/EC were a reference to relevant information gathered under the [<sup>F10</sup>assimilated] law which implemented Articles 5(3), 14 and 24 of Directive 2010/75/EC of the European Parliament and of the Council on industrial emissions ”,
  - (b) in the third paragraph—
    - (i) at the start of sub-paragraph (i), there were inserted “[<sup>F11</sup>assimilated] law which implemented”,
    - (ii) in sub-paragraph (ii), the reference to information gathered under Articles 7 and 17 of Directive 91/414/EEC were a reference to relevant information gathered under Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC”,
    - (iii) in sub-paragraph (iii), for “Directive 98/8/EC” there were substituted “ 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 ”.

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### Textual Amendments

- F9** Word in sch. 5 para. 11(a)(i) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(h\)](#)
- F10** Word in sch. 5 para. 11(a)(ii) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(i\)](#)
- F11** Word in sch. 5 para. 11(b)(i) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(j\)](#)

12 Annex IV is to be read as if—

(a) in paragraph 1—

- (i) in sub-paragraph (iii), for “Directive [76/160/EEC](#)” there were substituted “ [F12assimilated] law which implemented 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](#) ”,
- (ii) in sub-paragraph (iv), after “under”, in both places it occurs, there were inserted “ the [F13assimilated] law which implemented ”,
- (iii) in sub-paragraph (v)—
- (A) after “under”, there were inserted “ the [F14assimilated] law which implemented ”,
- (B) for “Directive [79/409/EEC](#)” there were substituted “ the [F15assimilated] law which implemented Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds ”,

(b) in paragraph 2, the words “Community, national or local” were omitted.

### Textual Amendments

- F12** Word in sch. 5 para. 12(a)(i) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(k\)](#)
- F13** Word in sch. 5 para. 12(a)(ii) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(l\)](#)
- F14** Word in sch. 5 para. 12(a)(iii)(A) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(m\)](#)
- F15** Word in sch. 5 para. 12(a)(iii)(B) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(n\)](#)

13 Annex V is to be read as if—

- (a) references in tables 1.2.1 to 1.2.5 to Directive [91/414/EC](#), in each place they occur, were references to Regulation (EC) No [1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection

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- products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#),
- (b) references in tables 1.2.1 to 1.2.5 to Directive [98/8/EC](#), in each place they occur, were references to 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,
  - (c) in section 1.3.1, in the unnumbered paragraph headed “Selection of monitoring points”, the fourth indent (referring to “the Information Exchange Decision [77/795/EEC](#)”) were omitted,
  - (d) in section 1.3.5, for “Drinking Water Directive” there were substituted “ [<sup>F16</sup>assimilated] law which implemented Council Directive [98/83/EC](#) on the quality of water intended for human consumption ”,
  - (e) in section 1.4.3, for “Annex IX, Article 16 and under other relevant Community legislation” there were substituted “ the Priority Substances Directive and under relevant [<sup>F17</sup>assimilated] law ”,
  - (f) in the table in section 2.3.2, in the column for “good status”, for “other relevant Community legislation in accordance with Article 17” there were substituted “ the Groundwater Directive ”,
  - (g) in section 2.4.5, for “the Directives concerned” there were substituted “ the Priority Substances Directive and the Groundwater Directive ”.

#### Textual Amendments

- F16** Word in sch. 5 para. 13(d) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(o\)](#)
- F17** Word in sch. 5 para. 13(e) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(p\)](#)

- 14 Annex VI is to be read as if Part A were omitted.
- 15 Annex VII is to be read as if, in Part A, in point 7.1, for “to implement Community legislation” there were substituted “ under [<sup>F18</sup>assimilated] law ”.

#### Textual Amendments

- F18** Word in sch. 5 para. 15 substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(q\)](#)

#### *Definition of [<sup>F19</sup>assimilated] law*

#### Textual Amendments

- F19** Word in sch. 5 para. 16 cross-heading substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(2\)\(r\)](#)

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- 16 For the purposes of this Part, “[<sup>F20</sup>assimilated] law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.

**Textual Amendments**

**F20** Word in *sch. 5 para. 16* substituted (1.1.2024) by *The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374)*, reg. 1(1), **sch. 1 para. 4(2)(s)**

## PART 2

### THE GROUNDWATER DIRECTIVE

#### *Introduction*

- 17 (1) When interpreting the Groundwater Directive for the purposes of Part 1 of this Act—
- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation, or able to exercise that discretion, in respect of Scotland,
  - (b) a reference to Community legislation is to be read as a reference to [<sup>F21</sup>assimilated] law,
  - (d) the Groundwater Directive is to be read subject to the following rules.
- (2) In sub-paragraph 1(a)—
- “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
  - “relevant authority” means—
    - (a) the Scottish Ministers,
    - (b) SEPA,
    - (c) any responsible authority.

**Textual Amendments**

**F21** Word in *sch. 5 para. 17(1)(b)* substituted (1.1.2024) by *The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374)*, reg. 1(1), **sch. 1 para. 4(3)(a)**

#### *Modifications to the Articles*

- 18 Article 3(5) is to be read as if for “submitted” there were substituted “produced”.
- 19 Article 5(4) and (5) is to be read as if for “submitted” there were substituted “produced”.
- 20 Article 6(4) is to be read as if the words from “for the” to the end were omitted.
- 21 Article 12 is to be ignored.
- 22 Annex I is to be read as if—

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- (a) in footnote 1 to the table in paragraph 1, for “Article 2 of Directive 91/414/EEC and in Article 2 of Directive 98/8/EC” there were substituted “ Article 2 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC and in Article 3 of 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 ”,
- (b) in paragraph 2, for “Directive 91/414/EEC or Directive 98/8/EC” there were substituted “ Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC or 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 ”.

23 Annex II is to be read as if, in Part C—

- (a) in the first paragraph, for “submitted” there were substituted “ produced ”,
- (b) in the second paragraph—
  - (i) in the opening words, for “provide” there were substituted “ include ”,
  - (ii) in point (c)(iii), for “at national, Union or” there were substituted “ in [F22assimilated] law or other national legislation, or at ”.

#### Textual Amendments

**F22** Word in sch. 5 para. 23(b)(ii) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(3)(b)

#### *Definition of [F23assimilated] law*

#### Textual Amendments

**F23** Word in sch. 5 para. 24 cross-heading substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(3)(c)

24 For the purposes of this Part, “[F24assimilated] law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.

#### Textual Amendments

**F24** Word in sch. 5 para. 24 substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 1 para. 4(3)(d)

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### PART 3

#### THE PRIORITY SUBSTANCES DIRECTIVE

##### *Introduction*

- 25 (1) When interpreting the Priority Substances Directive for the purposes of Part 1 of this Act—
- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation, or able to exercise that discretion, in respect of Scotland,
  - (b) the Priority Substances Directive is to be read subject to the following rules.
- (2) In sub-paragraph (1)(a)—
- “exit day” has the meaning given by section 20 of the European Union (Withdrawal) Act 2018,
  - “relevant authority” means—
    - (a) the Scottish Ministers,
    - (b) SEPA,
    - (c) any responsible authority.

##### *Modifications to Articles*

- 26 (1) A reference in Article 3 to a provision of the relevant Directive is to be read as a reference to that provision subject to the modification described by paragraph 25(1) (a) of this schedule.
- (2) Article 3(5a) is to be ignored.
- (3) In sub-paragraph (1), “the relevant Directive” means 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.
- 27 Article 4 is to be read as if—
- (a) in paragraph 2(b), the words from “, such as” to the end were omitted,
  - (b) in paragraph 3(b), the reference to “Community law” were a reference to [<sup>F25</sup>assimilated] law.

#### **Textual Amendments**

**F25** Word in *sch. 5 para. 27(b)* substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(4\)\(a\)](#)

- 28 Article 5 is to be read as if—
- (a) references to Directive [91/414/EEC](#) were references to Regulation [\(EC\) No 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives [79/117/EEC](#) and [91/414/EEC](#),



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- (b) paragraph 3 were omitted.
- 29 The following are to be ignored—
- (a) Article 6(2),
  - (b) Article 7a(3),
  - (c) in Article 8a(1), the final sentence of the second sub-paragraph,
  - (d) Article 8b(4),
  - (e) Article 8c,
  - (f) Article 13.

*Definition of [F<sup>26</sup>assimilated] law*

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**Textual Amendments**

- F26** Word in sch. 5 para. 30 cross-heading substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(4\)\(b\)](#)

- 30 For the purposes of this Part, “[F<sup>27</sup>assimilated] law” has the meaning given by section 6(7) of the European Union (Withdrawal) Act 2018.]

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**Textual Amendments**

- F27** Word in sch. 5 para. 30 substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), reg. 1(1), [sch. 1 para. 4\(4\)\(c\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 23(5) inserted by [2014 asp 3 sch. 3 para. 8\(6\)\(b\)](#)